

## § 750.41

on the record of the hearing by the person chairing it or in writing by the Hearing Chairman.

### § 750.41 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, EPA will issue a final rule. EPA will also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a FEDERAL REGISTER document, and

(2) The effective date of the rule.

(b) Pursuant to the delegation of authority made in the Preamble to the Final Regulation for the PCB Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, the Assistant Administrator for Prevention, Pesticides and Toxic Substances will grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to § 750.31. The Assistant Administrator will act on such petitions subsequent to opportunity for an informal hearing pursuant to this rule.

(c) In determining whether to grant an exemption to the PCB ban, EPA will apply the two standards enunciated in section 6(e)(3)(B) of TSCA.

## PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

### Subpart A—General

Sec.

761.1 Applicability.

761.2 PCB concentration assumptions for use.

761.3 Definitions.

761.19 References.

### Subpart B—Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items

761.20 Prohibitions and exceptions.

761.30 Authorizations.

761.35 Storage for reuse.

### Subpart C—Marking of PCBs and PCB Items

761.40 Marking requirements.

761.45 Marking formats.

## 40 CFR Ch. I (7–1–06 Edition)

### Subpart D—Storage and Disposal

761.50 Applicability.

761.60 Disposal requirements.

761.61 PCB remediation waste.

761.62 Disposal of PCB bulk product waste.

761.63 PCB household waste storage and disposal.

761.64 Disposal of wastes generated as a result of research and development activities authorized under § 761.30(j) and chemical analysis of PCBs.

761.65 Storage for disposal.

761.70 Incineration.

761.71 High efficiency boilers.

761.72 Scrap metal recovery ovens and smelters.

761.75 Chemical waste landfills.

761.77 Coordinated approval.

761.79 Decontamination standards and procedures.

### Subpart E—Exemptions

761.80 Manufacturing, processing and distribution in commerce exemptions.

### Subpart F—Transboundary Shipments of PCBs for Disposal

761.91 Applicability.

761.93 Import for disposal.

761.97 Export for disposal.

761.99 Other transboundary shipments.

### Subpart G—PCB Spill Cleanup Policy

761.120 Scope.

761.123 Definitions.

761.125 Requirements for PCB spill cleanup.

761.130 Sampling requirements.

761.135 Effect of compliance with this policy and enforcement.

### Subparts H–I [Reserved]

### Subpart J—General Records and Reports

761.180 Records and monitoring.

761.185 Certification program and retention of records by importers and persons generating PCBs in excluded manufacturing processes.

761.187 Reporting importers and by persons generating PCBs in excluded manufacturing processes.

761.193 Maintenance of monitoring records by persons who import, manufacture, process, distribute in commerce, or use chemicals containing inadvertently generated PCBs.

### Subpart K—PCB Waste Disposal Records and Reports

761.202 EPA identification numbers.

761.205 Notification of PCB waste activity (EPA Form 7710-53).

## Environmental Protection Agency

Pt. 761

- 761.207 The manifest—general requirements.
- 761.208 Use of the manifest.
- 761.209 Retention of manifest records.
- 761.210 Manifest discrepancies.
- 761.211 Unmanifested waste report.
- 761.215 Exception reporting.
- 761.218 Certificate of disposal.

### Subpart L [Reserved]

### Subpart M—Determining a PCB Concentration for Purposes of Abandonment or Disposal of Natural Gas Pipeline: Selecting Sample Sites, Collecting Surface Samples, and Analyzing Standard PCB Wipe Samples

- 761.240 Scope and definitions.
- 761.243 Standard wipe sample method and size.
- 761.247 Sample site selection for pipe segment removal.
- 761.250 Sample site selection for pipeline section abandonment.
- 761.253 Chemical analysis.
- 761.257 Determining the regulatory status of sampled pipe.

### Subpart N—Cleanup Site Characterization Sampling for PCB Remediation Waste in Accordance with § 761.61(a)(2)

- 761.260 Applicability.
- 761.265 Sampling bulk PCB remediation waste and porous surfaces.
- 761.267 Sampling non-porous surfaces.
- 761.269 Sampling liquid PCB remediation waste.
- 761.272 Chemical extraction and analysis of samples.
- 761.274 Reporting PCB concentrations in samples.

### Subpart O—Sampling To Verify Completion of Self-Implementing Cleanup and On-Site Disposal of Bulk PCB Remediation Waste and Porous Surfaces in Accordance with § 761.61(a)(6)

- 761.280 Application and scope.
- 761.283 Determination of the number of samples to collect and sample collection locations.
- 761.286 Sample size and procedure for collecting a sample.
- 761.289 Compositing samples.
- 761.292 Chemical extraction and analysis of individual samples and composite samples.
- 761.295 Reporting and recordkeeping of the PCB concentrations in samples.

- 761.298 Decisions based on PCB concentration measurements resulting from sampling.

### Subpart P—Sampling Non-Porous Surfaces for Measurement-Based Use, Reuse, and On-Site or Off-Site Disposal Under § 761.61(a)(6) and Determination Under § 761.79(b)(3)

- 761.300 Applicability.
- 761.302 Proportion of the total surface area to sample.
- 761.304 Determining sample location.
- 761.306 Sampling 1 meter square surfaces by random selection of halves.
- 761.308 Sample selection by random number generation on any two-dimensional square grid.
- 761.310 Collecting the sample.
- 761.312 Compositing of samples.
- 761.314 Chemical analysis of standard wipe test samples.
- 761.316 Interpreting PCB concentration measurements resulting from this sampling scheme.

### Subpart Q—Self-Implementing Alternative Extraction and Chemical Analysis Procedures for Non-liquid PCB Remediation Waste Samples

- 761.320 Applicability.
- 761.323 Sample preparation.
- 761.326 Conducting the comparison study.

### Subpart R—Sampling Non-Liquid, Non-Metal PCB Bulk Product Waste for Purposes of Characterization for PCB Disposal in Accordance With § 761.62, and Sampling PCB Remediation Waste Destined for Off-Site Disposal, in Accordance With § 761.61

- 761.340 Applicability.
- 761.345 Form of the waste to be sampled.
- 761.346 Three levels of sampling.
- 761.347 First level sampling—waste from existing piles.
- 761.348 Contemporaneous sampling.
- 761.350 Subsampling from composite samples.
- 761.353 Second level of sample selection.
- 761.355 Third level of sample selection.
- 761.356 Conducting a leach test.
- 761.357 Reporting the results of the procedure used to simulate leachate generation.
- 761.358 Determining the PCB concentration of samples of waste.
- 761.359 Reporting the PCB concentrations in samples.

**Subpart S—Double Wash/Rinse Method for Decontaminating Non-Porous Surfaces**

- 761.360 Background.
- 761.363 Applicability.
- 761.366 Cleanup equipment.
- 761.369 Pre-cleaning the surface.
- 761.372 Specific requirements for relatively clean surfaces.
- 761.375 Specific requirements for surfaces coated or covered with dust, dirt, grime, grease, or another absorbent material.
- 761.378 Decontamination, reuse, and disposal of solvents, cleaners, and equipment.

**Subpart T—Comparison Study for Validating a New Performance-Based Decontamination Solvent Under § 761.79(d)(4)**

- 761.380 Background.
- 761.383 Applicability.
- 761.386 Required experimental conditions for the validation study and subsequent use during decontamination.
- 761.389 Testing parameter requirements.
- 761.392 Preparing validation study samples.
- 761.395 A validation study.
- 761.398 Reporting and recordkeeping.

AUTHORITY: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

**Subpart A—General****§ 761.1 Applicability.**

(a) This part establishes prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.

(b)(1) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this part include, but are not limited to: dielectric fluids; solvents; oils; waste oils; heat transfer fluids; hydraulic fluids; paints or coatings; sludges; slurries; sediments; dredge spoils; soils; materials containing PCBs as a result of spills; and other chemical substances or combinations of substances, including impurities and by-products and any byproduct, intermediate, or impurity manufactured at any point in a process.

(2) Unless otherwise noted, PCB concentrations shall be determined on a weight-per-weight basis (e.g., milligrams per kilogram), or for liquids, on a weight-per-volume basis (e.g., milli-

grams per liter) if the density of the liquid is also reported. Unless otherwise provided, PCBs are quantified based on the formulation of PCBs present in the material analyzed. For example, measure Aroclor™ 1242 PCBs based on a comparison with Aroclor™ 1242 standards. Measure individual congener PCBs based on a comparison with individual PCB congener standards.

(3) Most provisions in this part apply only if PCBs are present in concentrations above a specified level. Provisions that apply to PCBs at concentrations of < 50 ppm apply also to contaminated surfaces at PCB concentrations of ≤ 10 µg/100 cm<sup>2</sup>. Provisions that apply to PCBs at concentrations of ≥ 50 to < 500 ppm apply also to contaminated surfaces at PCB concentrations of > 10/100 cm<sup>2</sup> to < 100 µg/100 cm<sup>2</sup>. Provisions that apply to PCBs at concentrations of ≥ 500 ppm apply also to contaminated surfaces at PCB concentrations of ≥ 100 µg/100 cm<sup>2</sup>.

(4) PCBs can be found in liquid, non-liquid and multi-phasic (combinations of liquid and non-liquid) forms. A person should use the following criteria to determine PCB concentrations to determine which provisions of this part apply to such PCBs.

(i) Any person determining PCB concentrations for non-liquid PCBs must do so on a dry weight basis.

(ii) Any person determining PCB concentrations for liquid PCBs must do so on a wet weight basis. Liquid PCBs containing more than 0.5 percent by weight non-dissolved material shall be analyzed as multi-phasic non-liquid/liquid mixtures.

(iii) Any person determining the PCB concentration of samples containing PCBs and non-dissolved non-liquid materials ≥ 0.5 percent, must separate the non-dissolved materials into non-liquid PCBs and liquid PCBs. For multi-phasic non-liquid/liquid or liquid/liquid mixtures, the phases shall be separated before chemical analysis. Following phase separation, the PCB concentration in each non-liquid phase shall be determined on a dry weight basis and the PCB concentration in each liquid phase shall be determined separately on a wet weight basis.

(iv) Any person disposing of multi-phasic non-liquid/liquid or liquid/liquid

mixtures must use the PCB disposal requirements that apply to the individual phase with the highest PCB concentration except where otherwise noted. Alternatively, phases may be separated and disposed of using the PCB disposal requirements that apply to each separated, single-phase material.

(5) No person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided.

(6) Unless otherwise specified, references to weights or volumes of PCBs in this part apply to the total weight or total volume of the material (oil, soil, debris, etc.) that contains regulated concentrations of PCBs, not the calculated weight or volume of only the PCB molecules contained in the material.

(c) Definitions of the terms used in these regulations are in subpart A. The basic requirements applicable to disposal and marking of PCBs and PCB Items are set forth in subpart D—Disposal of PCBs and PCB Items and in subpart C—Marking of PCBs and PCB Items. Prohibitions applicable to PCB activities are set forth in subpart B—Manufacture, Processing, Distribution in Commerce, and Use of PCBs and PCB Items. Subpart B also includes authorizations from the prohibitions. Subparts C and D set forth the specific requirements for disposal and marking of PCBs and PCB Items.

(d) Section 15 of the Toxic Substances Control Act (TSCA) states that failure to comply with these regulations is unlawful. Section 16 imposes liability for civil penalties upon any person who violates these regulations, and the Administrator can establish appropriate remedies for any violations subject to any limitations included in section 16 of TSCA. Section 16 also subjects a person to criminal prosecution for a violation which is knowing or willful. In addition, section 17 authorizes Federal district courts to enjoin activities prohibited by these regulations, compel the taking of actions required by these regulations, and issue orders to seize PCBs and PCB Items manufactured, processed or distributed in violation of these regulations.

(e) These regulations do not preempt other more stringent Federal statutes and regulations.

(f) Unless and until superseded by any new more stringent regulations issued under EPA authorities, or any permits or any pretreatment requirements issued by EPA, a state or local government that affect release of PCBs to any particular medium:

(1) Persons who inadvertently manufacture or import PCBs generated as unintentional impurities in excluded manufacturing processes, as defined in § 761.3, are exempt from the requirements of subpart B of this part, provided that such persons comply with subpart J of this part, as applicable.

(2) Persons who process, distribute in commerce, or use products containing PCBs generated in excluded manufacturing processes defined in § 761.3 are exempt from the requirements of subpart B provided that such persons comply with subpart J of this part, as applicable.

(3) Persons who process, distribute in commerce, or use products containing recycled PCBs defined in § 761.3, are exempt from the requirements of subpart B of this part, provided that such persons comply with subpart J of this part, as applicable.

(4) Except as provided in § 761.20 (d) and (e), persons who process, distribute in commerce, or use products containing excluded PCB products as defined in § 761.3, are exempt from the requirements of subpart B of this part.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979, as amended at 49 FR 28189, July 10, 1984; 53 FR 24220, June 27, 1988; 63 FR 35436, June 29, 1998; 64 FR 33759, June 24, 1999]

#### **§ 761.2 PCB concentration assumptions for use.**

(a)(1) Any person may assume that transformers with < 3 pounds (1.36 kilograms (kgs)) of fluid, circuit breakers, reclosers, oil-filled cable, and rectifiers whose PCB concentration is not established contain PCBs at < 50 ppm.

(2) Any person must assume that mineral oil-filled electrical equipment that was manufactured before July 2, 1979, and whose PCB concentration is not established is PCB-Contaminated