Sunshine Act Meetings

Federal Register
Vol. 57, No. 137
Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF DEFENSE

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: Full Board 8:00 a.m., August 19, 1992.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—May 15, 1992; (2) Faculty Matters; (3) Report—Admissions; (4) Financial Report; (5) Associate Dean for Graduate Medical Education; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents; (9) Reports of Subcommittees on Planning and Oversight; New Business.

CONTACT PERSON FOR MORE INFORMATION: David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295–3886.

Dated: July 14, 1992.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–16951 Filed 7–14–92; 3:46 pm]

BILLING CODE 3810–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, July 14, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to probable failure of a certain insured bank.

Recommendation concerning an administrative enforcement proceeding.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,818—Silverado Banking, Savings and Loan Association, Denver, Colorado

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Vice Chairman Andrew C. Hove, Jr., Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require considereration of the matters in a meeting open to public observation; and that matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550, 17th Street, N.W., Washington, D.C.

Dated: July 14, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–16948 Filed 7–14–92; 3:38 pm]

BILLING CODE 6714–0–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m., Wednesday, July 22, 1992.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the June Board Minutes
2. Mid-year Review of Agency's Priorities
3. Office of Strategic Planning Update
   A. Strategic Plan
   B. System Efficiencies Task Force
4. Examination & Regulatory Oversight Reports
5. Board Management Issues

The above matters are exempt under one or more of sections 552b(c) (2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c) (2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 92–16864 Filed 7–14–92; 4:44 pm]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 22, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

July 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–16945 Filed 7–14–92; 3:37 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, July 21, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTER TO BE DISCUSSED:
FY 94 Budget.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92–16886 Filed 7–14–92; 2:33 p.m.]
BILLING CODE 7035–01–M

Corrections

Federal Register
Vol. 57, No. 137
Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 91-026-1]

National Poultry Improvement Plan and Auxiliary Provisions

Correction

In proposed rule document 92-15232 beginning on page 29044 in the issue of Tuesday, June 30, 1992, make the following corrections:

1. On page 29044, in the 3rd column, in the 6th full paragraph, in the 7th line, insert "industry" after "poultry"; and in the 11th line, "§ § 145.1" should read "§ 145.1".

2. On page 29045, in the second column, in the first paragraph, in the fourth line from the bottom, insert "period" after "incubation".

§ 145.4 [Corrected]

3. On page 29048, in the first column, in § 145.4(d), in the fourth line, "for" should read "from".

§ 145.33 [Corrected]

4. On the same page, in the third column, in § 145.33(d)(10(vii), in the fourth line, "30 days" should read "90 days".

5. On page 29049, in the first column, in amendatory instruction 15, in the first line "145.23" should read "145.53".

§ 147.11 [Corrected]

6. On the same page, in the third column, in § 147.11, in the fourth line, insert "(b)" before "*Bacteriologic examination of environmental and other contaminated specimens.*"

§ 147.12 [Corrected]

7. On page 29050, in the first column, in § 147.12(c)(2), in the last line, "milk 1 [1]" should read "milk[1]".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 920531-2131]

RIN 0648-AD76

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands

Correction

In proposed rule document 92-12353 beginning on page 22695 in the issue of Friday, May 29, 1992, make the following corrections:

1. On page 22697, in the 1st column, under **Establish FMP * * *,** in the 1st paragraph, in the 12th line, "§ 675.29" should read "§ 657.20".

2. On page 22698, in the third column, in the eighth line from the bottom, "yellowfish" should read "yellowfin".

3. On page 22699, in the 1st column, in the 11th line from the bottom, "CSAI" should read "BSAI".

4. On the same page, in the third column, in the first paragraph, in the fifth line, "increase" should read "increases".

5. On page 22700, in the second column, in the first full paragraph, in the seventh line, "ensure" should read "ensue"

6. On the same page, in the third column, in the eighth line from the top, "ensuring" should read "ensuing".

§ 672.22 [Corrected]

7. On page 22703, in the second column, in § 672.22(a)(1)(iv), in the last line, "ground fish" should read "groundfish"; and in paragraph (a)(2)(i), in the second line, "stick" should read "stock".

§ 672.26 [Corrected]

8. On page 22704, in the second column, in § 672.26(b)(1), in the second line, remove "a".

§ 675.26 [Corrected]

9. On page 22706, in the third column, in § 675.26(d)(3)(i)(A)(*2*), beginning in the fourth line, remove the phrase "based on the round weight equivalent of the retained groundfish" the first time it appears.

10. On the same page, in the same column, in § 675.26(d)(3)(i)(C), in the fifth line from the bottom, insert "reporting periods in which the vessel was assigned to that fishery" after "weekly"; and in the last line, insert a period after "periods".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 145

Commission Eastern Regional Office; Change of Address

Correction

In rule document 92-15309 appearing on page 29203 in the issue of Wednesday, July 1, 1992, in the third column, in amendatory instruction 5, in the second line, "(b)" should read "(g)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-16-18; Notice 6]

RIN 2127-AD75

Federal Motor Vehicle Safety Standards; Glazing Materials

Correction

In rule document 92-15868 beginning on page 30161 in the issue of Wednesday, July 8, 1992, make the following corrections:

1. On page 30161, in the third column, in the eighth line from the top, "of" the first time it appears should read "or".

2. On page 30163, in the first column, in the second full paragraph, in the last line, "rationable" should read "rationale".

3. On the same page, in the third column, in the third paragraph, in the fifth line from the bottom, "Text" should read "Test".

§ 571.205 [Corrected]

4. On page 30164, in the third column, in § 571.205, in S5.1.2.6, in the fifth line, after "4," insert "6,"; and in S5.1.2.10, at the end of paragraph (a), insert "* * *".

BILLING CODE 1505-01-D

federal register

Thursday
July 16, 1992

Part II

Department of Labor

Employment Standards Administration
Wage and Hour Division

41 CFR Part 50-201
General Regulations Under the Walsh-Healey Public Contracts Act; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

41 CFR Part 50–201

RIN 1215–AA33

General Regulations Under the Walsh-Healey Public Contracts Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department or DOL) is amending the Walsh-Healey Public Contracts Act (PCA) regulations to provide an alternative regular dealer definition for "information systems integrators," firms that contract to provide fully operational information processing ("ADP") systems to the Federal Government. This alternative definition is being promulgated in order to alleviate Federal procurement problems and to encourage more competition for Federal contracts.

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523–8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Walsh-Healey Public Contracts Act (PCA) provides labor standards for employees working on Federal contracts over $10,000 calling for the manufacture or furnishing of materials, supplies, articles, or equipment. Section 1(a) of PCA provides that contracts subject to the Act may only be awarded to a manufacturer of, or a regular dealer in, the materials, supplies, articles, or equipment to be furnished under the contract. As defined in regulations, a "manufacturer" is "a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications." A "regular dealer" is "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the contract are bought, kept in stock, and sold to the public in the usual course of business" (41 CFR 50–201.101(a) (1) and (2)). As provided in 41 CFR 50–206.53(b)(2), the stock maintained by a regular dealer must be "a true inventory from which sales are made."

In some situations the standard definitions do not accommodate the Government's needs and a particular industry's practices, and the statute and regulations allow for exceptions to be made in such cases when the Government's operations would be seriously impaired. In addition to a number of full and partial administrative exemptions from the eligibility requirements that have been adopted for certain types of contracts (see 41 CFR 50–201.603 and .604), special alternative definitions have been granted over the years for regular dealers in eleven particular products (including one for the procurement of used automatic data processing equipment), in order to recognize commercial practices existing in those industries (see 41 CFR 50–201.101(a)(2) (i) through (xi)). Common to all of these alternative definitions is the absence of a requirement that the dealer physically maintain a stock from which sales are made.

On June 22, 1989, DOL published in the **Federal Register** (54 FR 26212) a proposed alternative regular dealer definition for "information systems integrators," intending to amend the PCA regulations by adding a new subparagraph (a)(2)(xii) to 41 CFR 50–201.101 containing the new definition. In addition to establishing alternative qualifications for eligibility for a defined class of contracts, the special definition proposed to permit qualifying contractors in this industry to satisfy the statutory requirements without having to physically maintain a stock of inventory from which sales are made. The maintenance of physical inventory appeared to be inconsistent with this industry's practices. The proposed definition resulted from information furnished by representatives of contracting agencies and the industry indicating that information systems integrators play a crucial role in the economic and efficient acquisition of information processing resources by Federal agencies, and that uncertainty as to their eligibility under PCA could hamper agencies' operational capabilities that depend heavily on the performance of advanced technology computer systems.

Two favorable comments were received on the proposal during the initial comment period. In November 1989, the Subcommittee on Legislation and National Security of the Committee on Government Operations, U.S. House of Representatives, began a series of hearings on the Federal Government's purchase of ADP equipment, which included a review of some procurements awarded to systems integrators. The Department presented testimony at those hearings. Based on information brought out at the hearings and the fact that only two comments were received, the Department decided to reopen the comment period (to ensure an adequate rulemaking record) and to consider relevant information developed from the hearings in reaching decisions on formulating a final rule in the matter.

On November 27, 1990, the House Government Operations Committee ordered the printing of H.R. Rep. No. 101–987, 101st Cong., 2d Sess. (1990), entitled Acquisition of ADP Equipment—Questionable Practices by the Navy, Its Employees, the General Services Administration and IBM. The Committee recommendations include the following passage pertaining to the Department of Labor and its PCA rulemaking activities for "information systems integrators:"

> * * * e. The Committee continues to be concerned that the Walsh-Healey Act is being violated or circumvented by 'system integrators' that may not be eligible for contract awards under the Act as manufacturers or regular dealers. This situation is especially acute in the area of ADP procurement, where it is commonplace for a number of 'integrators' to offer identical equipment manufactured by the same manufacturer. It is clear that what results from these circumstances is not 'competition' as required by the Competition in Contracting Act. However, the Committee recognizes that bona fide systems integration contracts, which provide the government with substantial value added services, can improve the efficiency and effectiveness of Federal information resources management. Therefore, the Committee urges the Department of Labor to clarify the eligibility of systems integrators under the Walsh-Healey Act as soon as possible, in a manner that closes the loophole for sales to the government by 'bid brokers.'[1]

The Department reopened the comment period on the proposed special definition for sixty days, to ensure that interested parties had sufficient opportunity to comment, and to ensure that the Department had sufficient information in deciding what further rulemaking activity was appropriate (55 FR 50725; December 10, 1990). Commenters responding to this second Notice were invited to focus particular attention in the comments, in addition to commenting on the substance of the proposed definition itself, on the following two areas: (1) The extent to

[1] H.R. Rep. No. 101–987, 101st Cong., 2d Sess., pp. 42–43.

which the existing, standard PCA definitions for "manufacturer" and "regular dealer" present problems to the Federal Government in its ability to efficiently and effectively procure needed information processing systems and related ADP equipment; and, (2) whether the criteria specified in the proposed special definition were sufficient to prevent "bid brokering," or whether additional limitations or refinements were needed in the rule to ensure that pure "bid brokering" did not occur under the guise of systems integration.

Summary of Comments

The major issues presented in the comments received during the two comment periods are discussed below, followed by the Department's analysis and responses to those comments.

Comments on June 22, 1989 NPRM

The Department received written comments during the initial comment period from the Information Resources Management Service of the General Services Administration (GSA) and the Association of Data Processing Service Organizations (ADAPSO), a computer software and services industry association. One additional comment received from the U.S. Department of Agriculture after the close of the comment period was also included in the record. All comments generally supported the proposal.

GSA noted that, in distinguishing the types of solicitations and contracts to be within the intended scope of the information systems integrator definition, the proposal alternatively referred to only "functional" specifications on the one hand (within the definition), and to "specific make and model" specifications on the other (outside the definition). Under the Competition in Contracting Act of 1984 (Pub. L. 98–369), as implemented in the Federal Acquisition Regulations (48 CFR 10.002 (a)(4)) and the Federal Information Resources Management Regulations (41 CFR 201–30.013 (1989)), "performance" and "design" specifications are two additional types of specifications authorized for use in Government solicitations, provided their use in a particular procurement constitutes the best statement of the procuring agency's needs. GSA recommended that the proposed PCA regulation be revised to address the entire spectrum of Government specifications, and to include "performance and "design" specifications with "functional" specifications when describing the types of solicitations within the scope of the new systems integrator definition.

Comments on December 10, 1990 Notice

The Department reopened the comment period for sixty days beginning December 10, 1990 (55 FR 50725). Twenty-three comments were timely filed by Federal agencies, systems integrators and firms in the information technology field, consultants, associations representing the ADP industry and/or business equipment manufacturers, ADP equipment manufacturers, and others, as follows: Association of Data Processing Service Organizations (ADAPSO); Amdahl Corporation; Andersen Consulting; AT&T; BDM International, Inc.; Boeing Computer Services; Chartway Technologies; Computer and Business Equipment Manufacturers Association (CBEMA); Coalition of Minority Dealers (CMD); Department of Agriculture (USDA); Department of the Army (DOA); Department of Justice (DOJ); Department of Transportation (DOT); Department of Treasury, Internal Revenue Service (IRS); EDS; Federal Bar Association; Federation of Government Information Processing Councils; General Services Administration (GSA); Information Resources Management Service; International Business Machines Corporation (IBM); PRC Inc.; Professional Services Council; Sysorex Information System, Inc.; and Tektronix. The Farmers Home Administration (FmHA), Department of Agriculture (on behalf of the Interagency Committee on Information Resources Management and FmHA), and the Department of Housing and Urban Development each submitted general supporting comments after the comment period closed which were also included in the record. These commenters expressed universal support for the proposal generally, and some suggested particular changes. No comments objected to the adoption of a special definition for information systems integrators. A summary of these comments is presented below addressing the major points raised.

Need for the Special Definition

Commenters made the following observations concerning the need for the rule:

Revenues in 1989 for systems integrators operating in the Federal sector were placed at $5.3 billion (more than 50% of total U.S. systems integration revenues for 1989). It was suggested that the Federal share will exceed $10 billion by 1995 (future growth in the Federal sector was estimated at 19% per year).

The proposal is an important step in reconciling PCA with current government needs and ADP industry practices. The current rules have created uncertainty in government and industry. Hardware manufacturers have at times sought to exploit the uncertainty by threatening to challenge integrators' eligibility in an effort to reduce competition and limit an agency's choice among alternate systems.

The current rules adversely affect the government's procurement of information systems: they fail to recognize the uniqueness of the systems integrator industry, and were intended to avoid the historic broker relationship which is inappropriate for information systems procurements. The strictness of the existing definitions, read in conjunction with commercial practices in the industry, makes it difficult to prove eligibility. If systems integrators would be declared ineligible, it would be almost impossible for the government to meet its information processing systems needs. And reduced competition would be contrary to the goals of the Competition in Contracting Act.

The existing inventory requirement is costly—integrators deal in products not commonly held in inventory that are expensive, highly specialized, and purchased through special orders or by drop shipment. Few integrators have the resources to maintain inventories of expensive and highly sensitive equipment that is easily damaged during handling, storage and transit. For mainframes, storage and inventory costs are particularly prohibitive. Manufacturers often limit production of large items to orders on hand. Moreover, the product life cycle for ADP equipment is 18 months or less, a further disincentive for integrators to purchase and store equipment in advance of orders.

The inventory requirement excludes many firms from consideration that presently provide a value-added systems integration service, which creates an artificial difference between commercial business and government practices, increases the government's costs and reduces technical opportunities. Strictly applied, the current definition would qualify only manufacturers, which would limit competition, inhibit multiple-product, systems solutions, and increase costs. The change will promote competition and reduce the risk of costly and time-consuming bid protests due to the ambiguity in the existing definitions, and update PCA's definitions to specifically address information services procurement techniques that did not exist when PCA was enacted.

Uncertainty as to PCA eligibility has caused certain integrators to maintain a stock of inventory (which they otherwise would not maintain) to qualify as a "regulator dealer." Others attempt to do some assembly work at their own plant (at greater expense than might otherwise be necessary) to qualify as an "assembler" (and thus as a "manufacturer"). Such actions are contrary to industry practice, make contractors less efficient, and drive up the cost for the government's information processing. The uncertainty has resulted in investigations of eligibility which take time and money, delay acquisitions, and divert resources from the government's underlying need for information processing.

Because this industry is so dynamic, the government cannot readily determine the most advantageous offer on a particular solicitation. The government needs the expertise of systems integrators to identify the best mix of available hardware and software to meet the government's needs. The proposal will encourage the contractor to tailor systems based upon government requirements and not merely sell items the contractor has on hand. Contracting with an outside firm to design and assemble a system enables the agency to focus on the goals of the system rather than its technical specifications, allowing effective use of limited resources.

Integrators play an important and crucial role in developing and implementing information processing systems in DOT, and add significantly to DOT effectiveness in managing and maintaining such systems. Integrators have played an important role in recent IRS ADP acquisitions. Large and increasingly complex systems required to meet Government needs demand new approaches to solving problems that integrators can often meet. The proposal promotes competition and maximizes access to ADP expertise in the private sector. Excluding integrators from upcoming IRS ADP procurements would have a negative impact on the Tax System Modernization effort.

For larger ADP systems, the buyer's unique requirements determine the make-up of the system. Components must be tailored to the user's needs, and one large ADP system does not usually contain the same components as another. Thus the systems generally are not assembled with parts from inventory. The exception, known as a "total package procurement," comes from the few large original equipment manufacturers (OEMs) that assemble systems using elements that only they produce. Such packages may not always be the best combination of hardware, software, maintenance and price to meet the government's needs.

Integrators represent a unique resource to the government: Because they have no vested interest in any one particular hardware or software product, they may select products based on the government's requirements only. Integrators can build a system to government specifications using sources from several vendors to produce optimal price and performance. This is encouraged by the Federal Information Resources Management Regulation (FIRMR), which directs agencies to avoid total package procurements by stating specifications in terms of performance or function rather than using sole source or "brand name or equal" specifications that rely exclusively on a particular maker's product line (FIRMR § 201–11.002–1 (1989)).

The existing definitions do not address the most significant "value added" by integrators: Professional know-how to track emerging product lines and combine products to serve different data processing requirements. Instead, the eligibility focus is on arbitrary, peripheral activities like manual replacement of computer chips on circuit boards or rewiring inside a computer cabinet. An integrator "produces" customized computer or telecommunications systems, adding value through skillfull engineering and design to the components fabricated by others. But, engineering, planning, design, inspection, quality control, testing, marking, packaging, and repackaging are not, alone or in combination, "manufacturing" under PCA (41 CFR 50–206.51(h)). The "assembler" definition does not fit because of the requirement that assembly must include "substantial and significant fabrication or production of the desired product."

Integrators benefit the government by providing fully integrated information processing systems, in the form of creatively designed, mixed-vendor systems in a competitive environment, which enhances cost-effectiveness. Federal agencies acquire specialized technical knowledge and project management skills from integrators that usually are not available from within the agency itself. Thus, integrators perform functions that are of foremost importance to the efficient and effective utilization of information processing technology for many Federal agencies. Without integrators, the government would assume the schedule and cost risks associated with integrating complex technologies.

The foregoing views expressed by commenters support the Department's earlier belief that circumstances exist to support the promulgation of a special definition for this industry under the authority granted by the Act for such actions. No comments were received questioning the need for a special definition. No comments were received asserting that the Government is able or would be able to meet its information processing requirements satisfactorily under the present definitions and in the absence of the special definition. Accordingly, the Administrator finds that in the absence of a special definition for "information system integrators," the conduct of Government business would be seriously impaired.

Protection Against "Bid Brokering"

Commenters offered the following points on whether the proposed special definition contains sufficient protections against bid brokering.

All commenters agreed that the proposal should prevent "bid brokering" because the types of integration responsibilities described in the rule adequately distinguish between the furnishing of true value-added services and simple bid brokering. "Fronts" cannot perform the specialized tasks of system design, selection and acquisition of components, assembly, and assumption of risk for a fully operational system. As proposed, vendors must meet a multi-step test with respect to a procurement to qualify: The contractor must be engaged in systems integration and have the sophistication to perform as genuine systems integrators; the solicitation must call for delivery of a fully operational system; and the contractor must add value through performance of the functions listed in the definition. "Front" organizations would not meet such demanding criteria. Brokers typically would not have the capacity to design, select and acquire components, assemble, provide, and in particular assume the risk for performance of a fully operational complex system as required by the rule.

The functional responsibilities described in the proposal were considered by several commenters to be more than adequate for agencies to determine whether an offeror is proposing valid "added value" integration services, as opposed to assuming a bid brokering role. Because the proposed criteria exclude specific make and model contracts, USDA believes the criteria will sufficiently prevent bid brokering and DOJ

commented that the criteria are sufficient.

DOA commented that there is no risk in this industry of the type of broker relationship that the Act was intended to prevent. Congress sought to prevent "10 percenters" from purchasing for the government what the government could buy for itself. When the government seeks information systems, the integrator provides experience and expertise not available within the government. Special skills of integrators enhance the government's ability to obtain needed systems at the best possible cost.

In the Department's view, the intent behind the special definition was to recognize already established and growing practices in the ADP industry for large-scale, complex, computer systems contracts to be awarded to systems integrators, while at the same time preserving PCA's policy that "bid brokers" not be eligible for award of contracts subject to the Act. The proposed definition was written to only apply to procurements containing designated functional ADP system specifications, under which various manufacturers' products meeting the designated performance criteria would qualify, and to only those procurements calling for substantive integration functions to be performed. Procurements that specified particular makes or models of ADP equipment to be furnished, and those that did not call for integration functions to be performed, were intended not to be considered under the special definition. Instead, "brand name" or "make or model" specifications would continue to be subject to the standard PCA definitions for "manufacturer" or "regular dealer." The Department believes that this approach to the special definition will effectuate the policy of the PCA.

GSA's Federal Information Resources Management Regulation

In the Notice of Proposed Rulemaking published June 22, 1989 (54 FR 26212), the Department advised that the proposed PCA definition for "information systems integrator" was based in part on terms then codified in the Federal Information Resources Management Regulation (FIRMR) issued by the General Services Administration (GSA). The Department further advised that GSA had proposed to revise FIRMR part 201–2 (41 CFR part 201–2) to establish a definition for ADP entitled "Federal information processing resources," and that the Department would give full consideration to the final revisions in the FIRMR when the Department finalized its PCA rulemaking. The December 10, 1990 Notice reopening the comment period on the proposed special PCA definition advised that GSA had issued a final rule amending FIRMR part 201–2, which was published in the **Federal Register** on July 27, 1990, at 55 FR 30705. On December 28, 1990, at 55 FR 53386, GSA issued a final rule, effective April 29, 1991, that replaced the existing FIRMR with a new structure under the FIRMR Improvement Project. The new FIRMR continues to use the umbrella term "Federal information processing (FIP) resources" to identify ADP and telecommunications resources that are subject to GSA's exclusive procurement authority, and applies to all solicitations for FIP resources issued on or after April 29, 1991.

GSA revised the FIRMR (41 CFR chapter 201) to clarify the applicability of GSA's authority to the acquisition, management, and use of information resources by Federal agencies. The most recent amendment under the FIRMR Improvement Project replaced the existing FIRMR in the form of a republication of the chapter (see 55 FR 53386; December 28, 1990). The FIRMR uses the umbrella term "Federal information processing (FIP) resources" to identify ADP and telecommunications resources subject to GSA authority under the FIRMR. "Federal information processing (FIP) resources" is defined in FIRMR 201–4.001 (41 CFR 201–4.001) (and § 201–39.201) as automatic data processing equipment (ADPE) as provided in Public Law 99–500 (40 U.S.C. 759(a)(2)), as follows:

> Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information by a Federal agency; or under a contract with a Federal agency which (1) requires the use of such equipment, or (2) requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment. Such term includes computers; ancillary equipment; software, firmware, and similar procedures; services, including support services; and related resources as defined by regulations issued by the Administrator for General Services.

As discussed earlier GSA suggested several changes in the proposed special definition to ensure its compatibility with the FIRMR. In particular, the proposed special PCA definition only expressly provided coverage where "functional" specifications were employed. GSA noted that "performance" and "design" specifications are also permissible (in addition to "functional"), provided they are the best statement of agency needs in a given procurement. As modified to include the broader range of specifications, the proposal would still require substantial value to be added by integrators, thereby retaining the protection from bid brokering. GSA suggested additional changes to use "FIP system" language in the definition, for "Federal Information Processing System," in lieu of the terms "information processing system" and "functional ADP system specifications" included in the proposed PCA special definition.

ADAPSO endorsed GSA's initial (7/24/89) comments on the original proposal for including within the definition the "entire spectrum of Government specifications, that is, [to] allow 'functional, performance and design specifications,' " and supported updating the proposed special definition to conform to recent changes in the FIRMR ("Federal information processing resources"). IBM commented that equipment performance specifications, compatible functionally equivalent specifications, or brand name or equivalent specifications are also valid for full and open competition procurements, and suggested that the rule should incorporate these forms of specification in addition to functional specifications.

The Department has determined that for purposes of the portion of the definition that describes the class of contracts included in the information systems integrator definition under PCA, performance specifications (ranges of acceptable characteristics, minimum acceptable standards, etc.) and/or design specifications (when these reflect the best statement of the Government's ADP mission needs in a particular procurement) may be added to or substituted for functional specifications. Appropriate revisions have been made in the final rule. The Department has also made editorial revisions in the final rule to ensure compatibility with terms used in the revised FIRMR. Make or model specifications are not appropriate as they are not compatible with the function of systems integrators and they create a potential for "bid brokering" which this rule intends to exclude.

Under applicable procurement law and regulations, agencies are required to base their specifications and purchase descriptions on minimum needs and the available market to satisfy those needs. Specifications and purchase descriptions can be stated in terms of function, so that a variety of products (or services) may qualify; performance,

including a range of acceptable characteristics or minimum acceptable standards; or design. Agency descriptions, whenever practicable, are to be stated in terms of functions to be performed or performance required. (FAR 10.002(a) & (b); FIRMR 201–20.103–3)

Other Issues and Suggested Changes

CMD recommended the inventory requirement be waived for *all* ADP contracts, not just integration contracts. Tektronix stated that the exemption should be expanded to cover systems integrators generally, not just in the ADP industry (e.g., high-technology, manufacturing test, scientific and medical industries). Providing relief for "systems integrators" (of all types) from the need to maintain stock from which sales are made would enable these businesses to incorporate the best available products and technologies when meeting functional system specifications, whether ADP, manufacturing test, medical, or scientific needs.

This rulemaking is concerned only with information systems integration contracts as such contracts are expressly defined in this rule, and only to the extent of providing an alternative means of qualifying for eligibility under contracts subject to PCA. The Department does not have information regarding the extent systems integration takes place in fields other than information systems. Nor does the Department have information that problems exist in other fields involving the acquisition and integration of materials, supplies, etc. The Department recognizes, however, that information systems integration contracts may be awarded by the Government in various fields of endeavor (including, for example, the fields of science and medicine among many others), and that there is an evolving interdependence between ADP and other developing technologies (as reflected in the FIRMR).

CBEMA and others expressed concern that the definition was too narrow in that it disqualified systems integrators when the government specifies a certain make or model to meet its requirements—"e.g. a bid for peripherals which must be compatible with an existing system." CBEMA suggested it may not be in the government's best interest to prohibit integrators from participating in these types of acquisitions.

A "bid for peripherals" would, in most cases, fall outside the intended scope of a system integration contract. By international design of the special definition, specific make or model acquisitions would continue to be subject to the standard "manufacturer" or "regular dealer" definitions, for the reasons already discussed. Otherwise, bid brokering of the "peripherals" (to the CBEMA's example) could occur under the guise of a system integration contract.

The definition's requirement that an integrator perform the entire range of integrator functions, such that the procurement must be for a fully operational system, was viewed by CMD as violative of existing FAR provisions that prohibit organizational conflicts of interest (FAR § 9.505–1 & –2). Further, CMD stated it was CMD's experience that integration contracts are not awarded as contemplated by the proposal.

The Department believes that CMD misreads the FAR provisions cited in relation to the proposed special definition, and misconceives the intent and effect of the proposed definition. By international design, in order to qualify for eligibility under the proposed special definition, a systems integrator contractor must have overall contractual responsibility for development, integration, assembly and checkout of the system, thus removing such procurements from the prohibitions stated in the FAR section cited by CMD. The prohibitions cited by CMD refer to systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production. The FAR provisions cited by CMD pertain to a contractor preparing specifications or work statements in the situation where such specifications or work statements will later be used in a subsequent, competitive acquisition for equipment. This would not be the case under the proposed PCA definition for systems integrators. (See also FAR 9.505–2(a)(3) regarding development work.)

FBA commented that the proposed structure provides for eligibility on the basis of the functions to be performed on a particular contract and not on the general nature of the integrator's business, which differs from the approach in previous special definitions (citing machine tools and dealers in used ADP equipment). FBA suggested this may have unintended results. An entity that has never performed integrated work could thus qualify according to FBA, and if bid brokering is a concern it would more likely occur with a company not generally established as a systems integrator. FBA suggested there appears to be nothing to prevent any person from qualifying on a particular contract so long as it involves systems integration.

Sysorex also commented that eligibility should be based on the nature of the integrator's regularly-conducted business, not the specific functions required under a given contract. As Sysorex read the proposal, firms that have not previously performed integration functions could qualify, based simply on the tasks required by the terms of a particular contract. Sysorex stated this is too generous and should be revised to limit the definition to established integrators. Tektronix recommended that a criterion be added to require that the business responding to the procurement request be an established business prior to the specific procurement request, perform such work on a "regular basis," and have a "legal business relationship" (which was not further defined) with the vendors whose products it will use in its "systems" solution.

These commenters appear to have misread the proposal. The definition applies only to "* * * a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems * * *" The definition is already based on the nature of the integrator's business (in addition to the nature of the class of contracts), and applies only to "established" firms.

Conversely, FBA noted that some bona fide systems integrators might be ineligible for a particular contract because the full range of systems integration functions are not required, which "would appear to exclude Multiple Award Schedule contracts, * * * [and there] is no reason to suppose that the labor standards that the PCA was designed to protect would in any way be comprised by allowing an otherwise bona fide systems integrator to compete for such contracts."

The references to "functional specifications" and "mission objectives" will tend to unnecessarily limit the applicability of the definition, according to FBA. Use of other than functional specifications and the absence of a statement of mission objectives do not mean that a procurement does not entail systems integration.

IRS recommended that the definition focus on the vendor and not depend on the particular requirements for a fully operational "systems" contract (an integrator could be excluded if the Government decides it needs less than a fully operational system). Alternatively, IRS recommended that "fully

operational information processing system" be further defined.

Sysorex suggested that "functional" and "mission objectives" be deleted—solicitations do not always state agency mission objectives or functional characteristics; the caveat that specifications may not simply describe make and model of equipment should be retained. The use of functional specifications and mission needs will limit eligibility to the few giants according to Sysorex—there should not be artificial, unnecessary and anti-competitive roadblocks to qualification favoring only a few firms.

The Department did not intend through this special definition to provide a blanket waiver of PCA's eligibility requirements for any and all firms capable of assuming the mantle of "integrator." PCA empowers the Secretary of Labor to administratively exempt "bids for a contract or class of contracts" from the eligibility requirements upon finding that it will be so difficult to obtain satisfactory bids for the contract(s) at issue under the stipulated restrictions that the conduct of Government business would be seriously impaired (41 CFR 50–201.101(a)(3)(ii); PCA § 6). Thus, there is an express need to limit the definition to the specific class of contracts for which the exigency finding is being made under the requirements of the statute, although some accommodation can be made through clarifications to address the comments with respect to "functional" and "mission objectives" (i.e., GSA's concerns, noted above; revisions have been made in the final rule to address "performance" and "design" standards). The proposed special definition is based on such an exigency finding for the class of contracts referred to as systems integration contracts, as the Department defines that class of contracts in this rule. Other types of contracts falling outside the definition provided by this rule are not affected by the rule. The remaining "limitations" of the definition are essential for purposes of accurately defining and delimiting the intended scope of the class of contracts for which the exigency finding is being made, in a manner that, in DOL's view, "* * * closes the loophole for sales to the government by 'bid brokers' * * *," to quote the House Government Operations Committee report. No similar finding of exigency or impairment of Government business has been suggested for extending the scope of the definition to include the procurement of ADP equipment under "Multiple Award Schedule contracts" referred to by FBA, or to any other types of procurements mentioned in the comments. The government, not the contractor, is the integrator when purchases are made from "Multiple Award Schedule contracts."

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect in connection with the proposed rule published June 22, 1989. Accordingly, no regulatory flexibility analysis is required. However, the new definition would relieve potential, qualifying contractors in this industry, both large and small, from having to maintain stock in a manner that is inconsistent with industry practices.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble above, 41 CFR part 50–201 is amended as set forth below.

Signed at Washington, D.C., this 9th day of July, 1992.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Karen R. Keesling,

Acting Administrator.

PART 50–201—GENERAL REGULATIONS

41 CFR part 50–201 is amended as follows:

1. The authority citation for part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50–201.101, paragraph (a) is amended by adding a new paragraph (a)(2)(xii) to read as follows:

§ 50–201.101 Manufacturer or regular dealer.

(a) *Definitions.* * * *

(2) * * *

(xii)(A) An "information systems integrator" is a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems, comprised of "Federal information processing resources" as defined in 41 CFR 201–4.001, that meet the contracting agency's designated information processing needs and program objectives stated in terms of functional, performance, and/or design requirements. An "information systems integrator" may qualify as a regular dealer under contracts which meet the following criteria:

(*1*) The government agency solicits to acquire a fully operational information processing system;

(*2*) The purchase description and system specifications are not expressed in a form so restrictive that only a specific make or model of a product, or a particular feature of a product peculiar to one manufacturer, would meet the Government's needs, but rather are expressed in terms which delineate functional, performance or design requirements provided they constitute the best statement of agency needs in a particular procurement, for the data processing or program objectives to be accomplished;

(*3*) The contractor assumes the responsibility for designing, delivering, implementing, and testing (and, where required by the contract, maintaining) a fully operational information processing

system that meets the agency's designated specifications; and

(4) The contractor bears the risk of, and is responsible to the agency for correcting, any system deficiencies or component failures regardless of the manufacturer of the component or components involved.

(B) An "information systems integrator" will, in accordance with the contract, perform substantially all of the following functions:

(1) Analyze the agency's requirements and needs;

(2) Assess currently-available technological offerings and identify/evaluate alternative system designs;

(3) Determine the composition of the system;

(4) Select and deliver the Federal information processing resources;

(5) Customize, modify, or configure components (hardware, software, and supporting equipment) if necessary to satisfy inter-connectibility/compatibility requirements and the agency's specialized information processing needs;

(6) Assemble, install, test, implement, and render operational the final information processing system.

* * * * *

[FR Doc. 92-16635 Filed 7-15-92; 8:45 am]
BILLING CODE 4510-27-M

federal register

Thursday
July 16, 1992

Part III

Department of Defense

Department of the Army

Request for Nominations to the Inland Waterways Users Board; Notice

DEPARTMENT OF DEFENSE

Department of the Army

Assistant Secretary of the Army (Civil Works): Request for Nominations to the Inland Waterways Users Board

AGENCY: Department of the Army, DOD.

ACTION: Notice in the Federal Register.

SUMMARY: Section 302 of Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for five appointments or reappointments to two-year terms that will begin January 1, 1993.

EFFECTIVE DATE: July 15, 1992.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. G. Edward Dickey, Acting Principal Deputy Assistant Secretary of the Army (Civil Works) (703) 697–4671.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of section 302 of Public Law 99–662. The substance of those provisions is as follows:

Selection

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics.

Service

The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

Appointment

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

Carriers and Shippers. The law uses the terms "primary users and shippers." Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user. *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in

Waterborne commerce of the United States

In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting preceding selection criteria, the present representation by Board members is as follows: Members whose terms expire December 31, 1992, include two shipper representatives representing (1) the Upper Mississippi River region, and farm and food products, coal, and (2) the Columbia River region, and farm and food products; and, three carrier representatives representing (1) the Ohio River region (two carriers) and farm and food products, coal, petroleum, chemicals, minerals and metals, and (2) the Gulf Intracoastal Waterway in Louisiana and Texas, and petroleum.

Members whose terms expire December 31, 1993, include two shipper representatives representing (1) the Lower Mississippi River region, and farm and food products, and (2) the East Gulf region, and coal; two carrier representatives representing the Ohio River region, and coal, farm and food products, petroleum, chemicals, minerals, metals, and, two shipper/carrier representatives representing the Ohio River region, and coal.

Nominations to replace members whose terms will expire December 31, 1992, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper that the nominee is associated with. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice published July 19, 1991, have been retained for consideration for appointment along with nominations received in response to this **Federal Register** notice. Renomination is not required but may be desirable. Two of the five members whose terms expire December 31, 1992, are eligible for reappointment.

Deadline for Nominations: All nominations must be received at the address shown above no later than August 15, 1992.

Herbert H. Kennon,

Deputy Director of Civil Works.

[FR Doc. 92–16719 Filed 7–15–92; 8:45 am]

BILLING CODE 3710–92–M

federal register

Thursday
July 16, 1992

Part IV

Environmental Protection Agency

Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4152-7]

Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of initial list of categories of major and area sources.

SUMMARY: This notice publishes an initial list of categories of major and area sources of hazardous air pollutants (HAP's), as required under section 112(c)(1) of the Clean Air Act (CAA) as amended in 1990. The statute requires the Agency to promulgate regulations, over the 10 years following amendment of the CAA, establishing emission standards for each listed category of major sources and area sources.

Today's list does not constitute completion of the listing requirements under section 112(c)(3), pursuant to the area source program under section 112(k)(3)(B), or the listing requirements under section 112(c)(6), relating to sources of specific pollutants. Today's notice does not contain guidance or procedures for filing petitions to delete listed categories of sources, as allowed under section 112(c)(9)(B). Moreover, because of uncertainties in the available data bases concerning sources and emissions of HAP's, all categories of major and area sources meeting the listing criteria in section 112(c)(1) may not be included on today's list. In addition, all categories of sources may not be disaggregated to the extent necessary eventually for the establishment of emission standards. Descriptions of the categories on today's list are included in the docket, to identify industry sectors, processes and equipment that may constitute each listed category.

The Agency considers the listing of categories of sources under section 112(c)(1) to be an ongoing process. Under section 112(c)(1), the Agency is obligated to revise the list if appropriate, in response to public comment or new information, from "time to time, but no less often than every 8 years." The Agency intends to maintain the list as part of the regulatory development process of establishing emission standards and may revise the list on the basis of deletion determinations as part of the source category deletion process to be defined in a later **Federal Register** notice.

EFFECTIVE DATE: July 16, 1992.

ADDRESSES: Docket. Docket No. A-90-49, containing supporting information used in developing the notice, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the Agency's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning categories of sources involving the production, handling, refining or use of chemicals or petroleum, or products thereof, contact Mr. David Svendsgaard, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-2380.

For information concerning categories of sources involving fuel combustion, incineration, metals and minerals processing, contact Mr. William Maxwell, telephone number (919) 541-5430, Industrial Studies Branch, at the above address.

For general information concerning this notice, contact Mr. Thomas Lahre, Pollutant Assessment Branch, telephone number (919) 541-5668, at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this notice is organized as follows:

Table 1.—Initial List of Categories of Major and Area Sources of Hazardous Air Pollutants

Acronym List

CAA = Clean Air Act
CFC-113 = trichlorotrifluoroethane
CFR = Code of Federal Regulations
CTG = Control Technology Guidelines
CNS = central nervous system
Cr(+3) = trivalent chromium
Cr(+6) = hexavalent chromium
CWA = Clean Water Act
DOE = Department of Energy
FR = Federal Register
GACT = generally available control technology
HAP = hazardous air pollutants
kg/yr = kilograms per year
MACT = maximum achievable control technology
lb/yr = pounds per year
MC = methylene chloride
Mg/yr = megagrams per year
MSHA = Mine Safety and Health Administration
NEDS = National Emissions Data System
NESHAP = national emission standards for hazardous air pollutants
NRC = Nuclear Regulatory Commission
NSPS = new source performance standards
OMB = Office of Management and Budget
OSHA = Occupational Safety and Health Administration
OTVC = open top vapor cleaners
PCE = perchloroethylene
ppm = parts per million
PM = particulate matter
POTW = publicly owned treatment works
PSD = prevention of significant deterioration
RACT = reasonably available control technology
RCRA = Resource Conservation and Recovery Act
SCC = source classification codes
SIC = Standard Industrial Classification
SOCMI = synthetic organic chemical manufacturing industry
TCA = 1,1,1-trichloroethane
TCE = trichloroethylene
tm = trademark
TRIS = Toxic Release Inventory System
tpy = tons per year
VOC = volatile organic compounds
U.S. = United States

I. Legislative Background Relating to the Initial Source Category List

The Clean Air Act Amendments of 1990 (Pub. L. 101-549) require, under the revisions to section 112, that the Agency evaluate and promulgate regulations requiring control of emissions of HAP's from categories of major and area sources. The term "major source" is defined in paragraph 112(a)(1) to mean any stationary source or group of

stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.

The term "stationary source," from section 111, means any building, structure, facility, or installation which emits or may emit any air pollutant. The Agency may establish a lesser quantity of pollutant emissions for the definition of a major source than that specified in the previous sentence, based on various characteristics of the pollutants being emitted (including potency, persistence, potential for bioaccumulation, or other relevant factors). The Agency may establish different criteria for the definition of a major source in the case of radionuclides. The term "area source," as defined in section 112(a)(2), means any stationary source of HAP's that is not a major source. Section 112(c) requires the Agency to list categories of major sources and area sources. Because most groupings of sources are based on process or product-oriented criteria, they may include a mix of both major and area sources. The distinction between categories of major and area sources is discussed in more detail later in this notice.

Section 112(b) includes a list of chemicals, compounds, or groups of chemicals deemed by Congress to be hazardous air pollutants. Section 112(c)(1) requires the Agency to publish, within 1 year of enactment of the CAA Amendments of 1990, a list of categories of major and area sources emitting one or more listed HAP. Categories of area sources may be listed subject to the additional requirements of section 112(c)(3), which require the Agency to find a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under (Section 112).

There are additional requirements for listing source categories under section 112(c)(3) and section 112(c)(6). Section 112(c)(3) refers to the area source strategy required under section 112(k). This strategy requires that the Agency list in 5 years, and subject to regulation in 10 years, sufficient categories of area sources to account for 90 percent of the aggregate emissions of each of 30 or more HAP's. These 30 or more HAP's shall be those determined to present the greatest threat to public health in the largest number of urban areas. Section 112(c)(6) requires the listing within 5 years of categories of sources assuring that at least 90 percent of the aggregate emissions of each of seven specific pollutants are subject to emission standards under section 112(d) within 10 years of enactment of the CAA Amendments. Although some of the categories that will be identified under these sections are probably already included on today's list, there are likely to be others which have not yet been identified. The publication of today's list does not constitute completion of the requirements of section 112(c)(3) or section 112(c)(6).

Other requirements in section 112(c) affect the listing of specific categories of sources. Section 112(c)(4) gives the Agency the discretion to list any category of sources previously regulated under section 112 before enactment of the CAA Amendments of 1990. Section 112(c)(7) requires the Agency to establish a separate category for research facilities as necessary to assure equitable treatment of such facilities. Section 112(c)(8) requires the Agency to list boat manufacturing as a separate subcategory when establishing emissions standards for styrene. In addition, there are provisions elsewhere in section 112 and section 129 that impose listing requirements on the Agency, both directly and indirectly. These provisions, and the Agency's resulting actions, are discussed in detail in sections III.D and III.E in today's notice.

Revisions to today's list may also result from deletion determinations under section 112(c)(9)(B). Under section 112(c)(9)(B), the Agency may delete a category from the list, based on petition of any person or on the Administrator's own motion, upon a determination that: (1) In the case of sources that emit HAP's that may result in cancer, no source in the category (or group of sources in the case of area sources) emits HAP's in quantities that may cause lifetime cancer risk greater than 1-in-1 million to the most exposed individual; or, (2) in the case of sources that emit HAP's that may result in non-cancer adverse health effects or adverse environmental effects, emissions from no source in the category (or group of sources in the case of area sources) exceed a level adequate to protect public health with an ample margin of safety and no adverse environmental effects will result. The Agency shall grant or deny a petition to delete a category within 1 year after the petition is filed. Procedures for such petitions will be addressed in a separate **Federal Register** notice. Under section 112(c)(9)(A), the Agency shall delete a source category if all pollutants emitted by that category have been deleted from the HAP list under section 112(b)(3)(C) or section 112(b)(3)(D).

Revisions to today's list may also arise from the establishment of lesser quantities for the definition of major sources, under section 112(a), resulting in additional categories of major sources. Special studies required under various provisions of section 112, or information gathered by the Agency during the regulatory development process, may also result in changes to the list.

Section 112(c)(2) requires the establishment of emission standards under section 112(d) for every category of sources included on the initial list published pursuant to section 112(c)(1). Emission standards established for categories listed under section 112(c) shall be promulgated according to the schedule for standards set forth in section 112(e). In determining where source categories should be placed on this schedule under section 112(e), the Agency shall consider the known or anticipated adverse effects of the emitted pollutants on health and the environment; the quantity and location of emissions; and the efficiency of grouping categories according to the pollutants emitted or the processes or technologies used. The schedule for promulgation of emission standards for each category of HAP sources is to be published, after an opportunity for comment, within 24 months of enactment.

II. Identification of Categories and Subcategories on June 21, 1991 Preliminary Draft List

That list of categories of sources was made available for public comment on June 21, 1991 (56 FR 28548). The preliminary draft list was compiled from a number of data bases, described below, each having certain strengths and weaknesses.

1. The National Emissions Data System (NEDS) is an Agency data base of reported emissions from sources emitting more than 90.7 megagrams per year (Mg/yr) [100 tons per year (tpy)] of criteria air pollutants, including volatile organic compounds (VOC) and particulate matter (PM). The sources included in NEDS are classified by unique identifiers, termed source classification codes (SCC's). Speciation profiles have been assigned to each of the SCC's. These speciation profiles are an estimate of the chemical species comprising the total VOC or PM emissions for a category. In many cases, the chemical species constituents are HAP's. A category was included on the

preliminary draft list if HAP emissions were associated with a source classification code in NEDS, but only for species profiles having a data quality ranking of "A," "B," "C," or "D." Species profiles having an "E" ranking were not used, because of insufficient quality. (See Docket No. A–90–49, Items No. II–A–45 and 46 for published species profiles.)

2. Categories of the synthetic organic chemical manufacturing industry (SOCMI) were identified from literature describing SOCMI reactants and products. A SOCMI category was listed if it either manufactured a chemical on the list of HAP's or if it used one or more of the listed HAP's to produce another chemical.

3. Published production and consumption data for organic chemicals were used to identify organic chemical end-user processes emitting HAP's. There are a total of five general category groupings for which such data were used: Foam blowing processes, process solvent use, polymerization processes, pesticide production, and pharmaceutical production. Production and consumption data were obtained for each chemical from readily available literature. Each end use of a chemical was identified as a category.

4. The Agency's Toxic Release Inventory System (TRIS) was a fourth source of data that was used to identify HAP emitters. The TRIS data base contains emissions data reported by individual industrial facilities as required under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. Emissions data in TRIS are reported on a plant wide basis. Standard Industrial Classification (SIC) Codes are reported in TRIS but the entries are usually not specific enough to identify categories of sources. For this reason, it is difficult to use the TRIS data base for identifying categories, or to determine where there is overlap between the TRIS data base and the methods described above. The TRIS data base did, however, identify plants emitting listed pollutants not identified through the methods described above.

5. The list of categories developed by using the several data sources described above was augmented by reviewing existing studies by the Agency's Office of Air Quality Planning and Standards. A major portion of this effort consisted of reviewing data developed in support of previous Federal Register notices describing previous Section 112 regulatory decisions. For the most part, the methods described above had already identified most of the categories. However, in some cases additional categories were identified from these references and were added to the list.

Today's initial list in Table 1 is based on these same sources of data in addition to information supplied in response to the publication of the preliminary draft list.

III. Discussion of Major Issues and Responses to Comments

In the preamble to the June 21, 1991, preliminary draft list (56 FR 28548), comments were requested on a number of issues. Over 140 comments were received from industry representatives, environmental groups, State and local air agencies, universities, other Federal Agencies, and various other public and private interests. In general, comments were received relating to: (1) The quality and inclusiveness of the data base, (2) the definition and disaggregation of various categories of sources, (3) the need for a finding of threat of adverse health or environmental effects before listing categories of area sources, and (4) alternatives for listing categories of steam electric generators and incinerators. Following is a summary of the major comments received along with responses to these comments. The selection of particular comment responses for discussion in today's notice is intended to indicate the Agency's position on the major issues raised by the commenters. (All comments and responses are contained in Docket No. A–90–49.)

A. Delineation of Categories and Subcategories

Section 112(c)(1) states that the Administrator shall publish a list of all categories and subcategories of major sources and area sources. The terms "category" and "subcategory" are not defined in section 112, nor is the relation of either of these terms defined with respect to the term "source."

In the June 21, 1991, notice, comment was requested on the appropriate distinctions the Agency should make between categories and subcategories. In addition, information was requested for the division, or disaggregation, of listed groups of sources into categories and subcategories, along with accompanying documentation.

Relationship Between Source and Category of Source

Because of the undefined relationship between source and category of sources in the CAA, this relationship needs to be defined in the context of today's initial list of categories. Section 112(a)(3) provides that "stationary source" shall have the same meaning for purposes of this section as it has under section 111(a), which is any building, structure, facility, or installation which emits or may emit any air pollutant. As section 112 applies to all stationary sources emitting HAP's, any entity covered by this section must be a building, structure, facility or installation that emits HAP's. Whether such source is considered "major" will depend upon its size and configuration, or upon the size and configuration of the larger source of which it is a part.

A "category" of sources is a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule. Thus, for example, industrial process cooling towers would be considered a source category. Each tower emitting more than the amount of HAP's provided in section 112(a) as qualifying a source as a major source, or each tower located within a larger source emitting that amount of HAP's, would be subject to maximum achievable control technology (MACT) for major sources.

As a result, a large plant or facility, such as a refinery or chemical manufacturing plant, would clearly be a "major source," but would also comprise multiple source categories. For example, a large plant would likely contain stationary sources included within the industrial cooling tower source category, as well as sources within the process heater category, industrial boiler category, etc.

Categories having sources whose HAP emissions exceed the major source threshold in section 112(a), or having sources that are commonly located on the premises of major sources, are categories of major sources. Conversely, categories having sources which neither exceed the major source HAP emission threshold under Section 112(a), nor are commonly located on the premises of major sources, are categories of area sources.

Use of the Term "Category" or "Subcategory"

Several commenters suggested using only the term "category" rather than both "category" and "subcategory," for various reasons. Although the language in section 112 generally uses these terms together, seemingly interchangeably, the comments stated that there are several instances where only the term "category" is used. Sections 112(c)(9)(A) and 112(c)(9)(B)(i) provide for deleting of categories of sources only. Similarly, section 112(f)(2)(A) obligates the Administrator to promulgate standards to mitigate residual risk only for

categories of sources. In response to these comments, the Agency has decided to use the term "category" to designate all of the groupings of HAP-emitting sources in today's list. The exclusive use of the term "category" will clarify the applicable requirements of section 112. This decision does not affect the degree of disaggregation of industry groups in today's list of categories or the authority of the Agency to distinguish among classes, types, and sizes of sources in establishing emission standards. During the standard-setting process, the Agency may in some cases find it appropriate to combine several listed categories into one, or further divide a category. This decision does not affect the Agency's authority to define subcategories of sources at a later date.

An exception to the exclusive use of the term "category" has been made in the proposed rule establishing emission standards for perchloroethylene dry cleaning facilities (56 FR 64382), wherein subcategories were defined for each category to differentiate between the two major types of machines used in dry cleaning, i.e., "dry-to-dry" and "transfer." This is consistent with the Agency's strategy (discussed later in this Section) of identifying and listing disaggregated categories and/or appropriate subcategories as part of the rulemaking process, after gathering sufficient information to identify appropriate aggregations for standard-setting purposes.

Suggested Additions of Categories

Some commenters suggested adding specific categories to the list. In response, where the comments included reasonable documentation, the Agency has added the suggested categories.

Suggested Deletions of Categories

Many commenters suggested deleting categories that were on the draft preliminary list, for reasons summarized below.

Some commenters contended that all sources in certain categories are area sources, thereby requiring the Administrator to make a finding of threat of adverse health or environmental effect before listing those categories. The Agency agrees that such a finding or threat should precede listing categories of area sources (see section III.B for more discussion). Where commenters demonstrated the existence of no major sources of HAP emissions within categories, those categories were deleted from the preliminary draft list, as long as no finding of threat of adverse effects was made. The Agency may list such categories as area source categories later if a finding of threat of adverse effects can be made, per section 112(c)(3), or may list them under the area source strategy required under section 112(k).

Some commenters contended that no sources in certain categories emitted any HAP's, and therefore should not be listed. The Agency, in response, deleted categories if a commenter provided reasonable evidence of no HAP emissions and if the Agency's own data, upon review, could not support the existence of HAP emissions.

Some commenters contended that other provisions in amended section 112, or section 129, either preclude the listing of specific categories, or give the Agency the discretion not to list specific categories at this time. In response, the Agency acknowledges that its discretion to list or omit some categories of sources is limited by other provisions. Therefore, the Agency has attempted to make today's list consistent with these other provisions. These various other provisions are discussed in detail in section III.D of today's notice.

Some commenters contended that regulations exist or are being developed under other titles of the CAA or other statutes, either by EPA or other agencies, for many categories of sources on the preliminary draft list. These commenters further argued that categories subject to these other statutes should not be listed under section 112(c)1) and thus be subject to "dual regulation." In response, the Agency does not believe that the existence of another applicable regulation, or the imminent prospect of a regulation, either under the CAA or under another statute, gives the Agency general discretion to omit from today's list any category of sources under section 112(c)(1). (There are specific exceptions to this position, however, as is discussed in more detail in sections III.D and E of today's notice.) Moreover, listing does not necessarily lead to duplicate regulation because air emission regulations issued under another statute may become the basis for the "MACT floor," which is the minimum degree of emissions reduction prescribed for new and existing sources subject to emission standards under section 112(d).

Some commenters suggested deleting poorly defined and broadly overlapping categories of sources to avoid confusion when identifying sources subject to regulation in each category. Commenters most frequently criticized the following categories and groupings: "(product or chemical) use", "chemical intermediate," "primary and secondary metals, miscellaneous," "surface coating operations, general solvent uses," "in situ fuel use," and "TRIS production and use," the latter involving the production or use of HAP's as reported to the Agency's TRIS data base. In response, the Agency has removed a number of previously listed categories that were poorly defined and/or broadly inclusive. For example, most of the general "(product or chemical) use" categories have been deleted. As another example, the generic "waste treatment and disposal" category has been removed. As still another example, the broad category of "TRIS production and use" has likewise been deleted. Many of the operations covered under these deleted categories are still covered in today's list, but are included in the logical parent grouping instead of in a separate category. For instance, rather than listing wastewater treatment operations as part of a generic, stand-alone wastewater treatment grouping, these operations are now included under the listing of their respective production operations. Hence, even though many broad categories still remain on today's list, the Agency has eliminated many categories that were poorly defined and overlapping. (General descriptions of all categories of sources are located in Docket No. A-90-49, Item No. IV-A-55. See section V of today's notice for more discussion of these descriptions.)

Some commenters suggested not listing categories of sources where insufficient evidence existed to demonstrate that there were any major sources in those categories. In other words, the commenters suggesting only listing categories of sources that either exceeded the quantity of HAP's required to define a major source, pursuant to section 112(a), or which are commonly located on the premises of a major source. Upon review of all comments and the original data bases, the Agency has responded by only including categories of major sources where there was reasonable certainty that at least one stationary source in the category is a major source or where sources in the category are commonly located on the premises of major sources. In cases where sources in the category typically emit less than this threshold, the Agency may nevertheless list any such category as a category of major sources if sources in that category are commonly associated with major sources. For example, industrial process cooling towers, which individually emit chromium emissions in amounts less than 0.907 Mg/yr (1 typ), are listed as a category of major sources since such towers are commonly found on the premises of petroleum refineries, chemical manufacturing plants, and

other major sources. Thus, MACT standards set for the cooling tower major source category will be applicable to cooling towers that are a component of a larger major source, such as a refinery, even though no individual source in this category is itself a major source. This position is supported by the legislative history of the 1990 amendments. Senator Durenberger, one of the managers of the Senate Bill, stated that "[t]he managers' intent is * * * that where the entire plant is a major source, any portion thereof to which a MACT standard applies is subject to that standard regardless of the total emissions from that portion." 136 Cong. Rec. S. 16927 (October 27, 1990).

Note that any such category may also be listed as a category of area sources on today's list, if accompanied by a finding of threat of adverse effect, if the Agency elects to establish standards for sources in the same category that are not major sources. For example, chrome platers and anodizers are also listed as categories of area sources on today's list because many are not located on the premises of major sources. (The listing of categories of area sources is discussed later in section III.B.)

Appropriate Disaggregation of Categories

Many comments were received on the extent to which the Agency identified appropriate subdivisions of industry groups. Many commenters contended that insufficient or inappropriate categories were included on the draft preliminary list and that many categories on the draft list did not sufficiently differentiate among dissimilar processes based on variations in size, operations, raw materials, emissions, controllability, etc. The major rationale for further disaggregation, per the comments, are:

1. Disaggregation of broad categories affords the Agency with scheduling flexibility in promulgating standards under section 112(d). The Agency cannot, per language in section 112(d)(1), distinguish among classes, types, and sizes of sources within a category or subcategory in establishing standards for the purpose of delaying compliance with standards. Hence, the commenters argue that the Agency must list disaggregated categories in order to avoid having to establish standards for all categories within a broad group at the same time.

2. Disaggregation of broad categories reduces the likelihood that dissimilar categories will be considered together for the purposes of defining emission standards under section 112(d), or when determining the need for subsequent standards to address residual risk under section 112(f). The commenters argue that the definition of narrowly applicable categories of sources will promote more cost-effective, technically appropriate, and, in some cases, safer controls because any such controls would be based on a consideration of similar sources.

3. Disaggregation of broad categories into relatively narrow categories makes the source category deletion petition process more viable since the deletion criteria imposed under section 112(c)(9)(B) would have to be demonstrated for fewer sources in narrower industry groupings. Trade associations, in turn, would be better able to gather the necessary information for preparing deletion petitions if narrower industry groupings were made.

4. Disaggregation of broad categories into better resolved categories affords both industry and air agencies with a better indication of which sources may be affected by various regulatory provisions of section 112.

In contrast to the above comments, several commenters opposed excessive disaggregation of source categories. These commenters expressed concern that some categories might be disaggregated so finely as to result in the inclusion of only a few sources, which might result in MACT floors that would not result in effective emission standards.

In response to the many comments concerning appropriate disaggregation of source categories, the Agency acknowledges potential advantages and disadvantages of defining categories either very broadly or very narrowly. Ultimately, in accordance with section 112(d), the Agency will need to identify the "best controlled similar sources" when establishing emission standards for new sources in a category and "the best performing 12 percent" of sources when establishing emission standards for existing sources in a category. Hence, the Agency recognizes that further disaggregation of many listed categories of sources may be necessary prior to promulgation of emission standards. The Agency has the discretion to distinguish among classes, types, and sizes of sources within a category in establishing standards.

In general, the Agency has decided, at this time, in most cases, to list broad categories of major and area sources rather than very narrowly defined categories. The main reason for this decision is that, even considering the many comments received, the Agency has too little information to anticipate specific groupings of similar sources that are appropriate for defining MACT floors for the purpose of establishing standards. Criteria that may need to be considered in defining categories of similar sources include similarities in: Process operations (including differences between batch and continuous operations), emissions characteristics, control device applicability and costs, safety, and opportunities for pollution prevention. The Agency anticipates that all of the above criteria, and perhaps others, can be accounted for appropriately by the Agency only after gathering significant information for each listed category of sources during the course of establishing emission standards.

The Agency is aware of the potential disadvantages of listing broad categories of sources. The Agency believes that many of these disadvantages can be adequately overcome in several ways. First, a general description of each listed category is contained in the docket accompanying today's notice (Docket No. A-90-49, Item No. IV-A-55). This description assists in defining what industry sectors, operations, and/or equipment may be included in each listed category. Second, section 112(c) allows revisions to be made to the list, including additions and deletions, in response to public comment, new information, or through petition. In this regard, since the Agency initiates the development of standards years before expected promulgation, industry and the public have opportunities for considerable input to the process and can learn of the Agency's intentions for standards early in the process. Third, because of anticipated revisions to the list, the broad categories on today's initial list will not necessarily represent the pool of sources that will be considered for the purposes of identifying MACT floors for establishing emission standards under section 112(d) or for purposes of determining the need for residual risk standards under section 112(f). In this latter regard, MACT floors may be based on smaller pools of sources in instances where categories on today's list are disaggregated later during standard setting.

The Agency acknowledges that, by listing broad categories, it loses some flexibility in scheduling standards for different operations, or subcategories, within broad categories. The reason for this, as pointed out by several commenters, is that section 112(d) does not allow the Agency to distinguish among classes, types, and sizes of sources within a category where such action would lead to a delay of the

compliance date for any source within the broad category. Hence, once a broad category is initially defined, the Agency is obligated to establish standards for the entire category according to the schedule developed under section 112(e), regardless of how many classes, types, and sizes of sources are subsequently defined under that broad category.

While the Agency may not define subcategories within a category if such subcategories would result in a delay in compliance with standards, the Agency may, at its discretion, establish standards for listed categories or subcategories within a listed category sooner than scheduled under section 112(e). This option gives the Agency scheduling flexibility in a manner consistent with section 112(d)(1) and enables the Agency to consider broader categories for establishing standards and determining compliance. In this regard, the Agency may aggregate, into a single category on any revised list, categories or subcategories which have been disaggregated on the initial list. This may be done for the purpose of setting a single emission standard for the aggregated category. This would not result in the delay of the compliance date of any listed category.

The Agency also has the authority, under section 112(i), to establish compliance dates for existing sources up to 3 years following the effective date of any emission standards. This authority also provides some scheduling flexibility if the Agency decides to disaggregate a category of sources into subcategories.

The Agency acknowledges the existence of overlap in some categories on today's list. For example, synthetic organic chemical manufacturing is listed as a category, but so are process heaters and industrial process cooling towers, which can also be found on the premises of chemical manufacturing facilities. To avoid confusion in the regulatory schedule (required under section 112(e)) due to any such overlap in coverage, and to avoid confusion when establishing standards, a footnote has been added to today's list stating that "all listed categories are exclusive of any specific operations or processes included under other categories that are listed separately." This strategy allows the Agency to schedule the establishment of standards for overlapping categories at different times, at the Agency's discretion, based on the criteria for scheduling in section 112(e). Hence, in the above example, the Agency would have the discretion to schedule the promulgation of standards for process heaters and industrial process cooling towers separately from all other operations covered under the category of synthetic organic chemical manufacturing.

Consistency With Section 111 and Part C

Several commenters noted that section 112(c)(3) requires that to the extent possible, the categories and subcategories listed under (section 112(c)) shall be consistent with the list of source categories established pursuant to section 111 and Part C of the CAA. One commenter mentioned that both major and area sources, per the language in section 112(a), are stationary sources that have the same meaning as such term has under section 111, i.e. any building, structure, facility or installation which emits or may emit any air pollutant. The latter commenter contended that this definition of stationary source excludes some operations (e.g., certain applications of architectural paints and coatings) which do not conform to this definition. One commenter noted that categories defined under section 111 and part C represent a "high order of aggregation," and therefore, in order to be consistent with these other parts of the CAA, today's list should not identify overly "fine-grained" categories of sources. Conversely, another commenter contended that the listing under section 111 has no relevance since there is no differentiation between major and area sources.

In response to these comments, the Agency reviewed the categories of sources established pursuant to section 111 and part C, along with many other data bases (see section II), when developing the initial list in today's notice. Many of the categories of sources in section 111 and part C are included on today's list. Some categories in section 111 and part C are not on today's list because the Agency did not have reasonable evidence that they: (1) Are categories of major sources, or (2) are categories of area sources which present a threat of adverse health or environmental effects warranting regulation under section 112. In general, the level of aggregation of categories on today's list is consistent with that level inherent in section 111 and part C.

The categories of sources on today's list are generally consistent with the definition of stationary sources in section 111. The Agency interprets this definition to include a wide variety operations and activities that emit HAP's, including categories of stationary sources that emit fugitive emissions. No categories of mobile sources are included on today's list.

Consistency With Categorization Under Existing Clean Air Act (CAA) Standards

Several commenters contended that the Agency, in listing categories of sources under section 112(c), needs to consider adopting categories consistent with those already established under existing CAA regulations. Specifically, these commenters contended that today's list should conform to existing categories subject to the Agency's new source performance standards (NSPS), (40 CFR part 60), or in the Agency's control techniques guidelines (CTG's) for establishing reasonably available control technology (RACT). The rationale given was that this consistency would avoid confusion, unnecessary costs, and dislocation within the affected industries, and provide uniformity with the applications of the rules for the prevention of significant deterioration (PSD), NSPS, and nonattainment regulations. The commenters argued that the categories defined in setting NSPS and CTG's demonstrate reasonable subdivisions of categories already identified by the Agency as necessary for establishing appropriate controls for dissimilar processes. Hence, the commenters contend that this same level of categorization should be preserved on today's list and considered as a basis for promulgating standards under section 112(d).

In response, the Agency agrees that it is appropriate, when establishing standards for categories of sources on today's list, to consider categories of sources already defined under existing statutes, particularly categories regulated under the CAA. The Agency intends to consider consistency with categories subject to existing standards as one of many criteria to be considered when revising today's list prior to the establishment of emission standards under section 112(d).

Consistency With Clean Water Act Categorization Process

Several commenters suggested that the Agency should use, as a starting point, categories of sources identified for effluent limitation guidelines under the Clean Water Act (CWA). The commenters contended that the lessons learned in the source categorization process under the CWA underscore the importance of identifying appropriate categories of sources for which specific emissions standards may need to be developed.

When compiling today's initial list, the Agency did not adopt the categories of sources identified under the effluent

limitation guidelines under the CWA. This decision was made for two reasons. First, the Agency made the decision not to define overly narrow categories in this initial list (see earlier discussion in section III). Second, the Agency is not certain, at this time, whether categories, identified for purposes relating to water effluent standards, would be appropriate for establishing air standards. Nevertheless, the Agency intends to consider the category definitions use in setting effluent guidelines when subsequently revising today's initial list and when developing emission standards.

B. Listing of Categories of Area Sources

Section 112(c)(1) of the CAA Amendments of 1990 requires the Agency to publish a list of all categories of major sources and area sources. This requirement for listing categories of area sources is modified in section 112(c)(3) with language stating: the Administrator shall list each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section.

Section 112(c)(3) also requires that the Agency shall, not later than 5 years after the date of enactment of the CAA Amendments of 1990 and pursuant to section 112(k)(3)(B), list categories of specific HAP's presenting a health threat in urban areas. Section 112(c)(3) further requires that, within 10 years after enactment of the CAA Amendments, the Agency must ensure that categories of certain area sources are subject to regulation, according to emission and risk reduction criteria prescribed in sections 112 (c) and (k). The categories of area sources on today's initial list of categories of area sources do not constitute completion of this requirement.

There are other requirements in Section 112 that may directly or indirectly result in the listing and promulgation of standards for categories of area sources. Section 112(c)(6) requires, by 1995, the listing of categories of sources of specific pollutants (alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodi-benzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin), assuring that sources accounting for 90 percent or more of the aggregate emissions of each pollutant are subject to standards within 10 years of enactment of the CAA Amendments. Section 112(k) requires the listing of categories of area sources as part of a national strategy to reduce emissions of not less than 30 HAP's and to achieve a reduction in cancer incidence of not less than 75 percent. Studies or analyses performed as part of the Great Lakes and Coastal Waters program under section 112(m), or as part of other studies under section 112 involving mercury emissions, oil and gas wells and pipeline facilities, hydrogen sulfide, and hydrofluoric acid, may all potentially result in the listing of additional categories of area sources at some later date.

Alternative Approaches for Listing Categories of Area Sources

In the draft preliminary list (56 FR 28548), many categories of area sources were listed and no distinction was made between categories of major and area sources. The Agency solicited comments on three approaches under consideration for addressing categories of area sources on today's list:

1. Constrain the list to include only categories of major sources and categories of area sources that are sufficiently well characterized to permit a finding of threat of adverse effects. Additional categories of area sources would be subsequently added at some later date when sufficient data were gathered to make a finding of threat of adverse effect.

2. Make an interim finding that all categories of area sources should be listed by virtue of any emissions of HAP's, but later delete any categories determined to be inappropriately listed, using the source category deletion process in section 112(c)(9)(B).

3. Develop a finding of threat of adverse effects that is based on limited available data that could be applied to all identified categories of area sources on the preliminary draft list. This finding would be less rigorous than the first approach due to data limitations and available time. This approach would result in a more comprehensive list than envisioned in the first approach.

Many comments were received on the approach that should be taken for including categories of area sources on today's list. The overwhelming majority of commenters, particularly industry representatives, favored the first approach cited above requiring a detailed finding of threat of adverse effects before listing a category of area sources. Many commenters contended that the language of section 112(c) clearly requires such a finding. Many of these same commenters further contended that Congress clearly did not intend a listing approach similar to the second or third options listed above. These commenters cited as evidence the requirement, both under sections 112(c) and 112(k), for an area source program and for specific reductions in area source emissions and associated cancer incidence only after considerable study. Furthermore, if no finding or a less rigorous finding were utilized for listing categories of area sources, these commenters asserted that the Agency and potentially regulated sources would be overwhelmed with rigid regulatory obligations bearing little relation to HAP emissions, exposures, or risks. Moreover, these commenters asserted that this course of action might result in the development and evaluation of many unneeded and onerous petitions to delete categories of sources.

Several commenters supported the second approach cited above wherein all categories of area sources are listed based on any level of HAP emissions. The rationale given by the commenters was that this approach would ensure that all categories of area sources would ultimately be examined before deletion from the list.

Several commenters suggested considering a *de minimis* emission cutoff so that very small sources within a category would not be subject to standards. Such a *de minimis* level could be defined specifically for each category of area sources or defined generically for all categories of area sources. The purpose of this, per the commenters, would be to assure that industry and Agency resources are not expended on sources that pose negligible risk to human health or the environment.

In response to these comments, the Agency agrees that the language of section 112(c)(3) clearly requires that a finding be made of threat of adverse effects to human health or the environment warranting regulation under section 112 in order for a category of area sources to be listed. Hence, the Agency has removed all categories from today's list for which: (1) The available information indicates that the category contains only area sources, and (2) the Agency has insufficient information at this time to make a finding of threat of adverse effects warranting regulation. The Agency has listed today a number of categories of area sources for which the Agency has adequate information to make a finding of threat of adverse effects warranting regulation under section 112. A finding of threat of adverse effects for these listed area source categories is presented in Section IV in today's notice.

Regarding the commenter's recommendation that the Agency consider *de minimis* levels, the Agency

has the discretion, when establishing standards, to distinguish among classes, types, and sizes of sources within categories in setting standards under section 112(d)(2). The Agency shall consider costs and non-air quality health and environmental impacts and energy requirements. In addition, the Agency may set generally available control technology (GACT) standards for area sources under section 112(d)(5). The Agency considers this discretion sufficient to avoid establishing unwarranted and inappropriate emission standards for very small emitters.

Applicability of Emission Standards to Categories of Major and Area Sources

The Agency identifies a category of major sources as one characterized either by the presence of at least one major source in the category, based on the HAP emission threshold defined in section 112(a), or by the common association of sources in the category with major sources. Because of this, all sources in many listed categories of major sources may not be major sources, and some will be area sources. It is the Agency's intent that if no finding of threat of adverse effects warranting regulation is made, then only major sources in a listed category are subject to regulation under section 112. A footnote accompanies the list of categories of major sources in today's list indicating that only major sources within any category shall be subject to emission standards under Section 112 unless a finding is made, for the area sources in a category, of threat of adverse effects to human health or the environment warranting regulation under Section 112.

In certain cases the Agency has determined, or may determine during the standards development process, that the area sources in a listed category of sources warrant regulation under section 112. In such cases, the Agency may make a finding of threat of adverse effects and add these categories of area sources to the list. As an alternative, the Agency may establish a lesser quantity emission rate for some or all HAP's, under section 112(a), which could have the effect of enabling the Agency to list certain categories as major sources that only contained area sources before the establishment of lesser quantity emission rates.

Alternatives for Making a Finding of Threat of Adverse Effects

Most commenters contended that a finding of threat of adverse health or environmental effects is necessary under the language of Section 112(c)(3); however, few comments were received on the specific nature of the finding. One commenter suggested using the deletion criteria in section 112(c)(9)(B) as the basis for this finding. The rationale for this comment is that, because those same criteria must be used by a petitioner to demonstrate that a category of sources should be deleted, they should be used to add categories of area sources. For example, since a petitioner would have to demonstrate that no source in a category caused a cancer risk exceeding one in a million to the maximally exposed individual in order to have a category of sources deleted from the list, the commenter argued that the Agency should have to show, conversely, that at least one source in a category exceeded this same risk level in order to demonstrate a threat of adverse health effects and list a category of area sources. In response to this comment, the Agency interprets the broad language of section 112 as allowing risk and other factors to be assessed in determining if a threat of adverse effects exists warranting regulation under section 112.

The Agency's criteria for area source findings, and the findings for each area source category included on today's list, are presented in section IV later in this notice.

C. Data Base Quality

Many comments were received on the quality of the data base used in developing the preliminary draft list published on June 21, 1991 (56 FR 28548). Most commonly, the commenters identified particular aspects of the data base that they felt were inadequate for listing many categories of sources.

Many commenters indicated that the Agency had inadequate data to demonstrate that at least one source in many categories was, in fact, a major source. In this regard, many commenters argued that the Agency needs to demonstrate the existence of at least one major source in a category before that category could be listed as a category of major sources.

In response, the Agency agrees that, in order to be listed as a category of major sources: (1) There must be at least one major source in that category, (2) or, as discussed in section III.A of today's notice, sources in the category of concern must commonly be located on the premises (i.e., within the contiguous area under common control) of a major source, as defined in section 112(a). Hence, when reviewing the data base used to develop the preliminary draft list, in light of comments received in this regard, the Agency considered the adequacy of the data showing the existence of at least one major source in each category or the common association of a category with major sources. Where reasonable evidence was available suggesting that these criteria are met, that category was included as a category of major sources on today's list. In many instances, the Agency sought out additional data from the Agency's TRIS and other internal Agency sources to confirm the existence of a major source in each listed category of major sources or the common location of a category on the premises of major sources.

As discussed in section II in today's notice, species profiles were used as an indicator of HAP emissions when compiling the preliminary draft list. These profiles have quality rankings ranging from "A" to "E," with "A" reflecting the best profile quality and "E" reflecting the poorest profile quality. Many comments were received concerning the use of species profiles with lesser quality for estimating HAP emissions. At the outset, profiles having "E" quality rankings were not used at all by the Agency because of insufficient quality. Some commenters suggested not using "D" ranked profiles, which were based on measured emissions from a single source or engineering calculations from more than one source. Some commenters suggested only using the highest quality species profiles that are ranked "A." Some commenters pointed out that particular species profiles, no matter the quality ranking, were inapplicable to the category to which they were applied.

In response to comments relating to species profiles, the Agency continues to believe that species profiles are an appropriate tool for identifying sources of HAP emissions and for estimating HAP emissions, when applied to particulate and volatile organic matter emissions. Hence, profiles having quality rankings of "A" through "D" were still considered in preparing today's list, with several qualifications. First, the Agency agrees that some species profiles were inappropriately applied to some categories on the preliminary draft list. Any categories that were included on the preliminary draft list, based solely on inappropriate profiles, were not included on today's list. Second, all categories on the preliminary draft list, regardless of profile quality ranking, were reviewed before being retained on today's list. Some of these categories are not included on today's list because the Agency could not verify the existence of at least one major source within the categories or the common location of the

categories on the premises of major sources.

D. Consistency With Section 112 and Section 129 Provisions Relating to Specific Categories of Sources

Listing of Electric Utility Steam Generating Units

Many commenters contended that electric utility steam generating units should not be listed because of provisions under section 112(n)(1) requiring the Agency to perform a study of the hazards to public health from these units. Section 112(n)(1) further states that the Agency shall regulate these units under section 112 only if the Agency finds such regulation appropriate and necessary after considering the results of the study.

Some commenters suggested various reasons for listing electric utility steam generating units on today's initial list. These commenters stated that section 112(n)(1) does not preclude listing utilities. Only regulation of electric utility steam generating units is precluded before the Agency reviews the results of the requisite electric utility study. Other commenters also raised a fairness issue. These commenters contended that electric utility steam generating units should certainly be listed if smaller combustion units had to be listed and subject to standards. Some of these same commenters suggested, as an alternative, that non-utility combustion units should be included in the utility study, and not listed until the results of utility study were available.

In response to these comments, the Agency agrees that a study of hazards from electric utility steam generating units is required before regulating these units. Given this requirement, the Agency sees little benefit in listing these units unless this study demonstrates significant public health hazards, warranting regulation. Hence, electric utility steam generating units, as defined in section 112(a)(8), are not included on today's initial list of categories of major and area sources. The Agency has initiated the study of these units, as required under section 112(n)(1).

In response to comments suggesting that the Agency delete non-utility boilers from today's list, the Agency does not have the authority under section 112 to exclude other combustion units (except for certain solid waste incineration units, as described in the following subsection). The provisions of section 112(n)(1) only apply to electric utility steam generating units, as defined in section 112(a)(8). Moreover, the Agency has determined that several categories of non-utility boilers and units not meeting the definition of an electric utility steam generating unit are categories of major sources and are thus required to be included on today's list.

Listing of Solid Waste Incinerator Units

The term solid waste incineration unit, under section 129(g)(1), means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Section 129(h)(2) states that no solid waste incineration unit subject to performance standards under (section 129) and section 111 shall be subject to standards under section 112(d) of this Act. The Agency interprets section 129(h)(2) to preclude the inclusion on today's list (or any revision of this list) of solid waste incineration units combusting municipal waste, hospital waste, medical waste, infectious waste, commercial or industrial waste. The rationale for this is that section 129(a) specifically requires the Agency to promulgate standards for units combusting these particular wastes under section 111 and section 129. The Agency interprets section 129 as not requiring standards to be promulgated for sewage sludge incineration units under section 129, so these units are included on today's list.

Section 129(g)(5) states that an incineration unit shall not be considered to be combusting municipal waste for purposes of section 111 or (section 129) if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste. The Agency interprets this as allowing standards to be established for fuel combustion categories on today's list that combust up to 30 percent municipal waste. Today's list does not identify specific fuels or fuel mixtures associated with categories of fuel combustion.

Provisions in section 129(g)(1) exclude certain other categories of combustion from inclusion as solid waste incineration units. Excluded are metal recovery facilities (including primary or secondary smelters), qualifying cogeneration facilities burning homogeneous waste (such as tires, used oil, but not including refuse-derived fuel), certain air curtain incinerators, and incinerators permitted under section 3005 of the Solid Waste Disposal Act (Pub. L. 94–580). Any such combustion units are subject to listing under Section 112(c) if all other listing criteria in Section 112 are met. Of these categories, today's list includes several categories of smelters and hazardous waste incinerators.

No solid waste incineration units are included on today's list as categories of area sources.

A number of commenters agreed with the Agency's earlier position that various types of solid waste incinerators should not be included on today's list of categories because of the exclusion in section 129. As stated above, the Agency has not changed this position for most types of incineration in this notice.

Several commenters argued that sewage sludge incinerators should not be listed because they are already regulated under the CWA and by NSPS and NESHAP's. In response, the Agency does not consider sewage sludge incineration units to be covered under Section 129, so it has the authority to list and set standards for these units under Section 112. The Agency does not have the discretion to omit this category because of existing regulations under the CWA or existing NSPS. Moreover, section 112(c)(4) gives the Agency the authority to list any category of sources previously regulated by NESHAP's before the CAA Amendments of 1990.

Listing of Research Facilities

The Agency received two comments regarding the listing of research facilities under section 112(c)(7). Both commenters urged the Agency to recognize the unique qualities of research laboratories as expressed in section 112. Specifically, section 112(c)(7) requires the Agency to establish a separate category covering research or laboratory facilities, as necessary in order to assure the equitable treatment of such facilities.

The preliminary draft list of categories of sources did not include a category for research facilities or laboratories. At the time of publication of the draft list, the Agency had insufficient information to list research facilities as a category of major sources. The Agency did not receive, through public comment, any specific emissions data that support the addition of a category for research facilities. Due to this lack of evidence, the Agency did not add research facilities or laboratories to today's initial list of categories of sources.

Listing of Boat Manufacturing

The Agency has identified major sources of HAP emissions in the category of boat manufacturing, and has added boat manufacturing as a category of major sources on today's list.

Section 112(c)(8) of the CAA requires the Agency to list boat manufacturing as a separate subcategory, when establishing standards for styrene. However, as explained earlier in today's

notice, the Agency has interpreted the terms "subcategory" and "category" to be interchangeable in the context of today's initial list. Hence, boat manufacturing has been listed as a category of major sources. This meets the intent of the CAA that boat manufacturing be considered separately from any other category when establishing standards.

Listing of Radionuclide Emitters

The Agency received several comments on the listing of radionuclide emitters. The commenters noted that the Agency had omitted all categories of radionuclide emitters from the preliminary draft list and suggested the addition of underground and surface uranium mines, Department of Energy (DOE) facilities, as well as facilities already licensed by the Nuclear Regulatory Commission (NRC).

Categories of radionuclide emitters are not included on today's initial list because of several provisions in Section 112. At the outset, the Agency notes that no source of radionuclide emissions meets the major source threshold for HAP's. Section 112(a)(1) allows the Agency to define criteria for differentiating between major and area sources of radionuclide emitters that are different from the weight-based thresholds established for other HAP's. At this time, the Agency has not decided how to define these different criteria. Hence, because categories of major and area sources of radionuclide emissions are not differentiated at this time, and cannot be differentiated based on the 9.07/22.7 Mg/yr (10/25 tpy) threshold in section 112(a) or any existing lesser quantity emission rates, the Agency considers their inclusion on today's list inappropriate. Categories of radionuclide emitters may be added to the list at a later date.

Section 112(d)(9) authorizes the Agency not to regulate, under section 112, emissions from facilities licensed by the NRC if the Agency first determines by rule that the regulatory program implemented by the NRC provides an ample margin of safety to protect public health. At this time, the Agency is engaged in a variety of information gathering and rulemaking activities to determine whether the NRC programs are sufficient to provide an ample margin of safety. For instance, the Agency has proposed to rescind regulatory NESHAPS for nuclear power reactors and non-operational uranium mill tailing disposal sites licensed by NRC and is gathering information as to whether NESHAPS are necessary for the remaining NRC licensees. Hence, no categories of sources regulated by the NRC are listed on today's list because of radionuclide emissions. The Agency will decide whether or not to add any NRC-licensed categories once sufficient information has been gathered.

Section 112(q)(2) states that no standard shall be established under section 112, as amended, for radionuclide emissions from elemental phosphorous plants, grate calcination elemental phosphorous plants, phosphogypsum stacks, or any subcategory of the foregoing. Under section 112(q)(2), these source categories continue to be governed by the previous version of section 112. None of these categories has been listed due to emissions of radionuclides.

Section 112(q)(3) gives the Agency the discretion to regulate radionuclide emissions from: (1) Non-DOE facilities which are not licensed by the NRC, (2) coal-fired utility and industrial boilers, (3) underground and surface uranium mines, and (4) disposal of uranium mill tailings piles. These source categories are subject to NESHAPS and general rulemakings under the previous version of the CAA. The Agency has not listed any of these categories of sources due to their radionuclide emissions on today's list.

Listing of Coke Ovens

The Agency received few comments regarding the listing of coke ovens. The CAA Amendments, under section 112(d)(8), instruct the Agency to promulgate regulations establishing emission standards for coke oven batteries. In response, the Agency listed several categories of coke oven operations in the preliminary draft list under the industry group "ferrous metals processing."

Listing of Publicly Owned Treatment Works

In the preliminary draft list, the Agency included a category for "wastewater treatment systems" under the industry group "waste treatment and disposal." This category included both publicly owned treatment works (POTW's) and industrial waste water treatment plants.

Many commenters argued that the category "wastewater treatment systems" was too broad to address realistically the wide variation in existing facilities and, at a minimum, should be divided into two categories: POTW's and industrial waste water treatment plants. In addition, many commenters argued that this broad category overlapped with industry categories listed elsewhere. For example, the broad categories listed in the industry group "production of synthetic organic chemicals" already encompass wastewater treatment systems as well as many other operations such as process vents and equipment leaks.

In response to these comments, the Agency has eliminated the category "wastewater treatment systems." The Agency agrees that industrial wastewater treatment plants are logically covered under the respective industry groups on today's list, and do not need to be listed separately.

Two provisions in Section 112 affect the listing of POTW's. Section 112(e)(5) requires the Agency to promulgate standards for POTW's, pursuant to section 112(d), not later than 5 years after the date of enactment of the CAA. Section 112(n)(3) states that the Agency may provide for control measures that include: (1) Pretreatment of discharges causing HAP emissions or (2) process or product substitutions or limitations that may be effective in reducing such emissions.

The Agency has included a category of "POTW emissions" on today's list. The Agency has the discretion, under section 112(n)(3), to conduct studies to characterize POTW emissions and to demonstrate control measures, considering alternatives involving pretreatment of discharges and process or product substitutions or limitations. The Agency intends to conduct studies to characterize HAP emissions from industries discharging to POTW's and to identify industrial, commercial and residential discharges that contribute to such emissions. The Agency has the authority, under section 112(n)(3), to consider the efficacy of regulations involving pretreatment of discharges. When such information is obtained, the Agency will add to the source category list, if necessary, to insure regulation of POTW emissions.

Listing of Oil and Gas Wells and Pipeline Facilities

The Agency received numerous comments regarding the category "oil and gas production" in the preliminary draft list. The commenters stated that based upon section 112(n)(4), the Agency had erroneously included oil and gas production wells in the oil and gas production category. Commenters generally urged the Agency to delete production wells as either a category of area or major sources.

The Agency agrees with the commenters that the CAA Amendments mandate certain limitations regarding the listing of oil and gas production wells. Section 112(n)(4) limits the Agency's ability to list oil and gas wells

(and associated equipment) as categories of major or area sources.

Section 112(n)(4)(A) specifically requires that each oil and gas well (and associated equipment), pipeline compressor, and pump station at a source must be considered individually, rather than in aggregate across a common area under contiguous control, to determine whether such units or stations are major sources. The Agency has evidence that certain individual units can exceed the major source threshold. Such units would not be excluded from being a major source under section 112(n)(4)(A).

Section 112(n)(4)(B) requires the Agency to determine that HAP emissions from oil and gas production wells (with its associated equipment), present more than a negligible risk of adverse effects to public health before these categories can be listed as categories of area sources. Section 112(n)(4)(B) further limits any such category to only include sources located in any metropolitan statistical area with a population exceeding 1 million. The Agency has not made such a determination at this time. Hence, oil and gas wells (with its associated equipment), pipeline compressors, and pump stations are not listed as categories of area sources on today's list.

E. Listing of Regulated Categories

Several commenters questioned the listing of some categories of sources currently regulated under the CAA or another statute. In some cases, various commenters pointed out that certain categories of sources on the draft list are (or will be) controlled by NSPS under section 111, by previously defined NESHAP's under Section 112 before the CAA Amendments of 1990, by CTG's under the CWA, under the Resources Conservation and Recovery Act (RCRA), or under the Federal Insecticide, Fungicide and Rodenticide Act. The commenters contended that "dual regulation" would cause confusion and hardship to the regulated community.

In response to these comments, the Agency has no general discretion, under section 112, to exclude categories of sources from today's list if they are subject to other statutes. Moreover, with a few exceptions, discussed below, the Agency has no discretion to exclude categories that are subject to other CAA standards.

Section 112(c)(4) states that the Agency may, at the Administrator's discretion, list any category previously regulated under this section as in effect before the date of enactment of the CAA Amendments of 1990. This gives the Agency the discretion to list categories of sources if the Administrator decides that existing NESHAP's are inadequate. However, the "savings provision" under section 112(q)(1) obligates the Agency to review and, if appropriate, revise existing NESHAP's to comply with the requirements of section 112(d) within 10 years.

Section 112(n)(7) obligates the Agency to take into account and be consistent with any regulations under RCRA, also known as the Solid Waste Disposal Act.

The Agency has declined to list categories of radionuclide emitters in light of the CAA statutory provisions, discussed in section III.D of this notice, and because the Agency is still developing the criteria for differentiating between major and area sources of radionuclide emitters. Likewise, as described in section III.D of this notice, the language in section 129(h)(2) precludes the listing of many categories of solid waste incineration units that are subject to standards under sections 111 and 129 of the CAA.

Marine vessel loading and unloading facilities are not listed on today's list because the Agency intends to regulate HAP's as well as emissions of VOC's and other pollutants under authority of section 183(f) of the CAA. Section 183(f) requires that the Agency, in conjunction with the Coast Guard, establish emissions standards for emissions of VOC's and any other air pollutant from loading and unloading tank vessels. Given the Congressional mandate to consult with the Coast Guard and consider safety impacts in developing tank vessel standards, the Agency believes it advisable to address all tank vessel emissions in a comprehensive, multi-faceted manner under section 183(f).

In response to comments regarding "dual regulation," the Agency notes that the establishment of standards under section 112 does not necessarily lead to duplicate regulation. This is because air emission regulations issued under another statute would likely become the basis for MACT floors under section 112, which are defined by evaluating best performing existing sources within any category or best controlled similar sources for new sources.

F. Judicial Review of List

Section 112(e)(4) states notwithstanding Section 307 of this Act (dealing with administrative proceedings and judicial review), no action of the Administrator listing a source category or subcategory under subsection (c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category.

Therefore, today's list is not a final Agency action and is not subject to judicial review.

IV. Finding of Threat of Adverse Effects for Categories of Area Sources

As discussed earlier in section III.B of this notice, in order to list categories of area sources the Agency must find a threat of adverse health or environmental effects warranting regulation under section 112. The Agency hereby lists the following categories of area sources for which a finding of threat of adverse effects warranting regulation under section 112 has been made: Commercial sterilizers using ethylene oxide, chromium electroplaters and anodizers, perchloroethylene dry cleaners, halogenated solvent cleaners, and asbestos processing. Additional area source categories may be listed from time to time as sufficient data become available to support a finding of threat of adverse effects warranting regulation under section 112.

Today's list includes some source categories which are listed twice, once for the major sources within the category and once for the area sources. This is necessary because some categories are comprised of both area and major sources. Where categories of area sources are listed, a finding is required of threat of adverse effects warranting regulation under section 112.

The language of section 112 provides limited guidance on the nature of the finding of threat of adverse effects to human health or the environment warranting regulation under (section 112). The term "adverse environmental effect" is defined in section 112(a) as any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

Section 112(a) contains no concomitant definition of adverse health effect. The area source provisions of section 112(k), however, are closely linked to section 112(c) and state that health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the

role of such pollutants as precursors of ozone or acid aerosol formation.

Moreover, the finding is one of a threat of adverse effect, not a demonstration of the adverse effect, per se.

In the findings accompanying the area source listings in today's notice, quantitative assessments of risk are an important consideration in assessing significant threats of adverse health effects. Quantitative risk assessment, in this context, means the estimation of a mathematical probability of an individual or population being subject to some adverse health effect, such as cancer. The Agency has historically developed assessments of cancer risks, both to maximally exposed individuals and populations, as part of its regulatory actions under section 112. Population risks are expressed in terms of the total number of cancer cases (i.e., cancer incidence) that could be expected to occur in a given time within a prescribed area, considering the exposure of the population within the area to ambient concentrations of toxic air pollutants. Most typically, in these findings, nationwide cancer incidence is expressed on an annual basis (i.e., cases per year). In contrast, a maximum individual "lifetime" risk is expressed as the risk of contracting cancer associated with an exposure for 70 years (an assumed life span) to the maximum, modeled, long-term concentration of the listed HAP's in the proximity of emitting sources. (The findings in today's notice do not demonstrate any threat of adverse environmental effects, only human health effects; future findings may be based on environmental effects as the appropriate information becomes available.)

Section 112(c) of the CAA Amendments of 1990 does not offer a "bright line" test for the Agency to use in making an area source finding. Instead, considering the language cited above, the Agency believes it has discretion to consider a range of health effects endpoints and exposure criteria in making a finding of a threat of adverse effects. In the findings for the listed categories of area sources given later in today's notice, the Agency considers factors such as the number of sources in a category, the quantity of emissions from sources individually or in aggregate, the toxicity of the HAP emissions, the potential for individual and population exposures and risks, and the geographical distribution of sources.

In determining what constitutes a significant threat of adverse effects, the Agency considers the risk criteria developed in the establishment of the benzene NESHAP in light of the DC Circuit Court's decision on the Agency's vinyl chloride emission standards to be an important precedent (*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d at 1146 [1987]) (the "*Vinyl Chloride*" decision). In the September 14, 1989 **Federal Register** implementing the *Vinyl Chloride* decision (54 FR 38044), the Agency presents an approach for providing for the protection of public health with an ample margin of safety under section 112 in protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level of no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

In the September 14, 1989 **Federal Register**, the Agency indicates that, as a first step in this process, it considers incidence (i.e., the numbers of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk the EPA believes that even if the MIR (maximum individual risk) is low, the overall risk may be unacceptable if significant numbers of persons are exposed to a hazardous air pollutant, resulting in a significant estimated incidence. Consideration of this factor would not be reduced to a specific limit or range but estimated incidence would be weighed along with other health risk information in judging acceptability.

In the September 14, 1989 **Federal Register**, the Agency indicates that attention will also be accorded to the weight of evidence of the potential human carcinogenicity or other health effects of a pollutant. The uncertainties, gaps in data, and science policy assumptions associated with any risk measures must also be weighed. As a second step in determining the appropriate level of control, the Agency will examine both these factors above and other relevant factors such as the extent of exposure, the incidence of adverse effect, and the cost of control. The Agency will use these factors in determining whether a regulation provides an ample margin of safety. The Agency believes that consideration of these additional factors is also appropriate in determining whether a category of area sources poses a significant threat of adverse health effects warranting regulation under section 112. This interpretation, however, does not supersede the statutory requirements of the area source program under section 112(k).

In summary, the Agency will not examine a single parameter or measure for making a finding of threat of adverse effects for the purpose of listing any category of area sources. Instead, in determining that a significant threat of adverse effects exists warranting regulation under section 112, the Agency will look to a collection of parameters and measures involving emissions, toxicities, numbers of facilities, the reasonableness of control measures, population exposures to HAP emissions, individual risks and population incidence. In determining what constitutes a significant threat, the Agency will consider the criteria for determining acceptable risks and an ample margin of safety arising from the establishment of benzene NESHAP's in light of the Vinyl Chloride decision. An important criterion in determining a significant threat is evidence that a category of area sources may pose a cancer risk to the maximally exposed individual(s) in excess of one in 10,000. Another important criterion is evidence that significant cancer incidence may result due to many persons exposed to HAP emissions from a category of area sources, even if the maximum individual risk to any individual is low. In addition, the Agency may consider a number of additional factors as appropriate.

As reflected in its interpretation of the Vinyl Chloride decision (54 FR 38044), the Agency recognizes uncertainties in current estimates of risk based on maximum, modeled concentrations and the use of conservative, upperbound risk assumptions (such as continuous exposures for 24 hours per day for 70 years). The Agency acknowledges that current cancer risk estimates do not necessarily reflect the true risk, but often represent a conservative risk level which is an upperbound that is unlikely to be exceeded. The Agency intends to improve its risk assessment procedures in accordance with guidance from its own Risk Assessment Council and through the risk assessment studies required under sections 112(f), 112(o), and 303 of title III of the CAAA.

Each finding detailed below is based on qualitative and quantitative information demonstrating a significant threat of adverse effects to health or the environment for such categories of sources individually or in the aggregate, as required under section 112(c)(3). Most data used in the area source findings were gathered from published reports. Summary information only is presented

in each finding in today's notice. Information from references supporting today's findings is available in the docket (Docket No. A–90–49, Item No. IV–B–44).

A. Finding of Threat of Adverse Effects for Category of Commercial Sterilizers Using Ethylene Oxide

Ethylene oxide is widely used as a sterilant/fumigant in the production of medical equipment and in sterilization and fumigation operations. Current estimates indicate that there are about 190 facilities in the U.S. performing ethylene oxide commercial sterilization. Commercial sterilization is performed by medical equipment suppliers, pharmaceutical manufacturers, spice manufacturers, contract sterilizers, libraries, museums and archives, and laboratories. Emissions of ethylene oxide are estimated at 1.1 million kg/yr (2.4 million lb/yr) from commercial facilities.

The adverse health effects from ethylene oxide are well documented. Numerous studies exist which attest to the health effects from both acute and chronic exposures to ethylene oxide. Headaches, nausea, vomiting, and/or respiratory irritation are common symptoms resulting from acute inhalation exposure to ethylene oxide. Studies of subchronic and chronic exposures indicate that ethylene oxide has serious long-term effects. Plant workers exposed to high levels of ethylene oxide over a 1-week to 3-month periods reported the development of neurological abnormalities and cataracts.

Animal experiments and human epidemiological studies indicate that ethylene oxide is a probable human carcinogen. Animals exposed to ethylene oxide over long periods of time exhibit increased incidence of tumors, including brain neoplasms, and leukemia. Studies of persons occupationally exposed to ethylene oxide indicate the possibility of a significant association between exposure and cancer incidence, for both stomach cancer and leukemia.

The reproductive and teratogenic effects of ethylene oxide inhalation have been examined in laboratory animals. Studies indicate that exposure to ethylene oxide produces maternal toxicity, depression of fetal weight gain, fetal death, and fetal malformation in females and reduced sperm numbers and motility in males. Recent studies on ethylene oxide have also examined the mutagenicity associated with ethylene oxide and the ability of ethylene oxide-induced genetic damage to cause adverse reproductive impacts. Ethylene oxide has been shown to cause mutations in mammalian cells, both somatic and germ.

Due to the adverse effects associated with ethylene oxide observed in both animals and humans, the Agency is concerned about ethylene oxide emissions as well as the presence of ethylene oxide in the ambient air. Studies have confirmed the presence of ethylene oxide above background concentrations in many areas of the nation, including areas of high population. Many ethylene oxide sterilizers are located near population centers and may pose a threat to the surrounding public.

The Agency has conducted nationwide analyses of emissions, exposures, and cancer risks associated with commercial sterilizers using ethylene oxide. The Agency estimates that as many as three increased cancer cases arise in the U.S. annually from exposure to commercial sterilizers using ethylene oxide. The Agency estimates that the maximum individual lifetime cancer risk associated with any commercial sterilizer is as high as one in 100 (1×10^{-2}). Furthermore, about 120,000 persons living in the proximity of commercial sterilizers are estimated to be subject to upper-bound lifetime individual risks possibly in excess of one in 10,000 (1×10^{-4}); about 2,300,000 persons are subject to lifetime individual risks possibly in excess of one in 100,000 (1×10^{-5}); and about 35,000,000 persons—or about one sixth the entire U.S. population—are subject to lifetime individual risks exceeding one in 1,000,000 (1×10^{-6}).

Currently, there are no Federal regulations covering ethylene oxide sterilizer emissions, except Occupational Safety and Health Administration (OSHA) requirements for workplace exposure levels. Sixteen States and Puerto Rico have developed regulations; however, no national regulations currently exist that address all ethylene oxide emissions from commercial sterilizers.

Since there are few commercial sterilizers that exceed 9.07 Mg/yr (10 tpy) of ethylene oxide emissions, they must be listed as categories of area sources in order to be regulated under section 112(d). The Agency hereby finds that the high emission levels, documented exposures, and known and suspected adverse health effects associated with ethylene oxide emissions from commercial sterilizers present a threat of adverse effects to human health. The Agency thus includes this category on the list of categories of area sources on today's list.

B. Finding of Threat of Adverse Effectives for Categories of Chromium Electroplaters and Anodizers

The chromium electropating industry consists of hard chromium electroplaters, decorative chromium electroplaters, and anodizers. Hard chromium electropolating involves coating a base metal, such as steel, with a relatively thick layer of chromium, in order to provide a wear resistent surface. Hard plating is most often used on items such as hydraulic cylinders and rods, zinc die castings, plastic molds engine components, and marine hardware. Decorative plating, on the other hand, usually plates the base metal (i.e., brass, steel, aluminum, or plastic) with a layer of nickel and then a thin layer of chromium in order to produce a bright, wear- and tarnish-resistant surface. Decorative plating is most often used on automotive trim, bicycles, hand tools, and plumbing fixtures. A third type of chromium electroplater, anodizers, uses chromic acid to form an oxide layer on aluminum to provide corrosion resistance. Chromium anodizing is primarily used on aircaft parts and architectural structures that are subject to high stress and corrosive conditions. Although chromium may be used in other operations at metal finishing plants, today's notice only includes those processes that use chromic acid in an electrolytic cell to deposit chromium metal or to form an oxide film on a product.

The chromium electroplating industry is comprised of an estimated 1,540 hard electroplaters, 2,800 decorative electroplaters, and 680 chromic acide anodizers, or approximately 5,000 * operations nationwide. These operations vary in size from small shops with only one or two small tanks to large shops with several tanks that are operated almost continuously. Some plating operations are done in stand-alone "job shops," whereas others are done on the premises of larger sources, and are called "captive shops." Although no single electroplating operation emits more than 9.07 Mg/yr (10 tpy) of chromium, electroplaters are estimated to emit 159 Mg/yr (175 tpy) of chromium per year nationwide.

Chromium electroplaters can present an adverse health threat to populations living near the source of emissions. Chromium electroplaters mostly emit the hexavalent form of chromium, Cr (+6), as chromic acid mist, and lesser amounts of trivalent chromium, Cr (+3). Current health effects data suggest that the hexavalent form of chromium is the

most toxic of all chromium compounds. Both human case studies and epidemiological studies attest to the adverse health effects from inhalation of hexavalent chromium. Acute exposure to hexavalent chromium has been shown to cause nasal irritation in workers and other individuals. Intermediate and chronic inhalation exposure to chromium has been reported to cause adverse respiratory tract effects, including irritation and perforation of the nasal mucosa, decreases in lung function, and renal proteinuria. Animal studies of acute organ toxicity also suggest that chromium compounds may produce kidney and liver damage.

The carcinogenic health effects from chromium are also well documented. Hexavalent chromium is considered a Group A carcinogen because there is adequate evidence for its carcinogenicity in humans. Specifically, chronic occupational exposure to chromium has been associated with increased incidence of respiratory cancer in workers. The association of exposure to chromium and the induction of lung cancer is strengthened by the high lung cancer mortality ratios found in various epidemiological studies, the consistency of results across several studies, the increased tumors found in association with increasing doses, and the specificity of the tumor site. The role of trivalent chromium in carcinogenesis is presently unclear.

Reproductive studies on animals also suggest that chromium compounds may have some fetal and maternal toxicity effects. Although conclusive results can not be drawn from the available data, studies suggest that chromium compounds can adversely affect fetal development and male reproduction in experimental animals.

The Agency has developed nationwide emission and population exposure estimates associated with chrome platers and anodizers. Based on this analysis, the Agency estimates that chrome platers and anodizers contribute significantly to the total increased cancer incidence in the U.S. from airborne toxics. Hard chrome platers, decorative chrome platers, and acid anodizers may cause as many as 110 increased cancer cases per year in the U.S. In addition to significant population risks, chrome platers and anodizers contribute significantly to maximum individual cancer risks in the proximity of particular facilities. The Agency estimates that maximum, upper-bound individual risks range from two chances in 100,000 (2×10^{-5}) for small acid anodizing plants to five chances in 1,000 (5×10^{-3}) for large hard plating operations. All estimates of risk in this analysis are based on hexavalent chromium only, and not on trivalent chromium.

An Agency study of Southeast Chicago estimates that chrome platers contribute about one sixth of the total cancer incidence due to all sources of airborne toxics in the study area, including steel mills, road vehicles, and other industrial sources.

An Agency analysis of cancer incidence from air toxic emissions in five large U.S. cities shows that chrome platers contribute about one tenth of the total increased cancer incidence due to all sources of airborne toxics. Extrapolating the cancer rate in the five cities to the U.S. yields an estimate of as high as 90 increased cases per year.

Currently, the only Federal emission regulations for electroplaters are limited to OSHA workplace emission standards, designed specifically to limit worker exposures. Fourteen States have adopted or proposed regulations for controlling chromium emission from electroplaters.

The Agency hereby finds that the overall emissions, exposures, and known and suspected health impacts associated with chromium electroplaters and anodizers present a threat of adverse effects to human health. Based on the finding above, the Agency has included chromium electroplaters and anodizers on today's initial list as categories of area sources.

C. Finding of Threat of Adverse Effects for Category of Commercial Perchloroethylene Dry Cleaners

A finding of threat of adverse effects for commercial perchloroethylene dry cleaners is presented in a proposed rule to establish emission standards for perchloroethylene dry cleaners (56 FR 64382).

D. Finding of Threat of Adverse Effects for Category of Cleaners Using Halogenated Solvents

Halogenated solvents are widely used throughout industry to clean the surface of metal parts, electronic components, and other nonporous substrates. The cleaning machines that use halogenated solvents are categorized as one of three types: Cold cleaners, open top vapor cleaners (OTVC's), and in-line or conveyorized cleaners. Machines, including maintenance cleaners, that use petroleum distillate type solvents are not included in this category of area sources at this time. The five largest industry users of halogenated solvents for cleaning, by Standard Industries Classification (SIC) Code, are SIC 25 (furniture and fixtures), SIC 34 (fabricated metal products), SIC 36 (electric and electronic equipment), SIC 37 (transportation equipment), and SIC 39 (miscellaneous manufacturing industries). In addition to these industry groups, many non-manufacturing industries (such as railroad, bus, aircraft, and truck maintenance facilities; automotive and electric tool repair shops; automobile dealers; and service stations) also use these solvents for cleaning.

In all of these industries, the most commonly used halogenated solvents are methylene chloride (MC), trichloroethylene (TCE), perchloroethylene (PCE), trichlorotrifluoroethane (CFC–113), and 1,1,1-trichloroethane (TCA). Use of these chemicals is found throughout many industries because they can dissolve many common residues from manufacturing processes, have little or no flammability, and can achieve a high degree of cleanliness on even small parts.

The Agency estimates that there are approximately 100,000 small cold cleaners, 25,000 to 35,000 OTVC's, and 2,500 to 4,000 in-line (cold and vapor) cleaners. Specific emission levels from each type of machine may vary; however, the Agency has estimated that emissions range from 2,500 to 6,000 kg/yr (5,520 to 13,250 lb/yr), depending on the schedule of operation. Most of the solvent losses from halogenated cleaners are to the air.

Due to the high usage and emissions of these cleaners throughout industry, as well as the large number of cleaners, there is a great potential for exposure to the HAP's used as solvents. Two degreasing solvents, CFC–113 and TCA, have also been implicated as causing stratospheric ozone depletion. The TCA has also been shown to be photochemically reactive and contribute to increases in tropospheric ozone levels. Both of these two chemicals, CFC–113 and TCA, will be phased out with other Agency regulations under title VI of the CAA.

The health effects associated with halogenated solvent cleaners are most well documented for MC, TCE, and PCE. Both MC and TCE are considered probable human carcinogens and are classified in Group B2, while PCE is still under review.

Evidence indicating the carcinogenicity of MC is available through animal studies. Animal inhalation studies on MC have shown significant increases in liver and lung adenomas and carcinomas in both males and females. Other animal studies have

indicated that exposure to elevated levels of MC can cause benign mammary tumors. Based upon this available animal evidence, the Agency has determined that MC is a probable human carcinogen. In addition to these adverse effects, short-term exposure to MC has been known to cause impairments in central nervous system (CNS) functioning. Case reports of exposure to MC have shown that humans exposed to MC exhibited narcosis, irritability, analgesia, and fatigue.

Both PCE and TCE are moderately toxic substances that appear to target the CNS, causing dizziness, headaches and slowing of mental activity. Over longer periods of exposure, these adverse effects may also be seen in the liver and kidneys as well as the eyes and upper respiratory tract. The carcinogenic effects from both these chemicals has also been investigated, mostly through animal experiments. Results of TCE tests indicate that inhalation may result in the formation of renal tumors. Other TCE studies suggest that inhalation is fetotoxic and may cause litter resorption and reduced fetal body weight.

An Agency analysis has been conducted of nationwide exposures, individual lifetime risks, and population incidence from halogenated solvent cleaners emissions. This analysis estimates that as many as six increased cancer cases are attributable to halogenated solvent cleaners, annually, in the U.S. This study also suggests that upper-bound maximum individual lifetime risks in the proximity of these cleaners range from as high as one in 1,000,000 (1×10^{-6}) to one in 10,000 (1×10^{-4}). Nationally, the maximum individual risk near a large facility with multiple conveyorized cleaners is as high as five in 10,000 (5×10^{-4}).

Based upon the evidence presented, the Agency finds that cleaners using halogenated solvents present a threat of adverse impact to human health or the environment. The Agency therefore adds them to the categories of area sources on today's initial list.

E. Finding of Threat of Adverse Effects for Category of Asbestos Processing

The Agency is hereby listing one category of asbestos-related sources: Asbestos processing. Asbestos processing includes asbestos milling, manufacturing, and fabrication. Products that are manufactured or fabricated using asbestos include, but are not limited to, textiles, papers and felts, friction materials, cements, vinyl-asbestos floor tiles, gaskets and packings, shotgun shell wads, asphalt concrete, fireproofing and insulating materials, and chlorine.

Information on asbestos emissions has been limited by the lack of an appropriate measuring method. Therefore, engineering estimates of emission have been made from other available information, when appropriate, including process data and worker concentration data. Under the current NESHAP, emissions from asbestos processing are estimated at 1,020 kg/yr (2,240 lb/yr) given full compliance with the current NESHAP. This includes all emissions from milling, manufacturing, and fabricating. Due to the potency of asbestos and the well documented health hazards (described below), the Agency is concerned about these emissions even though exact amounts have not been quantified.

The health effects associated with exposure to asbestos are well documented. Numerous occupational exposure studies, supported by animal studies, clearly indicate that asbestos is a human (Group A) carcinogen. The major impacts associated with asbestos inhalation are lung cancer and mesothelioma. Studies have confirmed that death from lung cancer and mesothelioma is proportional to the cumulative exposure (duration times the intensity). Studies also indicate that asbestos is linked to gastrointestinal cancers, although these occur at a lower rate than that seen for lung cancer.

The Agency has completed an analyses of cancer incidence and maximum individual cancer risks associated with asbestos emissions from the category of asbestos processing. Available Agency estimates of maximum lifetime cancer risks in the vicinity of processing operations are based on early emission estimates that have since been revised to reflect more recent and improved information. However, estimates of maximum risk derived using these earlier estimates of emissions were evaluated and, for asbestos processing, appear to still be applicable. These available data suggest that upper-bound maximum individual lifetime risks are about two in 1,000 (2×10^{-3}) for production in the manufacturing sector.

Regulations to control workplace exposures and/or emissions from asbestos have been established by OSHA, the Mine Safety and Health Administration (MSHA), EPA, and States. The most recent Agency NESHAP, promulgated November 20, 1990, amended the earlier NESHAP to enhance enforcement and promote compliance with the current standards without altering the stringency of existing controls. Since the initial promulgation in 1973, many States have adopted more stringent requirements than the Agency; therefore, no uniform standard now exists. The Agency intends to consult and coordinate with OSHA and other regulatory agencies to establish regulations that are more compatible and consistent than current regulations, as well as easier to understand. This should improve compliance with all regulations.

Based on emission and risk information discussed previously, and the known health effects of asbestos, the Agency has determined that asbestos processing presents a threat of adverse effects to human health. Emissions data from this category indicate that no sources emit greater than 9.07 Mg/yr (10 tpy) of asbestos. Based on the finding above, the Agency hereby includes the category of asbestos processing on today's list.

In addition to the finding of threat of adverse effects given above, the Agency has additional authority to list and establish standards for the category of asbestos processing under sections 112(c)(4) and 112(q)(1). Section 112(c)(4) gives the Agency the authority to list any category or subcategory of sources previously regulated under Section 112 as in effect before enactment of the CAA Amendments of 1990. Section 112(q)(1) obligates the Agency to review and, if appropriate, revise each standard previously promulgated under Section 112 before enactment, to comply with the requirements of section 112(d), within 10 years after the date of enactment of the CAA Amendments of 1990. Since the category of asbestos processing has a promulgated NESHAP, the Agency exercises its discretion to list this category under the authority of section 112(c)(4) and 112(q)(1).

V. Descriptions of Listed Categories

Because some of the categories on today's list encompass several industry sectors, operations, and/or types of equipment, the Agency recognizes the importance of describing what is included under each listed category. Hence, descriptions are included in the accompanying docket (Docket No. A–90–49, Item No. IV–A–55) for the purpose of delineating, to the extent currently possible with available data, the potential coverage of each category. The Agency recognizes that these descriptions, like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each

listed category, or subsequently listed subcategories, will be incorporated in each rule establishing a NESHAP for a category. It is not the Agency's intent that the descriptions, in the docket accompanying today's notice, limit what may be included under each category for the purposes of establishing emission standards either under section 112(d) or, on a case-by-case basis under section 112(j), or for purposes relating to other parts of section 112 involving the definition of source or category of sources.

VI. Relationship of List to Definition of Source for Early Reduction

The identification of categories and subcategories of major sources in today's initial list has no bearing whether any particular facility or grouping is a "source" for purpose of the early reduction program under section 112(i)(5) or a major source for purposes of section 112(a)(1). The term "major source" is defined in section 112(a)(1) in such a way that it refers to the emissions occurring from a contiguous area under common control. By contrast, the Agency must identify "categories and subcategories" of major and area sources generically for the purposes of today's initial list and for establishing standards under section 112(d). In most cases, this identification will be made as product or process oriented groupings which will not affect the definition of "source" for purposes of either the early reduction under section 112(i)(5) or the definition of a "major source" under section 112(a)(1). The definition of source in the early reduction program is described in section II.B of the Proposed Regulations Governing Compliance Extensions for Early Reduction of Hazardous Air Pollutants (June 13, 1991, 56 FR 27338).

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this initial list of categories of sources. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's initial list.

B. Executive Order 12291 Review

Executive Order 12291 requires the Agency to determine whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements. This notice was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and written EPA responses are available in the docket.

C. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 55 U.S.C. 3501 et seq.

D. Regulatory Flexibility Act Compliance

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements.

Dated: July 2, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]

Category Name
FUEL COMBUSTION
Engine Test Facilities
Industrial Boilers [b]
Institutional/Commercial Boilers [b]
Process Heaters
Stationary Internal Combustion Engines [b]
Stationary Turbines [b]
NON-FERROUS METALS PROCESSING
Primary Aluminum Production
Secondary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Secondary Lead Smelting
Lead Acid Battery Manufacturing
Primary Magnesium Refining
FERROUS METALS PROCESSING
Coke By-Product Plants
Coke Ovens: Charging, Top Side, and Door Leaks
Coke Ovens: Pushing, Quencing, and Battery Stacks
Ferroalloys Production
Integrated Iron and Steel Manufacturing
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation
Iron Foundries
Steel Foundries
Steel Pickling—HCl Process
MINERAL PRODUCTS PROCESSING
Alumina Processing
Asphalt/Coal Tar Application—Metal Pipes
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Chromium Refractories Production
Clay Products Manufacturing
Lime Manufacturing
Mineral Wool Production
Portland Cement Manufacturing
Taconite Iron Ore Processing
Wool Fiberglass Manufacturing
PETROLEUM AND NATURAL GAS PRODUCTION AND REFINING
Oil and Natural Gas Production
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units
Petroleum Refineries—Other Sources Not Distinctly Listed
LIQUIDS DISTRIBUTION
Gasoline Distribution (Stage 1)
Organic Liquids Distribution (Non-Gasoline)
SURFACE COATING PROCESSES
Aerospace Industries
Auto and Light Duty Truck (Surface Coating)
Flat Wood Paneling (Surface Coating)
Large Appliance (Surface Coating)
Magnetic Tapes (Surface Coating)
Manufacture of Paints, Coatings, and Adhesives
Metal Can (Surface Coating)
Metal Coil (Surface Coating)
Metal Furniture (Surface Coating)
Miscellaneous Metal Parts and Products (Surface Coating)
Paper and Other Webs (Surface Coating)
Plastic Parts and Products (Surface Coating)
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing (Surface Coating)
Shipbuilding and Ship Repair (Surface Coating)
Wood Furniture (Surface Coating)
WASTE TREATMENT AND DISPOSAL
Hazardous Waste Incineration
Municipal Landfills
Sewage Sludge Incineration
Site Remediation
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)
Publicly Owned Treatment Works (POTW) Emissions
AGRICULTURAL CHEMICALS PRODUCTION
2,4-D Salts and Esters Production
4-Chloro-2-Methylphenoxyacetic Acid Production
4,6-Dinitro-o-Cresol Production
Captafol Production

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]—Continued

Captan Production
Chloroneb Production
Chlorothalonil Production
Dacthal (tm) Production
Sodium Pentachlorophenate Production
Tordon (tm) Acid Production

FIBERS PRODUCTION PROCESSES

Category Name
Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

FOOD AND AGRICULTURE PROCESSES

Category Name
Baker's Yeast Manufacturing
Cellulose Food Casing Manufacturing
Vegetable Oil Production

PHARMACEUTICAL PRODUCTION PROCESSES

Category Name
Pharmaceuticals Production

POLYMERS AND RESINS PRODUCTION

Category Name
Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butadiene-Furfural Cotrimer (R–11)
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Elastomers Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Non-Nylon Polyamides Production
Nylon 6 Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]—Continued

Polyethylene Teraphthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

PRODUCTION OF INORGANIC CHEMICALS

Category Name
Ammonium Sulfate Production—Captrolactam By-Product Plants
Antimony Oxides Manufacturing
Chlorine Production
Chromium Chemicals Manufacturing
Cyanuric Chloride Production
Fume Silica Production
Hydrochloric Acid Production
Hydrogen Cyanide Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Quaternary Ammonium Compounds Production
Sodium Cyanide Production
Uranium Hexafluoride Production

PRODUCTION OF ORGANIC CHEMICALS

Category Name
Synthetic Organic Chemical Manufacturing

MISCELLANEOUS PROCESSES

Category Name
Aerosol Can-Filling Facilities
Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carbonyl Sulfide Production
Chelating Agents Production
Chlorinated Paraffins Production
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Dodencanedioic Acid Production

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]—Continued

Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Industrial Process Cooling Towers
OBPA/1,3-Diisocyanate Production
Paint Stripper Users
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood/Particle Board Manufacturing
Polyether Polyols Production
Pulp and Paper Production
Rocket Engine Test Firing
Rubber Chemicals Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production
Tire Production
Wood Treatment

CATEGORIES OF AREA SOURCES [c]

Asbestos Processing
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating

[a] All categories in Table 1 are categories of major sources unless specifically identified as categories of area sources. Only major sources within any category shall be subject to emission standards under section 112 unless a finding is made, for the area sources in the category, of a threat of adverse effects to human health or the environment warranting regulation under section 112. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] Sources defined as electric utility steam generating units under section 112(a)(8) shall not be subject to emission standards pending the findings of the study required under section 112(n)(1) and subsequent listing and regulation thereof.

[c] A finding of threat of adverse effects to human health or the environment warranting regulation under section 112 has been made for each category of area sources listed in Table 1.

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