

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: June 21, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 84-19343 Filed 7-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[Region II Docket No. 35; OAR-FRL-2635-8]

Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for New York State

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA's) proposed approval of part of a request from New York State to revise its air quality designations with regard to the Hudson Valley Air Quality Control Region (AQCR) and Washington County. If approved, most of the Hudson Valley AQCR would be designated as "better than national standards" with regard to the ozone national ambient air quality standard. EPA proposes to approve the Hudson Valley AQCR redesignation request for the section south of the Albany-Schenectady-Troy Urbanized Area. EPA proposes to disapprove the request with regard to the Albany-Schenectady-Troy Urbanized Area and adjacent areas downwind of the urbanized area (including Washington County). Such designations are required by Section 107(d) of the Clean Air Act and may be revised at the request of a state.

This action will mean that air quality in all of New York State, outside of the New York City and Albany metropolitan areas, will be designated as being "better than national standards" for ozone.

DATE: Comments must be received on or before August 22, 1984.

ADDRESSES: All comments should be addressed to: Richard T. Dewling, Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal submitted by New York State are available for public inspection during normal business hours at the following addresses:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of attainment status designations with respect to the national ambient air quality standards for all areas. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, these designations have been revised from time to time at a state's request.

EPA's Review Criteria

EPA uses several criteria for reviewing redesignations. These are based on EPA policy as outlined in a "Section 107 Designation Policy Summary" memo of April 23, 1983 from the Director for EPA's Office of Air Quality, Planning and Standards (OAQPS). The criteria that apply to today's action are as follows:

(1) The number of exceedances of the ozone standard based on data from the last three complete ozone seasons must average 1.0 or less, or that last two complete ozone seasons must have had no exceedances; and

(2) There must be evidence of an implemented control strategy approved by EPA.

State Submittal

On February 14, 1984 the New York State Department of Environmental Conservation (NYSDEC) submitted a request to revise two of its air quality designations for ozone to "better than national standards" (i.e., attainment).

The State requested that EPA redesignate parts of the Hudson Valley Air Quality Control Region (AQCR) from "does not meet primary standard" (i.e., nonattainment) to "better than national standards" with respect to ozone. In addition, the State requested that Washington County in the Northern AQCR be redesignated from "cannot be classified" to "better than national standards" for ozone.

Previous EPA Action

On March 7, 1984 (49 FR 8439) EPA disapproved a December 29, 1982 request from New York State to redesignate the Hudson Valley AQCR to

attainment of the ozone standard. As discussed in the notice of proposed rulemaking for the March 7, 1984 action (48 FR 38255, August 23, 1983), EPA concluded that there were insufficient ozone data collected in the Hudson Valley AQCR during the 1982 ozone season to justify the redesignation. Subsequently, a complete set of ozone air quality data for the 1983 ozone season was collected and forms the basis of New York's February 14, 1984 resubmittal of its request for redesignation.

EPA's Findings

An area can be designated as "better than national standards" (i.e., attainment) if the average number of expected exceedances over a three-year period is less than or equal to 1.0 per year. The number of "expected exceedances" is the frequency of daily peak ozone concentrations above the ozone air quality standard adjusted to account for the probability that ozone exceedances occurred on days without data during the ozone season. However, for the number of expected exceedances to be valid, there should be no long periods of time without monitoring data.

During the past three years (1981-1983), two of the three ozone monitoring stations in the Hudson Valley AQCR clearly attained the standard. Only one exceedance of the ozone standard was recorded at Poughkeepsie over the three-year period and no exceedances were recorded at Schenectady. These data result in a zero and a 0.4 frequency of expected exceedances for Schenectady and Poughkeepsie, respectively. Since these frequencies are less than 1.0, the monitors at Schenectady and Poughkeepsie show attainment of the ozone air quality standard.

Nevertheless, the other monitoring site in the AQCR at Rensselaer was unable to collect two and one-half months of ozone data during the ozone season of 1982. (This issue was discussed in EPA's Aug. 23, 1983 and Mar. 7, 1984 Federal Register notices, referenced in the preceding section of today's notice.) The Rensselaer ozone monitor recorded two exceedances during 1980, one in 1981, insufficient data in 1982, and no exceedances in 1983. Therefore, the calculated expected exceedances for the most recent three years with complete data are 2.1 for 1980, 1.2 for 1981, and zero for 1983. The three-year average is 1.1 expected exceedances per year.

Since the frequency of expected exceedances at the Rensselaer monitor is greater than the 1.0 average per year

needed for attainment of the ozone standard, EPA must disapprove the part of the State's redesignation request associated with the urban area around the Rensselaer monitor.

EPA policy on boundaries of nonattainment areas is described in the April 21, 1983 memo from OAQPS cited earlier. For rural ozone problems, a county is the minimum size area to be considered. In urban areas, the entire urbanized area including fringe areas of development is the minimum area for consideration.

The urban area associated with the Rensselaer ozone monitor is the Albany-Schenectady-Troy Urbanized Area as defined by the U.S. Bureau of the Census. EPA policy requires that the Schenectady urban area remain as part of the nonattainment area, despite the fact that the Schenectady ozone monitor shows attainment of the ozone standard. This policy is appropriate because the Schenectady urban area may contribute to the ozone concentrations recorded at the Rensselaer monitor. In addition, all of Rensselaer County is also included in the area proposed for disapproval based upon the rural ozone boundary policy cited earlier. Finally, all of the areas downwind of the Albany-Schenectady-Troy Urbanized Area that are presently classified as not meeting the ozone standard will remain nonattainment. Therefore, the areas proposed by the EPA to remain designated as not meeting the primary standard for ozone are as follows:

- Those portions of Albany, Schenectady, and Rensselaer Counties that are included in the Albany-Schenectady-Troy Urbanized Area as defined by the U.S. Bureau of the Census;
- The remainder of Rensselaer County;
- Those portions of Albany and Schenectady Counties that are surrounded by the Albany-Schenectady-Troy Urbanized Area and the northern border of Albany and Schenectady Counties; and
- The Towns of Clifton Park, Halfmoon, and Waterford and the City of Mechanicville in Saratoga County.

Based on the lack of exceedances of the ozone standard at Poughkeepsie and Schenectady, the remaining portion of the Hudson Valley AQCR (that part south of the Albany-Schenectady-Troy Urbanized Area) clearly meets the first criterion for redesignation. The other criterion concerns an implemented, EPA-approved control program. EPA has determined that the State is implementing the control program approved by EPA on March 19, 1981 (46

FR 17557). Therefore, the areas that are proposed by EPA to be approved for redesignation to "better than national standards" for ozone are as follows:

- Columbia, Dutchess, Greene, Orange, Putnam, and Ulster Counties; and
- Those parts of Albany and Schenectady Counties that are south of, and not included in, the Albany-Schenectady-Troy Urbanized Area.

The State also proposed that EPA approve a redesignation from "cannot be classified" to "better than national standards" for Washington county, located downwind of the Albany area. The State originally designated Washington County as "cannot be classified" with respect to the ozone standard because of a lack of monitoring data in the County. (See 44 FR 45650, Aug. 3, 1979.) The State based its request to redesignate the County on the fact that it had proposed redesignation of the Albany metropolitan area to attainment of the standard. It reasoned that a rural area should be classified as "better than national standards" for ozone if it is downwind of an area that meets the ozone standard.

Since the EPA does not believe there is sufficient information to approve the State's request to redesignate the Albany urban area and the downwind areas to "better than national standards," the request to redesignate Washington County is proposed for disapproval as well.

Future EPA Actions—Hudson Valley AQCR

EPA intends to reconsider automatically the State's request to redesignate the Albany urban area and the area downwind of Albany (including Washington County) to "better than national standards," with respect to ozone following receipt of ozone data from the 1984 ozone season. The redesignations that EPA is proposing to disapprove in today's notice will be reevaluated based on the same criteria used to evaluate the present request.

Specifically, if the Rensselaer monitor records a valid set of data for the 1984 ozone season and these data show that there were 1.9 or less expected exceedances of the ozone standard during the 1984 ozone season, then the monitor will have recorded compliance with the ozone standard for the area. This is because the average of 1.9 estimated exceedances in 1984, zero in 1983 and 1.2 in 1981 is approximately 1.0 expected exceedances per year for the three-year period. (This answer has been rounded to the nearest tenth as

required by 40 CFR Part 51, Appendix H.) This frequency of expected exceedances demonstrates compliance with the standard.

Future EPA Actions—Washington County

While there still is no ozone monitoring site in Washington County, EPA agrees with the State that Washington County can be designated as "better than national standards" if the Albany area is redesignated as "better than national standards." The County is rural (population 55,000) and is located downwind of the Albany area. Therefore, if and when EPA approves a redesignation to "better than national standards" for the Albany area, EPA will also approve a redesignation to "better than national standards" with respect to ozone for Washington County.

EPA's Proposed Action

Today, EPA is proposing to approve part of the State's requests to redesignate much of the Hudson Valley AQCR to "better than national standards" with respect to ozone.

EPA proposes to disapprove the State's redesignation request for the Albany-Schenectady-Troy Urbanized Area, Rensselaer County and the areas of Albany, Schenectady and Saratoga Counties downwind (north) of the Albany urban area that are presently designated as not meeting the ozone standard. EPA also proposes to disapprove the State's request to redesignate Washington County as "better than national standards" with respect to ozone. EPA will reassess the State's request when 1984 ozone air quality data are available.

EPA proposes to approve the State's redesignation request for the Counties of Columbia, Dutchess, Greene, Orange, Putnam, and Ulster and those parts of the Counties of Albany and Schenectady that are south of, and not included in, the Albany-Schenectady-Troy Urbanized Area.

EPA's proposed approval of part of the State's redesignation request is based on its meeting the requirements of Sections 107 and 301 of the Clean Air Act and applicable EPA guidelines.

Interested persons are invited to comment on the proposal and on whether it meets Clean Air Act requirements. Comments received by August 22, 1984 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA, at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. 605(b), I have certified that this redesignation will not have a significant economic impact on a significant number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: June 13, 1984.
(Sec. 107 and 301 of the Clean Air Act as amended [42 U.S.C. 7407 and 7601])

Richard T. Dewling,
Acting Regional Administrator
Environmental Protection Agency.

[FR Doc. 84-19341 Filed 7-20-84; 8:45 am]
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40 CFR Part 264

[OSWER-FRL 2627-3]

Hazardous Waste Management; Permit Applications for Hazardous Waste Land Treatment, Storage, and Disposal Facilities; Availability of Guidance Manual

Correction

In FR Doc. 84-18311 beginning on page 28274 in the issue of Wednesday, July 11, 1984, make the following correction on page 28274: In the third column, in the fourth line from the bottom, the telephone number for the Superintendent of Documents, U.S. Government Printing Office, should read "783-3238".

BILLING CODE 1505-01-M

40 CFR Part 421

[OW-FRL-2635-6]

Effluent Guidelines and Standards; Nonferrous Metals Manufacturing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Public hearing.

SUMMARY: Notice is hereby given of a hearing open to the public to discuss and receive comments on pretreatment standards recently proposed in the Federal Register relating to the Nonferrous Metals Manufacturing Point Source Category (June 27, 1984; 49 FR 26352). The hearing will be held to elicit additional comments on the regulation. These comments will be used to further

assist the Agency in developing the final regulations.

DATE: The public hearing has been scheduled for August 21, 1984.

ADDRESS: The public hearing will be held at the following address: L'Enfant Plaza Hotel, 480 L'Enfant Plaza East SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harold B. Coughlin, Effluent Guidelines Division (WH-552), (202) 382-7192, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Registration for the hearing will be held from 8:30 to 9:00 a.m. The hearing will start at 9:30 a.m. Opportunity will be given throughout the hearing for the audience to submit written questions to the Presiding Officer. These questions will be addressed during a question and answer session at the conclusion of the oral testimony presentations.

For those persons making an oral presentation, it is requested that a written transcript of their presentation, as well as correct spelling of names, affiliations and addresses, be submitted to the court recorder. Official transcripts of the hearing will be available upon request.

Dated: July 16, 1984.
Henry L. Longest II,
Acting Assistant Administrator for Water.

[FR Doc. 84-19340 Filed 7-20-84; 8:45 am]
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40 CFR Part 761

[OPTS-62039; TSH FRL 2600-4]

Polychlorinated Biphenyls (PCBs); Modification of Definition of Totally Enclosed Manner for PCB Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs) in other than a totally enclosed manner. Section 6(e)(2)(C) of TSCA defines "totally enclosed manner" as any manner that will ensure that any exposure of humans or the environment to PCBs will be insignificant. According to this section, in determining "totally enclosed manner," the Administrator will establish by rule what constitutes significant exposure to PCBs. In the Federal Register of May 31, 1979 (44 FR 31514), EPA issued a regulation that implemented section 6(e). In that rule, EPA defined "significant exposure" to

PCBs as "any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method." This notice proposes to amend the May 1979 PCB Rule to: (1) Delete the definition of "significant exposure;" (2) modify the definition of "totally enclosed manner;" and (3) present the Agency's current framework for assessment of PCB exposure. These modifications to the May 1979 PCB Rule are consistent with EPA's current approach to assessing exposure to PCBs.

DATES: An informal hearing, if requested, will be held on September 6, 1984, in Washington, D.C. The exact time and location of the hearing will be available by calling the TSCA Assistance Office toll free at (800-424-9065), or, in Washington, D.C., by calling (554-1404). Comments on this proposed rule and requests to participate in the informal hearing must be submitted by August 22, 1984.

ADDRESS: All comments should be sent in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket number OPTS-62039. Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Procedures for Informal Hearings

EPA will conduct all hearings in accordance with EPA's "Procedures for Conducting Rulemaking under section 6 of the Toxic Substances Control Act" (40 CFR Part 750). Commenters who want to participate in the informal hearings must write to EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT") and indicate that they want to participate. The informal hearings are meant to provide an opportunity for commenters to present additional information or to discuss new issues, not

to repeat information already presented in written comments.

II. Background

Section 6(e) of TSCA generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. The statute provides, however, two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a "totally enclosed manner." A "totally enclosed manner" is defined by TSCA to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant, as determined by the Administrator by rule." TSCA also allows EPA to authorize the use of PCBs in a manner other than a totally enclosed manner if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

In the Federal Register of May 31, 1979 (44 FR 31514), EPA issued a regulation that implemented section 6(e). (This rule is hereafter referred to as the May 1979 PCB Rule and is listed in the Code of Federal Regulations under 40 CFR Part 761). Among other things, the May 1979 PCB Rule: (1) Generally excluded from regulation materials containing PCBs in concentrations of less than 50 parts per million (ppm); (2) designated all intact, non-leaking capacitors, electromagnets, and transformers (other than railroad transformers) as "totally enclosed," and permitted their use without specific conditions; and (e) authorized 11 non-totally enclosed uses of PCBs, based on the finding that they did not present unreasonable risks. In addition, in the May 1979 PCB Rule, EPA defined the terms "significant exposure" and "totally enclosed manner" within the context of section 6(e)(2) of TSCA. "Significant exposure" is defined as any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method. (40 CFR 761.3(dd)). "Totally enclosed manner" is defined as any manner that will ensure that any exposure of human beings or the environment to any concentration of PCBs will be insignificant; that is, not measurable or detectable by any scientifically acceptable analytical method. (40 CFR 761.3(hh).)

The Environmental Defense Fund (EDF) successfully challenged the 50 ppm cutoff and the designation of PCB electrical equipment as "totally enclosed" in *EDF v. EPA*, 636 F. 2d 1267 (D.C. Cir. 1980). In that decision, the U.S. Court of Appeals for the District of

Columbia invalidated a portion of the rule and remanded the rule to EPA for further action. The definition of the terms "significant exposure" and "totally enclosed manner" in the May 1979 Rule were not, however, challenged and therefore not reviewed by the court in *EDF v. EPA*.

As a consequence of the court's decision in *EDF v. EPA*, EPA conducted a number of rulemaking actions. The action specifically relevant to the subject of today's notice of proposed rulemaking was published in the Federal Register of August 25, 1982 (47 FR 37342). (This rule will hereafter be referred to as the PCB Electrical Equipment Rule.) In that amendment to the May 1979 PCB Rule, among other things, EPA considered the effects on human health and the environment from various uses of PCBs in electrical equipment.

Following the promulgation of the PCB Electrical Equipment Rule, the Edison Electric Institute (EEI), the National Electrical Manufacturers Association (NEMA), EDF, Natural Resources Defense Council (NRDC), and the American Paper Institute (API) filed petitions for review of the PCB Electrical Equipment Rule. These actions were consolidated in the U.S. Court of Appeals for the District of Columbia Circuit.

On March 23, 1984, EEI, NEMA, API, and EPA filed a joint motion with the Court to hold the lawsuit in abeyance pending implementation of a settlement agreement reached between these parties. The court granted this joint motion on April 25, 1984. Under the settlement, EPA agreed to a schedule for conducting a rulemaking that would address the definitions of the terms "significant exposure" and "totally enclosed manner" in § 761.3 and certain provisions of § 761.20 relating to these terms. A Notice of Proposed Rulemaking to amend the PCB Electrical Equipment Rule would be issued by July 15, 1984, and a final rule would be promulgated by November 1, 1984. According to the settlement, this rulemaking activity by EPA will also defer a related motion that was filed by EEI and NEMA under section 19(b) of TSCA to remand the PCB Electrical Equipment Rule. EEI and NEMA agreed to withdraw their petition and the section 19(b) motion upon completion of this rulemaking. EDF, NRDC, and intervenor Chemical Manufacturers Association had no objection to the court's granting this motion.

III. Summary of Proposed Amendments

As a result of the settlement, EPA is proposing the following modifications to the May 1979 PCB Rule:

1. Deletion of the definition of "significant exposure" in § 761.3.
2. Revision of the definition of "totally enclosed manner" in § 761.3, by deleting the current definition and substituting the following: "Totally enclosed manner" means any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs."
3. Revision of the introductory text of § 761.20 by deleting the sixth, seventh, and eighth sentences, which state:

In addition, the Administrator hereby finds that any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method is a significant exposure. . . . Since any exposure to PCBs is found to be a significant exposure, a totally enclosed manner is a manner that results in no exposure of humans or the environment to PCBs.

The following two sentences would be substituted therefor: "In addition, the Administrator hereby finds, for purposes of section 6(e)(2)(C) of TSCA, that any exposure of humans or the environment to PCBs, as measured or detected by any scientifically acceptable analytical method, may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. For purposes of determining which PCB items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA, since exposure to such items may be significant, the Administrator further finds that a totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs."

Subsequent to the promulgation of the 1979 rule, which contained the definition of "significant exposure," EPA took a new look at its assessments of PCB exposure. The Agency no longer believes that the definition in the 1979 rule is useful. Hence, EPA has agreed that the concept of "significant exposure" in the May 1979 PCB Rule should be amended to reflect the Agency's most recent policies concerning exposures from activities involving PCBs. (For a discussion of the Agency's current approach to exposure assessment, see Unit III.C of this preamble.)

A. Deletion of the Definition of "Significant Exposure"

As used in section 6(e) of TSCA, the concept of "significant exposure" is

applicable only to the Agency's determination of uses of PCBs in a "totally enclosed manner." Under section 6(e)(2)(C) of TSCA, "totally enclosed manner" means "any manner which will ensure that any exposure to PCBs will be insignificant as determined by the Administrator by rule" (emphasis added). In the May 1979 PCB Rule, for purposes of implementing section 6(3)(2)(C) of TSCA, EPA defined "totally enclosed manner" and "significant exposure." If promulgated, this proposed rule would delete the separate definition of "significant exposure," because EPA believes that definition is no longer useful, and does not reflect the Agency's current analyses concerning exposures from activities involving PCBs.

B. Revision of the Definition of "Totally Enclosed Manner"

The current definition of "totally enclosed manner" in § 761.3 is "any manner that will ensure that any exposure of human beings or the environment to any concentration of PCBs will be insignificant; that is, not measurable or detectable by any scientifically acceptable analytical method." Under the proposed amendment, the term would be defined as "any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs." The effect of the "totally enclosed" definition is not changed by this amendment; under either definition, only PCB equipment that is intact and nonleaking qualifies as being used in a "totally enclosed manner." The proposed modification would continue to ensure that any exposures from activities involving PCBs in a "totally enclosed manner" will be insignificant.

C. Rationale for the Proposed Amendments

Since the May 1979 PCB Rule, EPA's methodology for assessing exposures from activities involving PCBs has changed. In the Closed and Controlled Waste Manufacturing Processes Rule, which was published in the Federal Register of October 21, 1982 (47 FR 46980), the Agency determined that for certain exposure scenarios, exposure to low concentration levels of certain PCBs (non-Aroclor) is insignificant with respect to risks to public health and the environment. That rule establishes PCB concentration limits for products, air emissions, water effluents, and wastes based on a determination of *de minimis* risk.

The Closed and Controlled Waste Manufacturing Processes Rule provides an exclusion from the general ban on the manufacture, processing and

distribution in commerce of PCBs for closed and controlled waste manufacturing processes. Closed manufacturing processes are processes that generate PCBs but release PCBs in concentrations below the practical limits of quantitation (LOQs) for PCBs in specific media. EPA concluded that for all practical purposes, it would be impossible to determine whether regulation of PCB concentrations below the practical LOQ had any effect on actually reducing releases of PCBs. (The PCB compounds involved in closed PCB manufacturing processes, which are referred to as "non-Aroclor PCBs," are not easily measured in air emissions, water effluents, products, or process waste streams, because up to 209 different chemical compounds can be produced and are present in different concentrations in a sample undergoing analysis.) Thus, PCBs in concentrations below the LOQ would present *de minimis* risk.

On June 27, 1984, the Agency promulgated a regulation amending the Closed and Controlled Waste Manufacturing Rule by excluding inadvertently generated and certain recycled PCBs from the prohibitions of section 6(e) of TSCA. ("Part 761—Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," 49 FR 28172, July 10, 1984.) This amendment is based on EPA's determination that these PCBs do not present an unreasonable risk of injury to health or the environment. In support of this recent PCB rule, EPA conducted a series of assessments to estimate the maximum probable human exposure to PCBs under various situations. Included among the factors considered by EPA in support of these exposure assessments were the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure.

Detailed descriptions of these exposure assessments are included in the support document for the June 27, 1984, rule entitled, "Exposure Assessment for Polychlorinated Biphenyls (PCBs): Incidental Production, Recycling, and Selected Authorized Uses (Final Report; May 2, 1984)."

IV. Agency's Position on Health and Environmental Effects of PCBs

A. Human Health Effects From Exposure to PCBs

The effects of PCBs have been previously described in various documents that are part of the

administrative record for the various PCB rulemakings. Copies of these documents are available through EPA's TSCA Assistance Office (see address above listed under "FOR FURTHER INFORMATION CONTACT").

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin; circulate throughout the body; and be stored in the fatty tissue.

In some cases, chloracne may occur in humans exposed to PCBs. Chloracne is painful, disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have been demonstrated in immature animals after exposure to PCBs prenatally and via breast milk.

Since the administration of PCBs to experimental animals results in tumor formation, reproductive effects, and developmental toxicity, EPA finds that there is the potential to produce these effects in humans exposed to PCBs. EPA finds no evidence to suggest that the animal data would not be predictive of the potential for oncogenic effects in humans.

Available data indicate little or no mutagenic activity from PCBs. EPA believes, however, that more information is needed to draw a conclusion on the possibility of mutagenic effects from PCBs.

B. Environmental Effects of PCBs

In previous PCB rules, EPA concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources. Available data show that PCBs affect the productivity of phytoplankton communities, cause deleterious effects on environmentally important freshwater invertebrates, and impair reproductive success in birds and mammals.

PCBs also are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

EPA conducted an environmental risk assessment of PCBs for the June 27, 1984 rule, including a review of available environmental data. This assessment can be found in the support document entitled "Environmental Risk and Hazard Assessments of Polychlorinated Biphenyls" (September 1983). EPA concluded that ambient concentrations and food chain transport of PCBs may impair the reproductive potential of commercially valuable fish and certain wild mammals. PCB residues also are strongly correlated with reductions in natural populations of marine mammals and may be correlated with declines in river otter populations. High PCB residues have been found in various birds, especially gulls and carnivorous birds, but no resulting effects have been demonstrated.

In addition, EPA estimated the toxicity for the monochlorinated through hexachlorinated biphenyls and for decachlorinated biphenyls. These estimates show that as the number of chlorine atoms on the biphenyl molecule increases, the no observable effect concentration (NOEC) for fish decrease.

V. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested parties an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review 2 weeks after publishing the final rule in the *Federal Register*. The effective date will be calculated from the promulgation date.

VI. Official Record of Rulemaking

In accordance with the requirements of section 19(a)(3)(E) of TSCA, EPA is issuing the following list of documents that constitute the record of this proposed rulemaking. A supplementary list or lists may be published at any time on or before the date that the final rule is issued.

A. Previous Rulemaking Records

(1) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Final Regulation" published in the *Federal Register* of February 17, 1978 (43 FR 7150).

(2) Official rulemaking record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibition Rule" published in the *Federal Register* of May 31, 1979 (44 FR 31514).

(3) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment" published in the *Federal Register* of August 25, 1982 (47 FR 37342).

(4) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution, and Use in Closed and Controlled Waste Manufacturing Processes" published in the *Federal Register* of October 21, 1982 (47 FR 46930).

(5) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations" published in the *Federal Register* of July 10, 1984 (49 FR 28172).

B. Federal Register Notices

(6) USEPA, "Polychlorinated Biphenyls (PCBs) Disposal and Marking Final Regulation." 43 FR 7150; February 17, 1978.

(7) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." 44 FR 31514; May 31, 1979.

(8) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment." 47 FR 37342; August 25, 1982.

(9) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes." 47 FR 46930; October 21, 1982.

(10) USEPA, "Polychlorinated Biphenyls (PCBs); Exclusion, Exemptions, and Use Authorizations." 48 FR 55076; December 8, 1983.

VII. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this amendment to the PCB rule is not a

major rule as the term is defined in section 1(b) of the Executive Order, because the annual effect of the rule on the economy will be substantially less than \$100 million; it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule merely modifies the definition of "totally enclosed manner" under section 6(e)(2)(C) of TSCA (without changing the regulatory effect of the definition) and describes the Agency's current policy on the assessment of PCB exposure.

This proposed amendment was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order.

VIII. Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

This proposed rule would modify the definition of "totally enclosed manner" in the PCB rule and would describe the Agency's PCB exposure assessment. Since EPA expects this proposed rule to have no negative economic effect to any business entity, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required and will not be completed for this rulemaking.

IX. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Sec. 6, 90 Stat. 2020 (15 U.S.C. 2605))

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Intergovernmental relations.

Dated: July 13, 1984.

Alvin L. Alm,
Acting Administrator.

PART 761—[AMENDED]

Therefore, it is proposed that 40 CFR Part 761 be amended as follows:

1. In § 761.3, the definition of "Significant exposure" is removed, and the definition of "totally enclosed manner" is revised to read as follows:

§ 761.3 Definitions.

"Totally enclosed manner" means any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs.

2. In § 761.20, the introductory text is revised to read as follows:

§ 761.20 Prohibitions.

Except as authorized in § 761.30, the activities listed in paragraphs (a) and (d) of this section are prohibited pursuant to section 6(e)(2) of TSCA. The requirements set forth in paragraphs (b) and (c) of this section concerning export and import of PCBs for purposes of disposal and PCB Items for purposes of disposal are established pursuant to section 6(e)(1) of TSCA. Subject to any exemptions granted pursuant to section 6(e)(3)(B) of TSCA, the activities listed in paragraphs (b) and (c) of this section are prohibited pursuant to section 6(e)(3)(A) of TSCA. In addition, the Administrator hereby finds, under the authority of section 12(a)(2) of TSCA, that the manufacture, processing, and distribution in commerce of PCBs at concentrations of 50 ppm or greater and PCB items with PCB concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure, the high probability of human and environmental exposure to PCBs and PCB items from manufacturing, processing, or distribution activities; the potential hazard of PCB exposure posed by the transportation of PCBs or PCB items within the United States; and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used. In addition, the Administrator hereby finds, for purposes of section 6(e)(2)(C) of TSCA, that any exposure of human beings or the environment of PCBs, as measured or detected by any scientifically acceptable analytical method, may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood

of exposure to humans and the environment, and the effect of exposure. For purposes of determining which PCB items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA, since exposure to such items may be significant, the Administrator further finds that a totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs. The following activities are considered totally enclosed: distribution in commerce of intact, nonleaking electrical equipment such as transformers (including transformers used in railway locomotives and self-propelled cars), capacitors, electromagnets, voltage regulators, switches (including sectionalizers and motor starters), circuit breakers, reclosers, and cable that contain PCBs at any concentration and processing and distribution in commerce of PCB Equipment containing an intact, nonleaking PCB Capacitor. See paragraph (c)(1) of this section for provisions allowing the distribution in commerce of PCBs and PCB Items.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for *Solidago Spithamea* (Blue Ridge Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to determine a plant, *Solidago spithamea* (Blue Ridge Goldenrod) to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. *Solidago spithamea* (Blue Ridge goldenrod) is endemic to high mountain peaks in North Carolina and Tennessee. Only three populations of *Solidago spithamea* (Blue Ridge goldenrod) are known to exist; one is on public land administered by the U.S. Forest Service and the other two are on privately owned lands. Past loss of habitat and populations has occurred due to the recreational development of the high mountain peaks where this plant occurred. The continued existence of this plant is threatened by trampling and habitat disturbance due to heavy use by hikers. This proposal, if made final,

would implement the protection provided by the Endangered Species Act of 1973, as amended, for *Solidago spithamea* (Blue Ridge goldenrod).

DATES: Comments from all interested parties must be received by September 21, 1984. Public hearing requests must be received by September 6, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Plateau Building, Rm A-5, South French Broad Avenue, Asheville, N.C., 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie, Botanist, 704/258-2850 ext. 382 or FTS: 8/672-0321 (see **ADDRESSES** section above).

SUPPLEMENTARY INFORMATION:

Background

Solidago spithamea (Blue Ridge goldenrod) was described from material collected in North Carolina by M.A. Curtis in the 1930's. Today, three populations of the species are known: Two in Avery County, North Carolina, and one on the border of Mitchell County, North Carolina and Carter County, Tennessee. Two populations are located on privately owned lands and one is located on public lands administered by the U.S. Forest Service. Two additional populations were historically known for the species but both sites have been developed and no Blue Ridge goldenrod have been relocated there during recent searches. The plant is considered extirpated from these sites or the original reports are considered erroneous. *Solidago spithamea* is an erect perennial herb that arises from a short stout rhizome, and is a member of the aster family. The yellow flowers are borne in heads arranged into a corymbiform inflorescence. *Solidago spithamea* grows above 4,600 feet in dry rock crevices of granite outcrops on high peaks in the Blue Ridge Mountains. The continued existence of *Solidago spithamea* is threatened by trampling and habitat disturbance due to heavy use of its habitat by hikers. Construction of new trails and other recreational improvements at any of the sites could further jeopardize this plant. This rule proposes to determine *Solidago spithamea* to be a threatened species and would implement the protection provided by the Endangered Species Act of 1973, as amended.