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(9) ASTM D1266-87, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for § 761.71.

(10) ASTM D1796-83 (Reapproved 1990), Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure), IBR approved for § 761.71.

(11) ASTM D2158-89, Standard Test Method for Residues in Liquified Petroleum (LP) Gases, IBR approved for § 761.71.

(12) ASTM D2709-88, Standard Test Method for Water and Sediment in Distillate Fuels by Centrifuge, IBR approved for § 761.71.

(13) ASTM D2784-89, Standard Test Method for Sulfur in Liquified Petroleum Gases (Oxy-hydrogen Burner or Lamp), IBR approved for § 761.71.

(14) ASTM D3178-84, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coke and Coal, IBR approved for § 761.71.

(15) ASTM D3278-89, Standard Test Methods for Flash Point of Liquids by Setaflash Closed-Cup Apparatus, IBR approved for § 761.75.

(16) ASTM E258-67 (Reapproved 1987), Standard Test Method for Total Nitrogen Inorganic Material by Modified KJELDAHL Method, IBR approved for § 761.71.

(b) [Reserved]

[77 FR 2463, Jan. 18, 2012]

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

§ 761.20 Prohibitions and exceptions.

Except as authorized in § 761.30, the activities listed in paragraphs (a) and (d) of this section are prohibited pursuant to section 6(e)(2) of TSCA. The requirements set forth in paragraph (c) of this section and subpart F of this part concerning export and import of PCBs and PCB Items for disposal are established pursuant to section 6(e)(1) of TSCA. Subject to any exemptions granted pursuant to section 6(e)(3)(B) of TSCA, the activities listed in paragraphs (b) and (c) of this section are prohibited pursuant to section 6(e)(3)(A) of TSCA. In addition, the

Administrator hereby finds, under the authority of section 12(a)(2) of TSCA, that the manufacture, processing, and distribution in commerce of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure, the high probability of human and environmental exposure to PCBs and PCB Items from manufacturing, processing, or distribution activities; the potential hazard of PCB exposure posed by the transportation of PCBs or PCB Items within the United States; and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used. In addition, the Administrator hereby finds, for purposes of section 6(e)(2)(C) of TSCA, that any exposure of human beings or the environment to PCBs, as measured or detected by any scientifically acceptable analytical method, may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. For purposes of determining which PCB Items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA, since exposure to such Items may be significant, the Administrator further finds that a totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs. The following activities are considered totally enclosed: distribution in commerce of intact, non-leaking electrical equipment such as transformers (including transformers used in railway locomotives and self-propelled cars), capacitors, electromagnets, voltage regulators, switches (including sectionalizers and motor starters), circuit breakers, reclosers, and cable that contain PCBs at any concentration and processing and distribution in commerce of PCB Equipment containing an intact, non-leaking PCB Capacitor. See paragraph (c)(1) of this section for provisions allowing the distribution in commerce of PCBs and PCB Items.

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(a) No persons may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that:

(1) An authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products as defined in § 761.3.

(2) An authorization is not required to use those PCBs or PCB Items resulting from an excluded manufacturing process or recycled PCBs as defined in § 761.3, provided all applicable conditions of § 761.1(f) are met.

(3) An authorization is not required to use those PCB Items which contain or whose surfaces have been in contact with excluded PCB products as defined in § 761.3.

(4) An authorization is not required to use sewage sludge where the uses are regulated at parts 257, 258, and 503 of this chapter. No person may blend or otherwise dilute PCBs regulated for disposal, including PCB sewage sludge and sewage sludge not used pursuant to parts 257, 258, and 503 of this chapter, for purposes of use or to avoid disposal requirements under this part. Except as explicitly provided in subpart D of this part, no person may dispose of regulated PCB wastes including, but not limited to, PCB remediation waste, PCB bulk product waste, PCBs, and PCB industrial sludges, into treatment works, as defined in § 503.9(aa) of this chapter.

(b) No person may manufacture PCBs for use within the United States or manufacture PCBs for export from the United States without an exemption, except that: an exemption is not required for PCBs manufactured in an excluded manufacturing process as defined in § 761.3, provided all applicable conditions of § 761.1(f) are met.

(c) No persons may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States or for export from the United States without an exemption, except that an exemption is not required to process or distribute in commerce PCBs or PCB Items resulting from an excluded manufacturing process as defined in § 761.3, or to process or distribute in commerce

recycled PCBs as defined in § 761.3, or to process or distribute in commerce excluded PCB products as defined in § 761.3, provided that all applicable conditions of § 761.1(f) are met. In addition, the activities described in paragraphs (c) (1) through (5) of this section may also be conducted without an exemption, under the conditions specified therein.

(1) PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for purposes other than resale may be distributed in commerce only in a totally enclosed manner after that date.

(2) Any person may process and distribute in commerce for disposal PCBs at concentrations of ≥ 50 ppm, or PCB Items with PCB concentrations of ≥ 50 ppm, if they comply with the applicable provisions of this part.

(i) Processing activities which are primarily associated with and facilitate storage or transportation for disposal do not require a TSCA PCB storage or disposal approval.

(ii) Processing activities which are primarily associated with and facilitate treatment, as defined in § 260.10 of this chapter, or disposal require a TSCA PCB disposal approval unless they are part of an existing approval, are part of a self-implementing activity under § 761.61(a) or § 761.79 (b) or (c), or are otherwise specifically allowed under subpart D of this part.

(iii) With the exception of provisions in § 761.60 (a)(2) and (a)(3), in order to meet the intent of § 761.1(b), processing, diluting, or otherwise blending of waste prior to being introduced into a disposal unit for purposes of meeting a PCB concentration limit shall be done in accordance with a TSCA PCB disposal approval or comply with the requirements of § 761.79.

(iv) Where the rate of delivering liquids or non-liquids into a PCB disposal unit is an operating parameter, this rate shall be a condition of the TSCA PCB disposal approval for the unit when an approval is required.

(3) PCBs and PCB Items may be exported for disposal in accordance with the requirements of subpart F of this part.

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(4) PCBs, at concentrations of less than 50 ppm, or PCB Items, with concentrations of less than 50 ppm, may be processed and distributed in commerce for purposes of disposal.

(5) Decontaminated materials. Any person may distribute in commerce equipment, structures, or other liquid or non-liquid materials that were contaminated with PCBs \geq 50 ppm, including those not otherwise authorized for distribution in commerce under this part, provided that one of the following applies:

(i) The materials were decontaminated in accordance with a TSCA PCB disposal approval issued under subpart D of this part, with § 761.79, or with applicable EPA PCB spill cleanup policies in effect at the time of the decontamination.

(ii) If not previously decontaminated, the materials now meet an applicable decontamination standard in § 761.79(b).

(d) The use of waste oil that contains any detectable concentration of PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to, road oiling, general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes.

(e) In addition to any applicable requirements under 40 CFR part 279, subparts G and H, marketers and burners of used oil who market (process or distribute in commerce) for energy recovery, used oil containing any quantifiable level of PCBs are subject to the following requirements:

(1) *Restrictions on marketing.* Used oil containing any quantifiable level of PCBs (2 ppm) may be marketed only to:

(i) Qualified incinerators as defined in 40 CFR 761.3.

(ii) Marketers who market off-specification used oil for energy recovery only to other marketers who have notified EPA of their used oil management activities, and who have an EPA identification number where an identification number is required by 40 CFR 279.73. This would include persons who market off-specification used oil who are subject to the requirements at 40 CFR part 279 and the notification requirements of 40 CFR 279.73.

(iii) Burners identified in 40 CFR 279.61(a)(1) and (2). Only burners in the

automotive industry may burn used oil generated from automotive sources in used oil-fired space heaters provided the provisions of 40 CFR 279.23 are met. The Regional Administrator may grant a variance for a boiler that does not meet the 40 CFR 279.61(a)(1) and (2) criteria after considering the criteria listed in 40 CFR 260.32 (a) through (f). The applicant must address the relevant criteria contained in 40 CFR 260.32 (a) through (f) in an application to the Regional Administrator.

(2) *Testing of used oil fuel.* Used oil to be burned for energy recovery is presumed to contain quantifiable levels (2 ppm) of PCB unless the marketer obtains analyses (testing) or other information that the used oil fuel does not contain quantifiable levels of PCBs.

(i) The person who first claims that a used oil fuel does not contain quantifiable level (2 ppm) PCB must obtain analyses or other information to support that claim.

(ii) Testing to determine the PCB concentration in used oil may be conducted on individual samples, or in accordance with the testing procedures described in § 761.60(g)(2). However, for purposes of this part, if any PCBs at a concentration of 50 ppm or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of 50 ppm or greater for purposes of complying with the disposal requirements of this part.

(iii) Other information documenting that the used oil fuel does not contain quantifiable levels (2 ppm) of PCBs may consist of either personal, special knowledge of the source and composition of the used oil, or a certification from the person generating the used oil claiming that the oil contains no detectable PCBs.

(3) *Restrictions on burning.* (i) Used oil containing any quantifiable levels of PCB may be burned for energy recovery only in the combustion facilities identified in paragraph (e)(1) of this section when such facilities are operating at normal operating temperatures (this prohibits feeding these fuels during either startup or shutdown operations). Owners and operators of such facilities are “burners” of used oil fuels.

(ii) Before a burner accepts from a marketer the first shipment of used oil fuel containing detectable PCBs (2 ppm), the burner must provide the marketer a one-time written and signed notice certifying that:

(A) The burner has complied with any notification requirements applicable to “qualified incinerators” (§ 761.3) or to “burners” regulated under 40 CFR part 279, subpart G.

(B) The burner will burn the used oil only in a combustion facility identified in paragraph (e)(1) of this section and identify the class of burner he qualifies.

(4) *Recordkeeping requirements.* The following recordkeeping requirements are in addition to the recordkeeping requirements for marketers found in 40 CFR 279.72(b), 279.74(a), (b) and (c), and 279.75, and for burners found in 40 CFR 279.65 and 279.66.

(i) *Marketers.* Marketers who first claim that the used oil fuel contains no detectable PCBs must include among the records required by 40 CFR 279.72(b) and 279.74(b) and (c), copies of the analysis or other information documenting his claim, and he must include among the records required by 40 CFR 279.74(a) and (c) and 279.75, a copy of each certification notice received or prepared relating to transactions involving PCB-containing used oil.

(ii) *Burners.* Burners must include among the records required by 40 CFR 279.65 and 279.66, a copy of each certification notice required by paragraph (e)(3)(ii) of this section that he sends to a marketer.

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

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and amended at 49 FR 25241, June 20, 1984; 49 FR 28190, July 10, 1984; 49 FR 44638, Nov. 8, 1984; 53 FR 12524, Apr. 15, 1988; 53 FR 24220, June 27, 1988; 58 FR 15435, Mar. 23, 1993; 58 FR 34205, June 23, 1993; 60 FR 34465, July 3, 1995; 61 FR 11106, Mar. 18, 1996; 63 FR 35439, June 29, 1998; 64 FR 33760, June 24, 1999]

§ 761.30 Authorizations.

The following non-totally enclosed PCB activities are authorized pursuant to section 6(e)(2)(B) of TSCA:

(a) *Use in and servicing of transformers (other than railroad transformers).* PCBs

at any concentration may be used in transformers (other than in railroad locomotives and self-propelled railroad cars) and may be used for purposes of servicing including rebuilding these transformers for the remainder of their useful lives, subject to the following conditions:

(1) *Use conditions.* (i) As of October 1, 1985, the use and storage for reuse of PCB Transformers that pose an exposure risk to food or feed is prohibited.

(ii) As of October 1, 1990, the use of network PCB Transformers with higher secondary voltages (secondary voltages equal to or greater than 480 volts, including 480/277 volt systems) in or near commercial buildings is prohibited. Network PCB Transformers with higher secondary voltages which are removed from service in accordance with this requirement must either be reclassified to PCB Contaminated or non PCB status, placed into storage for disposal, or disposed.

(iii) Except as otherwise provided, as of October 1, 1985, the installation of PCB Transformers, which have been placed into storage for reuse or which have been removed from another location, in or near commercial buildings is prohibited.

(A) Retrofilled mineral oil PCB Transformers may be installed for reclassification purposes indefinitely after October 1, 1990.

(B) Once a retrofilled transformer has been installed for reclassification purposes, it must be tested 3 months after installation to ascertain the concentration of PCBs. If the PCB concentration is below 50 ppm, the transformer can be reclassified as a non-PCB Transformer. If the PCB concentration is between 50 and 500 ppm, the transformer can be reclassified as a PCB-Contaminated transformer. If the PCB concentration remains at 500 ppm or greater, the entire process must either be repeated until the transformer has been reclassified to a non-PCB or PCB-Contaminated transformer in accordance with paragraph (a)(2)(v) of this section or the transformer must be removed from service.

(iv) As of October 1, 1990, all higher secondary voltage radial PCB Transformers, in use in or near commercial buildings, and lower secondary voltage