



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

EPA-HQ-RCRA-2011-0524 [FRL-9703-1]

RIN 2050-AG71

Polychlorinated Biphenyls (PCBs): Revisions to Manifesting Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: The Environmental Protection Agency (“EPA” or “the Agency”) is issuing this direct final rule to update and clarify several sections of the Polychlorinated Biphenyl (PCB) regulations associated with the manifesting requirements, which uses the Resource Conservation and Recovery Act (RCRA) Uniform Hazardous Waste Manifest, under the Toxic Substances Control Act (TSCA). Today’s changes are to match, as much as possible, the manifesting requirements for PCBs under TSCA to the manifesting requirements for hazardous waste under RCRA, of which the regulatory changes to implement the Uniform Hazardous Waste Manifest form were promulgated on March 4, 2005.

DATES: This direct final rule will be effective **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives adverse written comment by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. If adverse comments are received, EPA will publish a timely withdrawal in the Federal Register informing the public that the amendments in this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2011-0524, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: rcra-docket@epa.gov and noggle.william@epa.gov. Attention Docket ID No. EPA-HQ-RCRA-2011-0524.
- Fax: 202-566-9744. Attention Docket ID No. EPA-HQ-RCRA-2011-0524.
- Mail: **RCRA Docket** (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2011-0524. Please include a total of 2 copies.
- Hand Delivery: Please deliver 2 copies to the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2011-0524. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the HQ-Docket Center, Docket ID No EPA-HQ-RCRA-2011-0524, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Noggle, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200

Pennsylvania Avenue, NW, Washington, DC, 20460, Phone: 703-347-8769; or by e-mail:
noggle.william@epa.gov.

SUPPLEMENTARY INFORMATION

Table of Contents

- I. Why Is EPA Using a Direct Final Rule?
- II. Does This Action Apply to Me?
- III. Description of Amendments to Part 761
 - A. *Overview of Changes to 40 CFR Part 761*
 - B. *Revisions to the PCB Regulations under 40 CFR 761.207 (The Manifest – General Requirements)*
 - C. *Revisions to the PCB Regulations under 40 CFR 761.208 (Use of the Manifest)*
 - D. *Revisions to the PCB Regulations under 40 CFR 761.209 (Retention of Manifest Records)*
 - E. *Revisions to the PCB Regulations under 40 CFR 761.210 (Manifest Discrepancies)*
 - F. *Revisions to the PCB Regulations under 40 CFR 761.211 (Unmanifested Waste Report)*
 - G. *Revisions to the PCB Regulations under 40 CFR 761.215 (Exception Reporting)*
 - H. *Revisions to other Sections in 40 CFR 761*
- IV. Statutory and Executive Order Reviews
 - A. Regulatory Flexibility Act

B. Congressional Review Act

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule as a direct final rule because the Agency views this action as noncontroversial and EPA anticipates no adverse comments since these changes are only meant to update the PCB manifest regulations for the sake of consistency between the PCB manifest and the RCRA manifest. However, in the “Proposed Rules” section of today’s Federal Register, EPA is also publishing a separate document that will serve as a proposed rule should the Agency receive adverse comments on this action. EPA will not institute a second proposal or allow for another comment period on this action. Any parties interested in commenting must do so at this time using the Docket ID: EPA-HQ-RCRA-2011-0524, which is common to both this direct final rule and the proposed rule. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comments, the Agency will publish a timely withdrawal in the Federal Register informing the public that these amendments will not take effect, and the reason for such withdrawal. EPA will address public comments in any subsequent final rule based on the proposed rule being concurrently published today.

If we do not receive adverse comments, this direct final rule will take effect on **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

II. Does This Action Apply to Me?

This action applies to generators, transporters, and designated facilities (off-site disposal and commercial storage facilities) managing PCB wastes. Potentially affected categories and entities include, but are not necessarily limited to:

NAICS Description	NAICS Code	Examples of Potentially affected Entities
Electric Power Distribution	221122	Generators of PCB waste
Transportation and Warehousing	48-49	Transportation of PCB waste
Waste Management and Remediation Services	562	Facilities that manage PCB waste

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 Code of Federal Regulations (CFR) part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this document.

III. Description of Amendments to Part 761

A. Overview of Changes to 40 CFR Part 761

The existing PCB manifest regulations are in 40 CFR part 761. The RCRA manifest regulations are in 40 CFR parts 262, 263, and 264. Since the promulgation of the PCB manifest regulations, several updates have been made to the RCRA manifest

regulations, where the corresponding changes have not been made to the PCB manifest regulations. The intent of today's changes is to bring into alignment, as much as possible, the manifesting requirements for PCBs to those of RCRA hazardous waste. These changes are needed because PCB wastes are manifested using the RCRA Uniform Hazardous Waste Manifest and PCB waste handlers and generators need to adhere to the more recent RCRA hazardous waste manifest regulations, while still accounting for certain unique PCB manifest regulations. Since PCBs are manifested using the same manifest as RCRA hazardous waste, all of the changes described today to part 761 are already being implemented by PCB waste handlers and generators except for the exemption to manifest waste transported on a right-of-way (40 CFR 262.20(f)), and as a result, this rulemaking should have no economic impact since PCB waste handlers and generators will not have to modify their current practices on manifesting PCB waste. No additional burden is created. Furthermore, to simplify the use of both the RCRA and PCB manifest regulations, sections under part 761 are being reorganized and renumbered to parallel the similar sections under parts 262 through 264.

EPA compared the PCB manifest regulations (40 CFR part 761) to the RCRA manifest regulations (40 CFR parts 262, 263, and 264) to determine which sections from the RCRA manifest regulations do not exist in the PCB manifest regulations. Below is a table (Table 1) of the regulations from 40 CFR parts 262-264 that EPA is adding to 40 CFR part 761, where the content of the section will be new to 40 CFR part 761.

Explanations for the changes below, as with the other changes in this rule, are included in the subsequent sections in this direct final rule. In addition to today's direct final rule,

EPA is including, in the docket, a crosswalk between the RCRA manifest regulations and the PCB manifest regulations.

Table 1

40 CFR Section	Brief Description of RCRA Regulation
262.20(c)	Designating an alternate facility on the manifest
262.20(f)	Manifesting exemption for the transport of waste on a public or private right-of-way within or along the border of contiguous property
262.23(f)	Generator requirements for rejected shipments returned by the receiving facility back to the generator. (language on non-empty containers and residues is not relevant to PCB waste)
262.40(b)	3-year exception report retention requirement for generators
263.21(a)(2)	Alternate designated facility is listed as one of the options that the transporter must deliver the waste to
263.21(b)(2)	Partial and full load rejection requirements if the waste is rejected while the transporter is on the facility's premises
264.71(a)(1)	Facility signs and dates the manifest when the waste was received, except as noted in the discrepancy space of the manifest, or when the waste was rejected as noted in the manifest discrepancy space
264.72(a)(2)	Definition of rejected wastes as manifest discrepancies
264.72(d)	Upon rejecting waste, the facility must consult with the generator prior to forwarding the waste to another facility. The facility must send the waste to another facility or back to the generator within 60 days of the rejection. While making arrangements for the rejected waste, the facility must ensure that the transporter retains custody or the facility provides secure, temporary custody of the waste.
264.72(e)	Facility requirements for preparing a new manifest for full or partial load rejections that are to be sent off-site to an alternate facility
264.72(f)	Facility requirements for preparing a new manifest for rejected wastes that must be sent back to the generator
264.72(g)	Facility requirements for amending the manifest for rejected wastes after the facility has signed, dated, and returned the manifest to the delivering transporter or to the generator
264.76(a)(6)	Unmanifested waste report must include the certification signed by the owner, operator, or authorized representative of the facility

B. Revisions to the PCB Regulations under 40 CFR 761.207 (The Manifest – General Requirements)

EPA is using the following table (Table 2) to compare the sections of the PCB regulations under 40 CFR 761.207 to the equivalent or relevant sections in the RCRA regulations in 40 CFR part 262, which are §§ 262.20, 262.21, and 262.22.

Table 2

CFR Part 761 Section	CFR Part 262 Section	Description	Match (Y/N)	New 761 CFR
761.207 The manifest—general requirements.	262.20 General requirements.			
761.207(a)	262.20(a)(1)	Generator requirements	Y	761.207(a)
761.207(a)(1)		PCB specific	N	761.207(a)(1)
761.207(a)(2)		PCB specific	N	761.207(a)(2)
761.207(a)(3)		PCB specific	N	761.207(a)(3)
	262.20(a)(2)		N	see description below
761.207(b)	262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.	Supplies of printed copies of 8700-22	N	761.208
761.207(c)		State requirements	N	see description below
761.207(d)		State requirements	N	see description below
761.207(e)		State requirements	N	see description below
761.207(f)		State requirements	N	see description below
761.207(g)	262.20(b)	Generator requirements	Y	761.207(b)
	262.20(c)	Generator requirements	N	761.207(c)
761.207(h)	262.20(d)	Generator and Transporter requirements	Y	761.207(d)
	262.20(e)	Generator requirements	N	see description below
	262.20(f)	Generator and Transporter requirements	N	761.207(f)
761.207(i)	262.22 Number of copies.	Number of Copies	Y	761.209
761.207(j)		PCB specific	N	761.207(e)

Listed below are the explanations of each change made to § 761.207 in the order listed on the table above.

40 CFR 761.207(a) - general manifest requirements for generators: Section 761.207(a)

closely matches § 262.20(a)(1). However, § 262.20(a)(1) includes references to the manifest OMB control number and treatment, storage, or disposal facilities completing a manifest for a rejected load, which § 761.207(a) does not include. Section 262.20(a)(1) also includes a reference to the manifest continuation sheet being EPA form 8700-22A. Due to the additional manifest data required under §§ 761.207(a)(1), (2), and (3), EPA form 8700-22A is not required as the continuation sheet for the PCB manifest. The OMB

control number for managing PCB manifesting requirements and RCRA manifesting requirements is currently different, so the OMB control number will not be cited in Section 761.207(a). Section 761.207(a), codified through this rule, utilizes the language from § 262.20(a)(1), except for the reference to form 8700-22A and the specific OMB control number reference. Additionally, to clarify the use of a continuation sheet for the PCB manifest, a note is included in § 761.207(a), which explicitly states form 8700-22A does not need to be used as the continuation sheet.

40 CFR 761.207(a)(1), (2), and (3) - general manifest requirements for generators:

Sections 761.207(a)(1), (2), and (3) are unique requirements for completing a manifest for PCB waste, such as including the date for removal from service for disposal and the PCB article's serial number on the manifest. These sections will be retained in the updated regulations as §§ 761.207(a)(1), (2), and (3) with minor revisions.

40 CFR 262.20(a)(2) – compliance date: Part 761 does not contain a provision similar to § 262.20(a)(2). Section 262.20(a)(2) specifies the compliance date of manifest form revisions being September 5, 2006. This compliance date was relevant to PCB manifests; however, there should not be any more of the out-dated forms being used. Accordingly, language from § 262.20(a)(2) is not included in the updated PCB regulations. Section 262.20(a)(2) will be addressed in a separate RCRA rulemaking.

40 CFR 761.207(b) – obtaining manifests: Section 761.207(b) briefly describes how to obtain manifests. 40 CFR 262.21(g) not only includes a brief description in § 761.207(b), but also includes the most current details on obtaining manifests. Because § 761.207(b) lacks these details, § 761.208, codified through this rule, uses language from § 262.21(g). The language regarding certification of manifest printers from the remainder of § 262.21

will not be included in § 761.208, because EPA does not intend to certify printers solely for PCB manifests, when a certification process already exists under the RCRA regulation and certified printers distribute the same manifest form for both PCB and RCRA waste.

40 CFR 761.207(c), (d), (e), and (f) – State specific manifest requirements for

generators: Sections 761.207(c), (d), (e), and (f) are requirements for State specific manifests, which are no longer applicable to either the PCB or RCRA manifest requirements, because, under the revised RCRA manifest regulations promulgated on March 4, 2005 (70 FR 10815), all of the States must use the same uniform manifest for both PCB waste and RCRA hazardous waste (EPA form 8700-22). Sections 761.207(c),(d),(e), and (f) are obsolete and will be deleted from the CFR.

40 CFR 761.207(g) and (h) – general manifest requirements for generators and

transporters: The intent of the language in §§ 761.207(g) and (h) matches that of §§ 262.20(b) and (d), respectively. To harmonize the regulatory sections, the § 761.207(b) and (d), codified through this rule, will contain the language from §§ 262.20(b) and (d), and §§ 761.207(g) and (h) will be removed from the CFR.

40 CFR 262.20(c) –designating an alternate facility: Section 262.20(c) contains the details for designating an alternate facility on the manifest. This information is relevant to completing a manifest for PCB waste; however, this information does not currently exist under part 761. Section 761.207(c), codified through this rule, will contain the language from § 262.20(c).

40 CFR 262.20(e) – requirements for hazardous waste generators of between 100kg

and 1000kg in a calendar month: Part 761 does not contain a similar provision to § 262.20(e). Section 262.20(e) contains exceptions for generators of hazardous waste

between 100kg and 1000kg in a calendar month, which is unique to the RCRA hazardous waste regulations. There is no such exception or distinction of PCB generators based on quantity in the PCB regulations. Language from § 262.20(e) will not be incorporated in § 761.207(e), codified through this rule.

40 CFR 262.20(f) – exceptions for public or private right-of-way: Part 761 does not contain a provision similar to § 262.20(f). Section 262.20(f) contains manifesting exceptions when transporting hazardous wastes on a public or private right-of-way within or along the border of contiguous property (codified under 62 FR 6651, Feb. 12, 1997). EPA believes this manifesting exception is relevant to PCB waste. The citations in § 262.20(f) to § 263.30 and § 263.31 show that a cleanup on a private or public right-of-way is necessary despite the manifesting exemption. The cleanup and disposal of a PCB waste resulting from a spill is covered under part 761 Subparts D and G. The regulation here merely exempts the manifesting requirements, which are separate from Subparts D and G, thus the language regarding a discharge of the waste is redundant and not included in the updated § 761.207(f). Section 262.20(f) cites the marking regulations in § 262.32(b) which are substantially different than the PCB marking regulations, so that portion of § 262.20(f) will also not be included in the updated PCB regulations.

40 CFR 761.207(i) – number of copies: The intent of the language in § 761.207(i) matches that of § 262.22. Both sections describe the required number of copies of the manifest, but § 262.22 contains more streamlined language. Section 262.22 does not specify that the copy be returned to the generator ‘by the owner or operator of the first designated commercial storage or disposal facility’; however, this language is included in this rulemaking under new § 761.213(a)(2)(iv), codified through this rule. The updated §

761.209, also codified through this rule, will contain language from § 262.22, and § 761.207(i) will be removed from the CFR.

40 CFR 761.207(j) – general manifest requirements for PCB waste: Section 761.207(j) contains unique requirements for completing a manifest for PCB waste, such as what type of PCB waste requires a manifest. This section will be retained in the updated regulations and will be re-numbered as § 761.207(e).

C. Revisions to the PCB Regulations under 40 CFR 761.208 (Use of the manifest)

EPA is using the following table (Table 3) to compare the PCB regulations under § 761.208 to the equivalent or relevant sections in the RCRA regulations in 40 CFR parts 262, 263, and 264, which are §§ 262.23, 263.20, 263.21, and 264.71.

Table 3

CFR Part 761 Section	CFR Parts 262-264 Section	Description	Match (Y/N)	New 761 CFR
761.208 Use of the manifest.	262.23 Use of the manifest.			
761.208(a)(1)	262.23(a)	Generator requirements	Y	761.210(a)
761.208(a)(1)(i)	262.23(a)(1)	Generator requirements	Y	761.210(a)(1)
761.208(a)(1)(ii)	262.23(a)(2)	Generator requirements	Y	761.210(a)(2)
761.208(a)(1)(iii)	262.23(a)(3)	Generator requirements	Y	761.210(a)(3)
761.208(a)(1)(iv)	262.23(b)	Generator requirements	Y	761.210(b)
761.208(a)(2)	262.23(c)	Generator requirements	Y	761.210(c)
761.208(a)(3)	262.23(d)	Generator requirements	Y	761.210(d)
761.208(a)(3)(i)	262.23(d)(1)	Generator requirements	Y	761.210(d)(1)
761.208(a)(3)(ii)	262.23(d)(2)	Generator requirements	Y	761.210(d)(2)
	262.23(d)(3)	Generator requirements	N	see description below
	262.23(e)	Generator requirements	N	see description below
	262.23(f)	Generator requirements	N	761.210(e)
761.208(a)(4)		Generator requirements	N	see description below
	263.20 The manifest system.			
761.208(b)(1)	263.20(a)(1)		Y	761.211(a)(1)
761.208(b)(1)(i)		Exception for manifesting if PCB waste is below 50ppm	N	761.211(a)(1)(i)
761.208(b)(1)(ii)		Exception for manifesting if transporter is taken to a designated facility that is owned by the generator	N	761.211(a)(1)(ii)
	263.20(a)(2)	Transporter requirements	N	see description below
	263.20(a)(3)	Transporter requirements	N	see description below
761.208(b)(2)	263.20(b)	Transporter requirements	Y	761.211(b)
761.208(b)(3)	263.20(c)	Transporter requirements	N	761.211(c)
761.208(b)(4)	263.20(d)	Transporter requirements	Y	761.211(d)

761.208(b)(4)(i)	263.20(d)(1)	Transporter requirements	Y	761.211(d)(1)
761.208(b)(4)(ii)	263.20(d)(2)	Transporter requirements	Y	761.211(d)(2)
761.208(b)(4)(iii)	263.20(d)(3)	Transporter requirements	Y	761.211(d)(3)
761.208(b)(5)	263.20(e)	Transporter requirements	Y	761.211(e)
761.208(b)(5)(i)	263.20(e)(1)	Transporter requirements	Y	761.211(e)(1)
761.208(b)(5)(ii)	263.20(e)(2)	Transporter requirements	N	761.211(e)(2)
761.208(b)(5)(iii)	263.20(e)(3)	Transporter requirements	Y	761.211(e)(3)
761.208(b)(5)(iv)	263.20(e)(4)	Transporter requirements	Y	761.211(e)(4)
761.208(b)(5)(v)	263.20(e)(5)	Transporter requirements	Y	761.211(e)(5)
761.208(b)(6)	263.20(f)	Transporter requirements	Y	761.211(f)
	263.20(g)	Transporter requirements	N	see description below
	263.20(h)	Transporter requirements	N	see description below
	263.21 Compliance with the manifest.			
761.208(b)(7)	263.21(a)	Transporter requirements	Y	761.212(a)
761.208(b)(7)(i)	263.21(a)(1)	Transporter requirements	Y	761.212(a)(1)
	263.21(a)(2)	Transporter requirements	N	761.212(a)(2)
761.208(b)(7)(ii)	263.21(a)(3)	Transporter requirements	Y	761.212(a)(3)
	263.21(a)(4)	Transporter requirements	N	see description below
761.208(b)(8)	263.21(b)(1)	Transporter requirements	Y	761.212(b)(1)
	263.21(b)(2)	Transporter requirements	N	761.212(b)(2)
	263.21(b)(2)(i)	Transporter requirements	N	761.212(b)(2)(i)
	263.21(b)(2)(ii)	Transporter requirements	N	761.212(b)(2)(ii)
761.208(b)(9)		DOT 49 CFR part 171	N	761.212(b)(2)(iii)
	264.70 Applicability.			
	264.70(a)	Designated facility requirements	N	see description below
	264.70(b)		N	see description below
	264.71 Use of manifest system.			
	264.71(a)(1)	Designated facility requirements	N	761.213(a)(1)
761.208(c)(1)	264.71(a)(2)	Designated facility requirements	Y	761.213(a)(2)
761.208(c)(1)(i)	264.71(a)(2)(i)	Designated facility requirements	Y	761.213(a)(2)(i)
761.208(c)(1)(ii)	264.71(a)(2)(ii)	Designated facility requirements	Y	761.213(a)(2)(ii)
761.208(c)(1)(iii)	264.71(a)(2)(iii)	Designated facility requirements	Y	761.213(a)(2)(iii)
761.208(c)(1)(iv)	264.71(a)(2)(iv)	Designated facility requirements	Y	761.213(a)(2)(iv)
761.208(c)(1)(v)	264.71(a)(2)(v)	Designated facility requirements	Y	761.213(a)(2)(v)
	264.71(a)(3)	Designated facility requirements	N	see description below
761.208(c)(2)	264.71(b)	Designated facility requirements	Y	761.213(b)
761.208(c)(2)(i)	264.71(b)(1)	Designated facility requirements	Y	761.213(b)(1)
761.208(c)(2)(ii)	264.71(b)(2)	Designated facility requirements	Y	761.213(b)(2)
761.208(c)(2)(iii)	264.71(b)(3)	Designated facility requirements	Y	761.213(b)(3)
761.208(c)(2)(iv)	264.71(b)(4)	Designated facility requirements	Y	761.213(b)(4)
761.208(c)(2)(v)	264.71(b)(5)	Designated facility requirements	Y	761.213(b)(5)
761.208(c)(3)	264.71(c)	Designated facility requirements	N	761.213(c)
	264.71(d)	Designated facility requirements	N	see description below
	264.71(e)	Designated facility requirements	N	see description below

Listed below are the explanations for each change made to § 761.208 in the table above.

40 CFR 761.208(a)(1), (a)(2), and (a)(3) – generator requirements for completing a

manifest: The intent of the language in §§ 761.208(a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2), (a)(3), (a)(3)(i), and (a)(3)(ii) matches that of §§ 262.23(a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), and (d)(2), respectively. All sections describe a portion of the

generator requirements for completing a manifest. A portion of § 262.23(c) contains the requirements for exporting bulk shipments of waste by water. This information could be relevant to completing a manifest for PCB waste; however, because PCB waste has unique import and export restrictions found in part 761 subpart F, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking.

Sections 761.208(a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2), (a)(3), (a)(3)(i), and (a)(3)(ii) will be re-written to include language from §§ 262.23(a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), and (d)(2), and § 761.208(a) and will be renumbered under § 761.210.

40 CFR 262.23(d)(3) – exporting waste by rail: Part 761 does not contain a similar provision to § 262.23(d)(3). Section 262.23(d)(3) contains the requirements for exporting waste by rail. This information could be relevant to completing a manifest for PCB waste; however, for the reasons described in the paragraph above, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking.

40 CFR 262.23(e) – States not yet authorized to regulate a specific hazardous waste: Part 761 does not contain a similar provision to § 262.23(e). Section 262.23(e) contains regulations regarding shipments of hazardous waste to States which have not yet obtained authorization to regulate that particular waste. Due to PCBs being regulated under TSCA at the Federal level, § 262.23(e) is not relevant to manifesting PCBs. Section 262.23(e) will not be referenced in the PCB regulations.

40 CFR 262.23(f) – rejected shipments: Part 761 does not contain a provision similar to § 262.23(f), even though the substance of § 262.23(f) is relevant to rejected loads of PCB waste with the exception of the reference to § 265.72(f). Section 262.23(f) describes generator requirements for rejected shipments of hazardous waste that are returned to the

generator by the designated facility (following the procedures of §§ 264.72(f) or 265.72(f)). Section 761.210(e), codified through this rule, includes language from § 262.23(f) and all the sections under § 262.23(f), except for language on residues. The empty container residue language from RCRA is not relevant to PCB waste, because there is no equivalent section under the PCB regulations for § 261.7 *Residues of hazardous waste in empty containers* (i.e. PCB residues are regulated differently than residues of RCRA hazardous waste). PCB residues will not be addressed in this action.

40 CFR 761.208(a)(4) – exception reporting: The language in § 761.208(a)(4) closely matches that of §§ 262.42(a)(1) and (a)(2). All three sections describe a portion of the exception reporting requirements for a manifest. Sections 262.42(a)(1) and (a)(2) are specifically for generators of greater than 1000 kg of hazardous waste in a calendar month. There is no such quantity distinction for PCB generators in part 761. Also, § 761.208(a)(4) contains a requirement for the generator to retain a written record of all telephone or other confirmations to be included in the annual document log, in accordance with §761.180, specifically §761.180(a)(2)(viii). EPA believes this requirement is no longer necessary to effectively monitor compliance for exception reporting. The language from § 761.208(a)(4) will not be retained in the updated PCB regulations. Section 761.208(a)(4) will be removed from the CFR. Section 761.180(a)(2)(viii) will be removed from the CFR as well.

40 CFR 761.208(b)(1) – generator manifest requirements for transporters: The language in § 761.208(b)(1) closely matches that of § 263.20(a)(1). However, the exceptions listed in §§ 761.208(b)(1)(i) and (ii) are PCB-specific manifest requirements, so

§§ 761.208(b)(1), (b)(1)(i) and (b)(1)(ii) will be retained and renumbered as §§ 761.211(a), (a)(1)(i), and (a)(1)(ii).

40 CFR 263.20(a)(2) – EPA Acknowledgement of Consent is required for exports:

Part 761 does not contain a provision similar to § 263.20(a)(2). Section 263.20(a)(2) contains requirements for both exports of wastes that are subject to Subpart H of 40 CFR part 262 and exports of wastes that are not. Even though some of the content found under § 263.20(a)(2) may be relevant to exports of PCB waste, specific requirements for imports and exports of PCBs for disposal will not be addressed in this rule, because PCB waste has unique import and export restrictions found in part 761 subpart F.

40 CFR 263.20(a)(3) – compliance date: Part 761 does not contain a provision similar to § 263.20(a)(3). Section 263.20(a)(3) specifies the compliance date of Uniform Hazardous Waste Manifest form revisions being September 5, 2006. This compliance date was relevant to PCB manifests; however, there should not be any more of the out-dated forms being used. Accordingly, language from § 263.20(a)(3) is not included in the PCB regulations. Section 263.20(a)(3) will be addressed in a separate RCRA rulemaking.

40 CFR 761.208(b)(2), (b)(4), and (b)(5) – transporter requirements for completing a

manifest: The intent of the language in §§ 761.208(b)(2), (b)(4), (b)(4)(i), (b)(4)(ii), (b)(4)(iii), (b)(5), (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), and (b)(5)(v) matches that of §§ 263.20(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5). All sections detail a portion of the transporter requirements for completing a manifest. Sections 761.211(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5), codified through this rule, will contain language from §§ 263.20(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5). Sections 761.208(b)(2), (b)(4), (b)(4)(i),

(b)(4)(ii), (b)(4)(iii), (b)(5), (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), and (b)(5)(v) will be removed from the CFR.

40 CFR 263.20(c) – accompanying EPA Acknowledgment of Consent: Section 761.208(b)(3) is similar to § 263.20(c). However, § 263.20(c) includes a requirement for an export of waste to have an accompanying EPA Acknowledgment of Consent. Manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking, as PCB waste has unique import and export restrictions found in part 761 subpart F. Therefore, the language from § 263.20(c) will not be included in the PCB regulations. Instead, the language from § 761.208(b)(3) will be retained and renumbered as § 761.211(c), and § 761.208(b)(3) will be removed from the CFR.

40 CFR 263.20(e)(2) – accompanying EPA Acknowledgment of Consent: Section 761.208(b)(5)(ii) is similar to § 263.20(e)(2). However, § 263.20(e)(2) includes a requirement for an export of waste to have an accompanying EPA Acknowledgment of Consent. Since manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons described above, the language from § 263.20(e)(2) will not be included in § 761.211(e)(2). Instead, the language from § 761.208(b)(5)(ii) will be retained and renumbered as § 761.211(e)(2), and § 761.208(b)(5)(ii) will be removed from the CFR.

40 CFR 761.208(b)(6) – shipments involving rail transportation: The intent of the language in § 761.208(b)(6) matches that of § 263.20(f). In fact, § 761.208(b)(6) already references § 263.20(f). Section 761.211(f) and sections under § 761.211(f), codified through this rule, will contain language from § 263.20(f) and all the sections under § 263.20(f). However, § 263.20(f)(1)(iii)(c) and § 263.20(f)(2) both reference exports which

will not be addressed in this rulemaking. Thus, § 263.20(f)(1)(iii)(c) and the portion of § 263.20(f)(2) referencing the RCRA Acknowledgement of Consent will not be included in the regulations. Section 761.208(b)(6) will be removed from the CFR.

40 CFR 263.20(g) – transporting waste out of the United States: Part 761 does not contain a provision similar to § 263.20(g), even though the content of § 263.20(g) could be relevant to completing a manifest for PCB waste. Section 263.20(g) contains requirements for transporting waste out of the United States. Specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking because PCB waste has unique import and export restrictions found in part 761 subpart F.

40 CFR 263.20(h) – transporter requirements when transporting waste from a generator of between 100kg and 1000kg of hazardous waste in a calendar month: Part 761 does not contain a provision similar to § 263.20(h). Section 263.20(h) contains exceptions for generators of hazardous waste between 100kg and 1000kg in a calendar month. There is no such exception or distinction of PCB generators based on quantity in part 761. Therefore, language from § 263.20(h) will not be included in the PCB regulations.

40 CFR 761.208(b)(7) – transporter delivering to designated facility or next transporter: The intent of the language in §§ 761.208(b)(7), (b)(7)(i), and (b)(7)(ii) matches that of §§ 263.21(a), (a)(1), and (a)(3). All sections contain a portion of the transporter requirements for completing a manifest. Sections 761.212(a), (a)(1), and (a)(3), codified through this rule, will contain language from §§ 263.21(a), (a)(1), and (a)(3) to maintain consistency with the RCRA regulations. Section 761.208(b)(7) will be removed from the CFR.

40 CFR 263.21(a)(2) – alternate designated facility: Section 263.21(a)(2) contains the requirement for delivering waste to an alternate facility if the waste cannot be delivered to the designated facility. Even though the substance of § 263.21(a)(2) is relevant to delivery of PCB waste, part 761 does not currently have a provision similar to § 263.21(a)(2). Section 761.212(a)(2), codified through this rule, will contain language from § 263.21(a)(2).

40 CFR 263.21(a)(4) – delivering waste to a place outside the United States: Part 761 does not contain a provision similar to § 263.21(a)(4). Section 263.21(a)(4) contains the requirement for delivering waste to a place outside the United States. Even though the content of § 263.21(a)(4) could be relevant to completing a manifest for PCB waste, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons previously described.

40 CFR 761.208(b)(8) – what to do when waste cannot be delivered: The intent of the language in § 761.208(b)(8) matches that of § 263.21(b)(1). Both sections contain the transporter requirements when waste cannot be delivered. Section 761.212(b)(1), codified through this rule, will contain language from § 263.21(b)(1) to maintain consistency with the RCRA regulations. Section 761.208(b)(8) will be removed from the CFR.

40 CFR 263.21(b)(2) – partial and full load rejections: Section 263.21(b)(2) contains the requirement for partial load and full load rejections of waste. Even though the substance of § 263.21(b)(2) is relevant to rejected loads of PCB waste, part 761 does not currently have a provision similar to § 263.21(b)(2). Sections 761.212(b)(2), (b)(2)(i), and (b)(2)(ii), codified through this rule, will contain language from §§ 263.21(b)(2), (b)(2)(i), and (b)(2)(ii).

40 CFR 264.70(a) – applicability of manifest regulations to RCRA regulated entities:

Part 761 does not contain a provision similar to § 264.70(a). Section 264.70(a) is specific to the RCRA regulations, and thus will not be included in the regulatory changes.

40 CFR 264.70(b) – compliance date: Part 761 does not contain a provision similar to § 264.70(b). Section 264.70(b) specifies the compliance date of manifest form revisions being September 5, 2006. This compliance date was relevant to PCB manifests; however, there should not be any more of the out-dated forms being used. Accordingly language from § 264.70(b) is not included in the PCB regulations. Section 264.70(b) will be addressed in a separate RCRA rulemaking.

40 CFR 761.208(b)(9) – DOT regulations: Section 761.208(b)(9) emphasizes the significance of transporter regulations issued by the Department of Transportation (DOT) and set forth at 49 CFR part 171. Even though the same requirement is in place for transporters of RCRA hazardous waste, there is not an appropriate section under 40 CFR parts 262, 263, and 264 to reference. Accordingly, § 761.208(b)(9) will be retained, but renumbered to § 761.212(b)(2)(iii).

40 CFR 264.71(a)(1) – receiving facility requirements for completing a manifest:

Section 264.71(a)(1) contains requirements for the receiving facility signing the manifest. Even though the substance of § 264.71(a)(1) is relevant to receiving PCB waste, part 761 does not currently have a provision similar to § 264.71(a)(1). Section 761.213(a)(1), codified through this rule, will contain language from § 264.71(a)(1).

40 CFR 761.208(c)(1) – receiving facility requirements for completing a manifest:

The intent of the language in section § 761.208(c)(1) and its various subsections matches that of § 264.71(a)(2) and its various subsections. All sections contain the facility

requirements when waste is delivered. However, § 761.208(c)(1) specifies the requirement for an off-site shipment, which is unique to the PCB regulations, and § 264.71(a)(2) does not include a similar provision. Section 761.208(c)(1) will be retained and renumbered to § 761.213(a)(2). The subsections under new § 761.213(a)(2) will contain language from the subsections under § 264.71(a)(2). Subsections under § 761.208(c)(1) will be removed from the CFR.

40 CFR 264.71(a)(3) – receiving waste from outside the United States: Part 761 does not have a provision similar to § 264.71(a)(3). Section 264.71(a)(3) contains the requirement for receiving waste from outside the United States. Even though the content of § 264.71(a)(3) could be relevant to PCB waste, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons previously described.

40 CFR 761.208(c)(2) – receiving facility requirements when waste is shipped by rail or water: The intent of the language in § 761.208(c)(2) and its various subsections matches that of § 264.71(b) and its various subsections. All sections contain the facility requirements when waste is delivered via rail or water. Section 761.213(b) and its various subsections, codified through this rule, will contain language from § 264.71(b). Section 761.208(c)(2) will be removed from the CFR.

40 CFR 761.208(c)(3) – waste initiated from a disposal facility: The intent of the language in § 761.208(c)(3) matches that of § 264.71(c). However, § 761.208(c)(3) specifies the requirement for an off-site shipment, which is unique to the PCB regulations, and § 264.71(c) does not include a similar provision. Section 761.208(c)(3) will be retained and renumbered to 761.213(c).

40 CFR 264.71(d) – tracking document for wastes under 40 CFR 262 Subpart H: Part

761 does not contain a provision similar to § 264.71(d). Section 264.71(d) contains instructions for shipments subject to 40 CFR 262 Subpart H, which deals with transboundary shipments of hazardous waste for recovery within the Organization for Economic Co-operation and Development (OECD). Regardless of whether the content of § 264.71(d) could be relevant for PCB waste, specific requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking, because PCB waste has unique import and export restrictions found in part 761 subpart F. Language from § 264.71(d) will therefore not be included in the PCB regulations.

40 CFR 264.71(e) – additional wastes regulated by the consignment state: Part 761

does not contain a provision similar to § 264.71(e). Section 264.71(e) contains instructions for how to handle additional wastes regulated as hazardous wastes by the consignment state under its RCRA authorized state program. PCBs are regulated federally under TSCA authority, so § 264.71(e) does not apply. Language from § 264.71(e) will therefore not be included in the PCB regulations.

D. Revisions to the PCB Regulations under 40 CFR 761.209 (Retention of manifest records)

EPA used the following table (Table 4) to compare the sections of the PCB regulations under 40 CFR 761.209 to the equivalent or relevant sections in the RCRA regulations in 40 CFR parts 262, 263, and 264, which are §§ 262.40, 263.22, and 264.71.

Table 4

CFR Part 761 Section	CFR Parts 262-264 Section	Description	Match (Y/N)	New 761 CFR
761.209 Retention of manifest records.	263.22 Recordkeeping.			
761.209(a)	262.40(a)	Retention requirements	N	761.214(a)(1)

761.209(b)(1)	263.22(a)	Retention requirements	Y	761.214(a)(2)
761.209(b)(2)	263.22(b)	Retention requirements	Y	761.214(b)
761.209(b)(3)	263.22(c)	Retention requirements	Y	761.214(c)
761.209(b)(3)(i)	263.22(c)(1)	Retention requirements	Y	761.214(c)(1)
761.209(b)(3)(ii)	263.22(c)(2)	Retention requirements	Y	761.214(c)(2)
	263.22(d)	3 year retention requirement	N	see description below
761.209(c)	264.71(a)(2)(v), 264.71(b)(v)	3 year retention requirement	Y	761.213(a)(2)(v), 761.213(b)(5)
	262.40(b)	3 year retention requirement	N	761.214(d)
761.209(d)	263.22(e)	Retention requirements	Y	761.214(e)

Listed below are the explanations of each change made to § 761.209 in the table above.

40 CFR 761.209(a) – retention requirements for generators: The language in § 761.209(a) closely matches that of § 262.40(a). Both sections contain manifest retention requirements for generators, but the language in § 262.40(a) is more streamlined.

However, Section 761.209(a) references retention requirements in 761.180(a), which states that annual records, including manifests, must be maintained for three years after the facility ceases using or storing PCBs and PCB Items. Section 761.214(a)(1), codified through this rule, will contain language from § 262.40(a), as well as a reference to Section 761.180. Section 761.209(a) will be removed from the CFR.

40 CFR 761.209(b)(1), (b)(2), and (b)(3) – retention requirements for transporters:

The intent of the language in §§ 761.209(b)(1), (b)(2), (b)(3), (b)(3)(i), and (b)(3)(ii) matches that of §§ 263.22(a), (b), (c), (c)(1), and (c)(2). All sections contain manifest retention requirements for transporters. Sections 761.214(a)(2), (b), (c), (c)(1), and (c)(2), codified through this rule, will contain the language from §§ 263.22(a), (b), (c), (c)(1), and (c)(2) to maintain consistency with the RCRA regulations. Sections 761.209(b)(1), (b)(2), (b)(3), (b)(3)(i), and (b)(3)(ii) will be removed from the CFR.

40 CFR 263.22(d) – retention requirements for transporters who transport out of the

United States: Part 761 does not have a provision similar to § 263.22(d). Section 263.22(d) contains retention requirements for transporters who transport waste out of the

United States. Even though the content of § 263.22(d) could be relevant to completing a manifest for PCB waste, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons previously described.

40 CFR 761.209(c) – retention requirements for receiving facilities: The intent of the language in § 761.209(c) matches that of §§ 264.71(a)(2)(v) and 264.71(b)(5). All sections contain manifest retention requirements for facilities. As explained with respect to sections 761.208(c)(1)(v) and (c)(2)(v), new §§ 761.213(a)(2)(v) and (b)(5) will contain language from §§ 264.71(a)(2)(v) and 264.71(b)(5) to maintain consistency with the RCRA regulations. Section 761.209(c) will be removed from the CFR.

40 CFR 262.40(b) – exception report retention requirement for generators: Part 761 does not have a provision similar to § 262.40(b). Section 262.40(b) contains the 3-year exception report retention requirement for generators. The content of § 262.40(b) pertaining to the exception report is relevant to PCB exception reports. Thus, § 761.214(d), codified through this rule, will contain language from § 262.40(b).

40 CFR 761.209(d) – retention period for enforcement actions: The intent of the language in § 761.209(d) matches that of § 263.22(e). Both sections refer to extending the retention period for enforcement actions. Section 761.214(e), codified through this rule, will contain language from § 263.22(e) to maintain consistency with the RCRA regulations. Section 761.209(d) will be removed from the CFR.

E. Revisions to the PCB Regulations under 40 CFR 761.210 (Manifest discrepancies)

EPA used the following table (Table 5) to compare the PCB regulations under § 761.210 to the equivalent or relevant section in the RCRA regulations in 40 CFR part 264, which is § 264.72.

Table 5

CFR Part 761 Section	CFR Part 264 Section	Description	Match (Y/N)	New 761 CFR
761.210 Manifest discrepancies.	264.72 Manifest discrepancies.			
761.210(a)	264.72(a)	Manifest discrepancies	Y	761.215(a)
761.210(a)(1)	264.72(a)(1)	Manifest discrepancies	Y	761.215(a)(1)
	264.72(a)(2)	Manifest discrepancies	N	761.215(a)(2)
	264.72(a)(3)	Manifest discrepancies	N	see description below
761.210(a)(1)(i)	264.72(b)	Manifest discrepancies	Y	761.215(a) and 761.215(a)(1)
761.210(a)(1)(ii)	264.72(b)	Manifest discrepancies	Y	761.215(a) and 761.215(a)(1)
761.210(a)(2)	264.72(b)	Manifest discrepancies	Y	761.215(b)
761.210(b)	264.72(c)	Manifest discrepancies	Y	761.215(c)
	264.72(d)(1)	Manifest discrepancies	N	761.215(d)(1)
	264.72(d)(2)	Manifest discrepancies	N	761.215(d)(2)
	264.72(e)	Manifest discrepancies	N	761.215(e)
	264.72(f)	Manifest discrepancies	N	761.215(f)
	264.72(g)	Manifest discrepancies	N	761.215(g)

Listed below are the explanations of each change made to § 761.210 in the table above.

40 CFR 761.210(a), (a)(1), and (a)(2) – definition of manifest discrepancies and

significant discrepancies: The intent of the language in §§ 761.210(a), (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(2) matches §§ 264.72(a), (a)(1), and (b). Also, section 761.210(a)(2) matches the second sentence in § 264.72(b). All sections contain the definition of significant discrepancies. Sections 761.215(a), (a)(1), and (b), codified through this rule, will contain language from §§ 264.72(a), (a)(1), and (b) to maintain consistency with the RCRA regulations, as well as language from §§ 761.210(a)(1)(i), (a)(1)(ii), and (a)(2) for the specific PCB examples used to illustrate significant discrepancies. Sections 761.210(a), (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(2) will be removed from the CFR.

40 CFR 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g) – manifest discrepancies for

rejected loads: Sections 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g) contain information on manifest discrepancies for rejected loads. Even though the substance of §§

264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g) is relevant to PCB waste, part 761 does not currently have provisions similar to §§ 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g).

Sections 761.215(a)(2), (d)(1), (d)(2), (e), (f), and (g), codified through this rule, will contain language from §§ 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g). However, the residue language from §§ 264.72 (d)(1), (d)(2), (e), (f), and (g) is not relevant to PCB waste as container residues do not have quantity limits for PCB wastes and will not be addressed in this action.

40 CFR 264.72(a)(3) – manifest discrepancies for residues: Part 761 does not contain a provision similar to § 264.72(a)(3). Section 264.72(a)(3) is not relevant to PCBs. Container residues do not have quantity limits for PCB waste. Thus, this will not be addressed in this action.

40 CFR 761.210(b) – resolving manifest discrepancies: The intent of the language in § 761.210(b) matches that of § 264.72(c). Both sections refer to resolving manifest discrepancies. Section 761.215(c), codified through this rule, will contain language from § 264.72(c) to maintain consistency with the RCRA regulations. Section 761.210(b) will be removed from the CFR.

F. Revisions to the PCB Regulations under 40 CFR 761.211 (Unmanifested waste report)

EPA used the following table (Table 6) to compare the PCB regulations under § 761.211 to the equivalent or relevant section in the RCRA regulations in 40 CFR part 264, which is § 264.76.

Table 6

CFR Part 761 Section	CFR Part 264 Section	Description	Match (Y/N)	New 761 CFR
761.211 Unmanifested waste report.	264.76 Unmanifested waste report.			
761.211(a)	264.76(a)	Unmanifested Waste Report	N	761.216(a)
761.211(b)	264.76(a)	Unmanifested Waste Report	N	761.216(a)
761.211(c)	264.76(a)	Unmanifested Waste Report	N	761.216(a)
761.211(c)(1)	264.76(a)(1)	Unmanifested Waste Report	Y	761.216(a)(1)
761.211(c)(2)	264.76(a)(2)	Unmanifested Waste Report	Y	761.216(a)(2)
761.211(c)(3)	264.76(a)(3)	Unmanifested Waste Report	Y	761.216(a)(3)
761.211(c)(4)	264.76(a)(4)	Unmanifested Waste Report	Y	761.216(a)(4)
	264.76(a)(5)	Unmanifested Waste Report	Y	761.216(a)(5)
	264.76(a)(6)	Unmanifested Waste Report	N	761.216(a)(6)
761.211(c)(5)	264.76(a)(7)	Unmanifested Waste Report	Y	761.216(a)(7)
761.211(c)(6)		Unmanifested Waste Report	N	761.216(a)(8)
761.211(c)(6)(i)		Unmanifested Waste Report	N	761.216(a)(8)(i)
761.211(c)(6)(ii)		Unmanifested Waste Report	N	761.216(a)(8)(ii)

Listed below are the explanations of each change made to § 761.211 in the table above.

40 CFR 761.211(a) – facilities receiving unmanifested waste: The portion of § 761.211(a) that is similar to part of § 264.76(a) is that regarding the general instructions on how a facility handles unmanifested waste. These general instructions are still relevant to the PCB manifest regulations and will be retained in section 761.216(a), codified through this rule. The remaining portion of § 761.211(a) that is not covered in § 264.76(a) is the portion instructing the commercial storage or disposal facility to contact the generator to obtain a manifest or return the waste. Even though EPA believes this is an industry practice that does not need to be explicitly stated, this language was retained to help clarify that the commercial storage or disposal facility should attempt to obtain a manifest from the generator before seeking instruction from the EPA Regional Administrator of the EPA region in which his facility is located. The remaining language from § 761.211(a) will be retained in § 761.216(a). Section 761.211(a) will be removed from the CFR. Please note that § 761.211(a), (b), and (c) are all being revised and renumbered to § 761.216(a).

40 CFR 761.211(b) – facilities receiving unmanifested waste: Section 761.211(b) contains instructions for the disposal facility to contact the EPA Regional Administrator for guidance when the generator of an unmanifested shipment cannot be contacted. This step is unique to the PCB manifest regulations and, at this time, is still relevant to those regulations. Thus, language from § 761.211(b) is retained and included in § 761.216(a), which is codified through this rule. Section 761.211(b) will be removed from the CFR. Please note that § 761.211(a), (b), and (c) are all being revised and renumbered to § 761.216(a).

40 CFR 761.211(c) – unmanifested waste report: The procedure described in § 761.211(c) is similar to that of § 264.76(a). Both sections contain instructions on when and how to complete an unmanifested waste report. However, § 761.211(c) contains language stating that the unmanifested waste report will be sent to the Regional Administrator for the Region in which the commercial storage or disposal facility is located and to the Regional Administrator for the Region in which the PCB waste originated, where § 264.76(a) only states that the unmanifested waste report be sent to the Regional Administrator. EPA believes it is sufficient to only send the unmanifested PCB waste report to the Regional Administrator for the Region in which the commercial storage or disposal facility is located. Also, the form for the unmanifested waste report, EPA Form 8700-13B, was removed from the regulations on January 28, 1983 (48 FR 3977), so that will not be included in the regulations. The language from § 264.76(a) is included in § 761.216(a), which is codified through this rule, and § 761.211(c) will be removed from the CFR. Please note that § 761.211(a), (b), and (c) are all being revised and renumbered to § 761.216(a). Furthermore, § 264.76(a)(5) contains instructions on including the same

generalized information on the unmanifested waste report in greater detail than § 761.211(c). Language from § 264.76(a)(5) will therefore be included in § 761.216(a)(5), which will be codified through this rule.

40 CFR 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) – details included on the

unmanifested waste report: The intent of the language in §§ 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) matches that of §§ 264.76(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7). All sections contain details of what information needs to be included with the unmanifested waste report. Sections 761.216(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7), codified through this rule, will contain language from §§ 264.76(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7) to maintain consistency with the RCRA regulations. Sections 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) will be removed from the CFR.

40 CFR 761.211(c)(6) – details included on the unmanifested waste report: Sections 761.211(c)(6), (c)(6)(i), and (c)(6)(ii) contain details of information needed to be included with the unmanifested PCB waste report. These details are unique to the unmanifested PCB waste report. Thus, §§ 761.211(c)(6), (c)(6)(i), and (c)(6)(ii) will be retained and renumbered as §§ 761.216(a)(8), (a)(8)(i), and (a)(8)(ii).

40 CFR 264.76(a)(6) – certification of the unmanifested waste report: Part 761 does not contain a provision similar to § 264.76(a)(6). Section 264.76(a)(6) contains instructions on including a “certification signed by the owner or operator of the facility or his authorized representative” with the unmanifested waste report. This certification is just the signature of the owner or operator of the facility on the unmanifested waste report. Even though part 761 does not explicitly state that a signature should be included, EPA believes that this was just an oversight in part 761 and the unmanifest PCB waste reports should be

signed by the owner or operator of the facility. Section 761.216(a)(6), codified through this rule, will therefore contain language from § 264.76(a)(6).

G. Revisions to the PCB Regulations under 40 CFR 761.215 (Exception reporting)

EPA used the following table (Table 7) to compare the PCB regulations under § 761.215 to the equivalent or relevant section in the RCRA regulations in 40 CFR part 262, which is § 262.42.

Table 7

CFR Part 761 Section	CFR Part 262 Section	Description	Match (Y/N)	New 761 CFR
761.215 Exception reporting.	262.42 Exception reporting.			
761.215(a)	262.42(a)(1)	Exception Reporting	Y	761.217(a)(1)
761.215(b)	262.42(a)(2)	Exception Reporting	Y	761.217(a)(2)
761.215(b)(1)	262.42(a)(2)(i)	Exception Reporting	Y	761.217(a)(2)(i)
761.215(b)(2)	262.42(a)(2)(ii)	Exception Reporting	Y	761.217(a)(2)(ii)
	262.42(b)	Exception Reporting	N	see description below
	262.42(c)	Exception Reporting	N	761.217(b)
	262.42(c)(1)	Exception Reporting	N	761.217(b)(1)
	262.42(c)(2)	Exception Reporting	N	761.217(b)(2)
761.215(c)		One-year Exception Report	N	761.219(a)
761.215(c)(1)		One-year Exception Report	N	761.219(a)(1)
761.215(c)(2)		One-year Exception Report	N	761.219(a)(2)
761.215(d)		One-year Exception Report	N	761.219(b)
761.215(d)(1)		One-year Exception Report	N	761.219(b)(1)
761.215(d)(2)		One-year Exception Report	N	761.219(b)(2)
761.215(e)		One-year Exception Report	N	761.219(c)
761.215(e)(1)		One-year Exception Report	N	761.219(c)(1)
761.215(e)(2)		One-year Exception Report	N	761.219(c)(2)
761.215(e)(2)(i)		One-year Exception Report	N	761.219(c)(2)(i)
761.215(e)(2)(ii)		One-year Exception Report	N	761.219(c)(2)(ii)
761.215(e)(2)(iii)		One-year Exception Report	N	761.219(c)(2)(iii)
761.215(e)(2)(iv)		One-year Exception Report	N	761.219(c)(2)(iv)
761.215(e)(2)(v)		One-year Exception Report	N	761.219(c)(2)(v)
761.215(f)		One-year Exception Report	N	761.219(d)

Listed below are the explanations of each change made to § 761.215 in the table above.

40 CFR 761.215(a) – exception report: The intent of the language in § 761.215(a) closely matches that of § 262.42(a)(1). Both sections contain details of how a generator should proceed when a signed manifest is not received. Section 262.42(a)(1) is strictly for hazardous waste generators of over 1000 kg waste in a calendar month, where § 761.215(a)

is for all PCB waste generators. Section 761.217(a)(1), codified through this rule, will retain the language from § 761.215(a) to ensure that all PCB waste generators are covered.

40 CFR 761.215(b) – when to submit an exception report: The intent of the language in § 761.215(b) closely matches that of § 262.42(a)(2). Both sections contain details of when an exception report should be submitted. However, § 761.215(b) states the exception report should be submitted to the EPA no later than 45 days from the date on which the generator should have received the manifest, where § 262.42(a)(2) does not. Section 761.217(a)(2), codified through this rule, will retain the language from § 761.215(b) to maintain the deadline for submitting an exception report.

40 CFR 761.215(b)(1) and (b)(2) – details included in the exception report: The language in §§ 761.215(b)(1) and (b)(2) matches that of §§ 262.42(a)(2)(i) and (a)(2)(ii). All sections contain details of what information needs to be included with the exception report. Sections 761.217(a)(2)(i) and (a)(2)(ii), codified through this rule, will contain language from §§ 262.42(a)(2)(i) and (a)(2)(ii) to maintain consistency with the RCRA regulations. Sections 761.215(b)(1) and (b)(2) will be removed from the CFR.

40 CFR 262.42(b) – exception reporting instructions for generators of hazardous waste between 100kg and 1000kg in a calendar month: Part 761 does not contain a provision similar to § 262.42(b). Section 262.42(b) contains special exception reporting instructions for generators of hazardous waste between 100 kg and 1000 kg waste in a calendar month. The instructions in § 262.42(b) are not relevant to generators for PCB waste, which does not have such quantity limitations. Section 262.42(b) will therefore not be referenced in the PCB regulations.

40 CFR 262.42(c), (c)(1), and (c)(2) – rejected shipments forwarded to an alternate

facility: Sections 262.42(c), (c)(1), and (c)(2) contain information on exception reporting for rejected shipments forwarded to an alternate facility. Even though the substance of §§ 262.42(c), (c)(1), and (c)(2) is relevant to PCB waste, part 761 does not currently have provisions similar to §§ 262.42(c), (c)(1), and (c)(2). Sections 761.217(b), (b)(1), and (b)(2), codified through this rule, will therefore contain language from §§ 262.42(c), (c)(1), and (c)(2), except for the residue language; there is no provision similar under the PCB regulations for § 261.7 *Residues of hazardous waste in empty containers*. Also, the 60-day timeframe in § 262.42(c)(2) is not relevant because § 262.42(b) is not relevant to part 761.

40 CFR 761.215(c), (d), (e), (f) – One-year exception report for PCB waste:

Sections 761.215(c), (d), (e), and (f) contain details on the One-year Exception Report, which is unique to PCB waste. The One-year Exception Report is different from the exception reporting detailed in §§ 761.215(a), (b), and § 262.42, and therefore §§ 761.215(c), (d), (e), and (f) will be retained and renumbered under § 761.219, which is codified through this rule.

H. Revisions to other Sections in 40 CFR 761

There are four other sections in part 761 which refer to re-numbered sections in the regulations that need to be updated or reserved: §§ 761.60(j)(1)(vii), 761.65(i)(2) and 761.65(i)(4), and 761.180(a)(2)(viii).

40 CFR 761.60(j)(1)(vii):

Section 761.60(j)(1)(vii) references sections 761.207 through 761.218, which will now correspond to sections 761.207 through 761.219.

40 CFR 761.65(i)(2):

Section 761.65(i)(2) references section 761.208 which will now correspond to sections 761.210 through 761.213.

40 CFR 761.65(i)(4):

Section 761.65(i)(4) references sections 761.208, 209, and 761.215(a) and (b) which will now correspond to sections 761.210 through 761.213, 761.213 and 761.214, and 761.217, respectively.

40 CFR § 761.180(a)(2)(viii):

Section 761.180(a)(2)(viii) contains a requirement for the owner or operator of a facility to retain a written record of all telephone or other confirmations to be included in the annual document log. EPA believes this requirement is no longer necessary to effectively monitor compliance for exception reporting. Section 761.180(a)(2)(viii) will be effectively removed by changing the section to 'reserved', to avoid renumbering downstream sections.

IV. Statutory and Executive Order Reviews

As explained above, this action updates and clarifies existing regulations for manifesting PCB wastes to match, to the extent possible, the existing regulations for manifesting RCRA hazardous waste using the Uniform Hazardous Waste Manifest form. Once updated, the regulations will match what is currently being done by industry. For that reason, this action:

- is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to

review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), for State, local, or tribal governments or the private sector and contains no regulatory requirements that might significantly or uniquely affect small governments;
- does not have Federalism implications as specified in Executive Order 13132: Federalism (64 FR 43255, August 10, 1999);
- does not have tribal implications as specified by Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), because, as the rule does not make any substantive changes, it will not impose substantial direct costs on tribal governments or preempt tribal law;
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045: Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997);
- is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866;

- does not involve technical standards, thus the requirements of §12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply; and
- does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations under Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) because it does not affect the level of protection provided to human health or the environment.

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that is primarily engaged in hazardous waste treatment and disposal as defined by NAICS code 562211, with annual receipts of less than 12.5 million dollars (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is

any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule merely updates the existing regulations for manifesting PCB wastes to match the existing Uniform Hazardous Waste Manifest form. Once updated, the regulations will match what is currently being conducted by industry.

B. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Manifest, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: August 17, 2012

Lisa Feldt,
Acting Assistant Administrator,
Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 761--[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

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

Subpart D – [Amended]

2. Section 761.60 is amended by revising paragraph (j)(1)(vii) to read as follows:

§ 761.60 Disposal requirements.

* * * * *

(j) * * *

(1) * * *

(vii) Use manifests pursuant to subpart K of this part for all R&D PCB wastes being transported from the R&D facility to an approved PCB storage or disposal facility. However, §§761.207 through 761.219 do not apply if the residuals or treated samples are returned either to the physical location where the samples were collected or a location where other regulated PCBs from the physical location where the samples were collected are being stored for disposal.

* * * * *

3. Section 761.65 is amended by revising paragraphs (i)(2) and (i)(4) to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(i) * * *

(2) A laboratory sample is exempt from the manifesting requirements in §§761.210 through 761.213 when:

- (i) The sample is being transported to a laboratory for the purpose of testing.
- (ii) The sample is being transported back to the sample collector after testing.
- (iii) The sample is being stored by the sample collector before transport to a laboratory for testing.
- (iv) The sample is being stored in a laboratory before testing.

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector.

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

* * * * *

(4) When the concentration of the PCB sample has been determined, and its use is terminated, the sample must be properly disposed. A laboratory must either manifest the PCB waste to a disposer or commercial storer, as required under §§761.210 through 761.213, retain a copy of each manifest, as required under §§761.213 and 761.214, and follow up on exception reporting, as required under §761.217, or return the sample to the sample collector who must then properly dispose of the sample. If the laboratory returns the sample to the sample collector, the laboratory must comply with the shipping requirements set forth in paragraphs (i)(3)(i) through (i)(3)(iii) of this section.

* * * * *

Subpart J – [Amended]

4. Section 761.180 is amended by removing and reserving paragraph (a)(2)(viii) to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) * * *

(2) * * *

(viii) [Reserved]

* * * * *

Subpart K – [Amended]

5. Section 761.207 is revised to read as follows:

§ 761.207 The manifest – general requirements.

(a) A generator who transports, or offers for transport PCB waste for commercial off-site storage or off-site disposal, and commercial storage or disposal facility who offers for transport a rejected load of PCB waste, must prepare a manifest on EPA Form 8700–22, and, if necessary, a continuation sheet, according to the instructions included in the appendix of 40 CFR Part 262. The generator shall specify:

(1) For each bulk load of PCBs, the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste. (Item 15 – Special Handling Instructions box)

(2) For each PCB Article Container or PCB Container, the unique identifying number, type of PCB waste (*e.g.*, soil, debris, small capacitors), earliest date of removal from service for disposal, and weight in kilograms of the PCB waste contained. (Item 15 – Special Handling Instructions box)

(3) For each PCB Article not in a PCB Container or PCB Article Container, the serial number if available, or other identification if there is no serial number, the date of removal from service for disposal, and weight in kilograms of the PCB waste in each PCB Article. (Item 15 – Special Handling Instructions box)

Note 1 to paragraph (a): EPA Form 8700-22A is not required as the PCB manifest continuation sheet. In practice, form 8700-22A does not have adequate space to list required PCB-specific information for several PCB articles. However, if form 8700-22A fits the needs of the user community, the form is permissible.

Note 2 to paragraph (a): PCB waste handlers should use the Part 262 appendix instructions as a guide, but should defer to the Part 761 manifest regulations whenever there is any difference between the Part 761 requirements and the instructions in the appendix to Part 262. The differences should be minimal.

Note 3 to paragraph (a): PCBs are not regulated under RCRA, thus do not have a RCRA waste code. EPA does not require boxes 13 and 31 on forms 8700-22 and 8700-22A (if used), respectively, to be completed for shipments only containing PCB waste. However, some States track PCB wastes as State-regulated hazardous wastes, and assign State hazardous waste codes to these wastes. In such a case, the user should follow the State instructions for completing the waste code fields.

(b) A generator must designate on the manifest one facility which is approved to handle the PCB waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is approved to handle his PCB waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the PCB waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the PCB waste.

(e) The requirements of this section apply only to PCB wastes as defined in §761.3. This includes PCB wastes with PCB concentrations below 50 ppm where the PCB concentration below 50 ppm was the result of dilution; these PCB wastes are required under §761.1(b) to be managed as if they contained PCB concentrations of 50 ppm and above. An example of such a PCB waste is spill cleanup material containing <50 ppm PCBs when the spill involved material containing PCBs at a concentration of ≥ 50 ppm. However, there is no manifest requirement for material currently below 50 ppm which derives from pre-April 18, 1978, spills of any concentration, pre-July 2, 1979, spills of < 500 ppm PCBs, or materials decontaminated in accordance with §761.79.

(f) The requirements of this subpart do not apply to the transport of PCB wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way.

6. Section 761.208 is revised to read as follows :

§ 761.208 Obtaining manifests.

(a)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under 40 CFR 262.21

(c) and (e). A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) PCB waste generator, transporter or, designated facility; or

(iv) PCB waste broker or other preparer who prepares or arranges shipments of PCB waste for transportation.

(2) A generator must determine whether the generator state or the consignment state for a shipment regulates PCB waste as a State-regulated hazardous waste. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(b) [Reserved]

7. Section 761.209 is revised to read as follows:

§ 761.209 Number of copies of a manifest.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

8. Section 761.210 is revised to read as follows:

§ 761.210 Use of the manifest – Generator requirements.

(a) The generator must:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with §761.214(a)(1).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of PCB waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each transporter.

(d) For rail shipments of PCB waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail.

(e) For rejected shipments of PCB waste that are returned to the generator by the designated facility (following the procedures of § 761.215(f)), the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

9 Section 761.211 is revised to read as follows:

§ 761.211 Manifest system – Transporter requirements.

(a)(1) A transporter shall not accept PCB waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with §761.210(a)(1), except that a manifest is not required if any one of the following conditions exists:

(i) The shipment of PCB waste consists solely of PCB wastes with PCB concentrations below 50 ppm, unless the PCB concentration below 50 ppm was the result of dilution, in which case §761.1(b) requires that the waste be managed as if it contained PCBs at the concentration prior to dilution.

(ii) The PCB waste is accepted by the transporter for transport only to a storage or disposal facility owned or operated by the generator of the PCB waste.

(2) [Reserved]

(b) Before transporting the PCB waste, the transporter must sign and date the manifest acknowledging acceptance of the PCB waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter shall ensure that the manifest accompanies the PCB waste.

(d) A transporter who delivers PCB waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with §761.214; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of paragraphs (c), (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) The PCB waste is delivered by water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding EPA identification number, generator certification, and signatures) accompanies the PCB waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the PCB waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §761.214.

(f) For shipments involving rail transportation, the requirements of paragraphs (c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting PCB waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the PCB waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or,

(B) The designated facility, if the shipment is delivered to that facility by rail;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with §761.214.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) accompanies the PCB waste at all times.

Note: Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering PCB waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with §761.214.

(4) When delivering PCB waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with §761.214.

(5) Before accepting PCB waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

10. Section 761.212 is added to read as follows:

§ 761.212 Transporter compliance with the manifest.

(a) The transporter must deliver the entire quantity of PCB waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the PCB waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter.

(b)(1) If the PCB waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(2) If PCB waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection in the discrepancy block

of the original manifest. The transporter must retain a copy of this manifest in accordance with §761.214, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 40 CFR 761.215(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with §761.214, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 40 CFR 761.215(e)(1) through (6).

(iii) No provision of this section shall be construed to affect or limit the applicability of any requirement applicable to transporters of PCB waste under regulations issued by the Department of Transportation (DOT) and set forth at 49 CFR Part 171.

11. Section 761.213 is added to read as follows:

§ 761.213 Use of manifest – Commercial storage and disposal facility requirements

(a)(1) If a commercial storage or disposal facility receives PCB waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the PCB waste covered by the manifest was received, that the PCB waste was received except as noted in the discrepancy space of the manifest, or that the PCB waste was rejected as noted in the manifest discrepancy space.

(2) If a commercial storage or disposal facility receives an off-site shipment of PCB waste accompanied by a manifest, the owner or operator, or his agent, shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in §761.215(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a commercial storage or disposal facility receives, from a rail or water (bulk shipment) transporter, PCB waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the PCB waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in §761.215(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

Note to paragraph (b)(2): The Agency does not intend that the owner or operator of a facility whose procedures include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 761.215(a), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

Note to paragraph (b)(4): Section 761.210(c) requires the generator to send three copies of the manifest to the facility when PCB waste is sent by rail or water (bulk shipment).]

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever an off-site shipment of PCB waste is initiated from a commercial storage or disposal facility, the owner or operator of the commercial storage or disposal facility shall comply with the manifest requirements that apply to generators of PCB waste (§761.207).

12. Section 761.214 is added to read as follows:

§ 761.214 Retention of manifest records.

(a)(1) A generator must keep a copy of each manifest signed in accordance with §761.210(a) for three years or until he receives a signed copy from the designated facility which received the PCB waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter. A generator subject to annual document requirements under §761.180 shall retain copies of each manifest for the period required by §761.180(a).

(2) A transporter of PCB waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the PCB waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in §761.211(e)(2) for a period of three years from the date the PCB waste was accepted by the initial transporter.

(c) For shipments of PCB waste by rail within the United States:

(1) The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in §761.211(f)(2) for a period of three years from the date the PCB waste was accepted by the initial transporter; and

(2) The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the PCB waste was accepted by the initial transporter.

Note to paragraph (c): Intermediate rail transporters are not required to keep records pursuant to these regulations.

(d) A generator must keep a copy of each Exception Report for a period of at least three years from the due date of the report.

(e) The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

13. Section 761.215 is revised to read as follows:

§ 761.215 Manifest discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of PCB waste designated on the manifest or shipping paper, and the quantity and type of PCB waste a facility actually receives; or

(2) Rejected wastes, which may be a full or partial shipment of PCB waste that the designated facility cannot accept.

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight or variations greater than 10 percent in weight of PCB waste in containers; for batch waste, any variation in piece count, such as a discrepancy of one PCB Transformer or PCB Container or PCB Article Container in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as the substitution of solids for liquids or the substitution of high concentration PCBs (above 500 ppm) with lower concentration materials.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.*, with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting the PCB waste, the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection identification.

(2) While the facility is making arrangements for forwarding rejected wastes to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with §761.207(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with §761.207(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections that are returned to the generator, the facility must also comply with the exception reporting requirements in §761.217(a).

(g) If a facility rejects a waste after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

14. Section 761.216 is added to read as follows:

§ 761.216 Unmanifested waste report.

(a) If a facility accepts for storage or disposal any PCB waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by §761.211(e), and the owner or operator of the commercial storage or disposal facility cannot contact the generator of the PCB waste, then he shall notify the Regional Administrator of the EPA region in which his facility is located of the unmanifested PCB waste so that the Regional Administrator can determine whether further actions are required before the owner or operator may store or dispose of the unmanifested PCB waste, and additionally the owner or operator must prepare and submit a letter to the

Regional Administrator within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

- (1) The EPA identification number, name and address of the facility;
- (2) The date the facility received the waste;
- (3) The EPA identification number, name and address of the generator and the transporter, if available;
- (4) A description and the quantity of each unmanifested PCB waste the facility received;
- (5) The method of storage or disposal for each PCB waste;
- (6) Signature of the owner or operator of the facility or his authorized representative; and,
- (7) A brief explanation of why the waste was unmanifested, if known.
- (8) The disposition made of the unmanifested waste by the commercial storage or disposal facility, including:
 - (i) If the waste was stored or disposed by that facility, was the generator identified and was a manifest subsequently supplied.
 - (ii) If the waste was sent back to the generator, why and when.
- (b) [Reserved]

15. Section 761.217 is added to read as follows:

§ 761.217 Exception reporting.

(a)(1) A generator of PCB waste, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter, shall immediately contact the transporter and/or the owner or operator of the designated facility to determine the status of the PCB waste.

(2) A generator of PCB waste subject to the manifesting requirements shall submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report shall be submitted to EPA no later than 45 days from the date on which the generator should have received the manifest. The Exception Report shall include the following:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the PCB waste and the results of those efforts.

(b) For rejected shipments of PCB waste that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of § 761.215(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) of this section, as applicable, for the shipment forwarding the material from the designated facility

to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35- and 45-day timeframes begin the date the waste was accepted by the initial transporter forwarding the PCB waste shipment from the designated facility to the alternate facility.

16. Section 761.219 is added to read as follows:

§ 761.219 One-year exception reporting.

(a) A disposer of PCB waste shall submit a One-year Exception Report to the EPA Regional Administrator for the Region in which the disposal facility is located no later than 45 days from the end of the 1-year storage for disposal date when the following occurs:

(1) The disposal facility receives PCBs or PCB Items on a date more than 9 months from the date the PCBs or PCB Items were removed from service for disposal, as indicated on the manifest or continuation sheet; and

(2) Because of contractual commitments or other factors affecting the facility's disposal capacity, the disposer of PCB waste could not dispose of the affected PCBs or PCB Items within 1 year of the date of removal from service for disposal.

(b) A generator or commercial storer of PCB waste who manifests PCBs or PCB Items to a disposer of PCB waste shall submit a One-year Exception Report to the EPA Regional Administrator for the Region in which the generator or commercial storer is located no later than 45 days from the date the following occurs:

(1) The generator or commercial storer transferred the PCBs or PCB Items to the disposer of PCB waste on a date within 9 months from the date of removal from service for disposal of the affected PCBs or PCB Items, as indicated on the manifest or continuation sheet; and

(2) The generator or commercial storer either has not received within 13 months from the date of removal from service for disposal a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items, or the generator or commercial storer receives a Certificate of Disposal confirming disposal of the affected PCBs or PCB Items on a date more than 1 year after the date of removal from service.

(c) The One-year Exception Report shall include:

(1) A legible copy of any manifest or other written communication relevant to the transfer and disposal of the affected PCBs or PCB Items.

(2) A cover letter signed by the submitter or an authorized representative explaining:

(i) The date(s) when the PCBs or PCB Items were removed from service for disposal.

(ii) The date(s) when the PCBs or PCB Items were received by the submitter of the report, if applicable.

(iii) The date(s) when the affected PCBs or PCB Items were transferred to a designated disposal facility.

(iv) The identity of the transporters, commercial storers, or disposers known to be involved with the transaction.

(v) The reason, if known, for the delay in bringing about the disposal of the affected PCBs or PCB Items within 1 year from the date of removal from service for disposal.

(d) PCB/radioactive waste that is exempt from the 1-year storage for disposal time limit pursuant to §761.65(a)(1) is also exempt from the exception reporting requirements of paragraphs (a), (b), and (c) of this section.

[FR Doc. 2012-21674 Filed 09/05/2012 at 8:45 am; Publication Date: 09/06/2012]