Dated: June 17, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.472, to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-2-imidazolidinimine; tolerances for residues.

Time-limited tolerances, to expire June 28, 1995, are established permitting the combined residues of the insecticide 1-[(6-chloro-3-pyridinyl) methyl]-*N*-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)-methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, meat byproducts	0.2
Hops, dried	3.0
Goats, fat	0.2
Goats, meat	0.2
Goats, meat byproducts	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, meat byproducts	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, meat byproducts	0.2
Milk	0.05
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, meat byproducts	0.2

[FR Doc. 94–15679 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 372

[OPPTS–400063A; FRL–4767–5]

Barium Sulfate; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting barium sulfate from the category "barium compounds" on the list of toxic chemicals for which reporting is required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This action is based on EPA's conclusion that barium sulfate meets the deletion criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of barium sulfate that occurred during the 1993 reporting year, and releases that will occur in the future.

DATES: This rule is effective June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106, "PPA"). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added chemicals to and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Effective Date

This action becomes effective immediately. Thus, the last year in which facilities had to report releases of barium sulfate was 1993, covering releases that occurred in 1992. The effect of this deletion is that, since barium sulfate will not be on the section 313 list when facilities report in 1994 for releases that occured in 1993, these reports and all subsequent reports need not include barium sulfate release data. Facilities will therefore not have to collect release information for any releases of barium sulfate that occur during the 1993 reporting year or for any releases that occur in the future.

Section 313(d)(4) provides that "[a]ny revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 and before January 1 shall take effect beginning with the calendar year following the next calendar year." The Agency interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, the Agency may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) since a deletion from the section 313 list relieves a regulatory restriction.

The Agency believes that the purpose behind the section 313(d)(4) effective date provision is to allow facilities adequate planning time to incorporate newly added chemicals to their TRI release data collection processes. A facility would not need additional planning time to not report releases of a given chemical. Thus, a reasonable construction of section 313(d)(4), given the overall purpose and structure of EPCRA — to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list — is to apply the delayed effective date requirement only to additions to the list. Where the Agency has determined, as it has with barium sulfate, that a chemical does not satisfy the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that 313(d)(4) was intended to apply to deletions as well as additions; indeed,

such a construction would be incongruous, since deleted chemicals, by definition, do not satisfy the criteria for being on the section 313 list and their deletion from that list should not be delayed in the absence of any compelling reason to the contrary. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list. Indeed, the Agency has not given any of its rules deleting chemicals from the section 313 list the delayed effective dates specified in section 313(d)(4).

III. Description of Petition and Rationale for Delisting

A. Petition and Proposed Action

On September 24, 1991, EPA received a petition from the Chemical Products Corporation (CPC) to delete barium sulfate ($BaSO_4$) from the list of toxic chemicals established under EPCRA section 313. A second petition, submitted by the Dry Color Manufacturer's Association (DCMA), to delete barium sulfate was received on November 6, 1991. Both petitions are based on the contention that barium sulfate is not toxic and does not meet any of the statutory criteria under EPCRA section 313(d)(2).

Following a review of the petitions, EPA granted the petitions and issued a proposed rule in the **Federal Register** of June 11, 1993 (58 FR 32622), to delete barium sulfate from the category "barium compounds" on the list of toxic chemicals under EPCRA section 313. EPA's proposal was based on its conclusion that $BaSO_4$ meets the EPCRA section 313(d)(3) criteria for deletion from the list. With respect to deletions, EPCRA section 313(d)(3) provides that "[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)]." Specifically, in the proposal EPA preliminarily concluded that there is not sufficient evidence to establish that $BaSO_4$ causes adverse acute human health effects, chronic human health effects, or environmental toxicity. EPA's rationale is detailed in the proposed rule and is based on the Agency's review of the petitions, as well as other relevant materials:

B. Rationale for Delisting

After reviewing comments received and other relevant information, EPA has concluded that the assessment set out in the proposed rule should be affirmed. Therefore, this final rule is based on EPA's conclusion that $BaSO_4$ is essentially non-toxic to humans and the environment, and thus meets the EPCRA section 313(d)(3) criterion for delisting (i.e., it does not meet any of the EPCRA section 313(d)(2) listing criteria).

In reaching this conclusion, EPA considered the toxicity of the barium ion because another potential source of barium sulfate toxicity could be from the barium ion. EPA initially analyzed the availability of barium ion. If the ion is not available, barium sulfate cannot cause toxicity due to barium ion. EPA has concluded that barium ion from barium sulfate will not be available to humans or the environment in any way that would affect the Agency's decision under EPCRA section 313(d)(3). This is because barium ion from barium sulfate will occur at significant levels only under anaerobic conditions in stagnant water bodies that are cut-off from surface and ground waters. As discussed below, such conditions do not give rise to human health or environmental concerns under the EPCRA section 313(d)(2) criteria.

Because intact $BaSO_4$ is acutely toxic only at levels that greatly exceed releases and resultant exposures, $BaSO_4$ cannot reasonably be anticipated to cause ". . .significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases." EPA believes that barium ion anaerobically released from barium sulfate into isolated stagnant water bodies cannot reasonably be anticipated to result in adverse effects on human health because people do not routinely use these waters as sources of drinking water or food, or for recreation. Under other conditions, barium ion could not be an issue because it is not available. Thus, EPA has concluded that $BaSO_4$ does not meet the toxicity criterion for listing under EPCRA section 313(d)(2)(A).

EPA has concluded that $BaSO_4$ does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because $BaSO_4$ cannot reasonably be anticipated to cause cancer, developmental toxicity, reproductive toxicity, neurotoxicity, gene mutations, or chronic toxicity. Intact $BaSO_4$ is not known to cause such effects, and for the reasons discussed above barium ion will not be available to cause chronic human toxicity.

EPA has concluded that $BaSO_4$ does not meet the EPCRA section 313(d)(2)(C) toxicity criteria because of the lack of availability of soluble barium from barium sulfate. Moreover, ecotoxicity data indicate that barium ion generated in low sulfate, anaerobic environments cannot reasonably be anticipated to result in adverse effects on the environment of sufficient seriousness to warrant reporting under EPCRA section 313.

C. Response to Comments

EPA received 34 comments on the proposed rule, all in support of the deletion of barium sulfate. While all the comments received were in support of the deletion, a few commenters requested clarification on some points discussed in the proposed rule.

Two commenters wanted clarification of the statement regarding the water solubility of barium sulfate and how it relates to the maximum contaminant level (page 32624, second column, first full paragraph). EPA agrees with the commenters that, at the water solubility of 2.4 mg/L (2.4 ppm) at 25 °C, there are 1.4 ppm of barium ion and 1.0 ppm of sulfate ion, and that the 1.4 ppm concentration of barium ion is below the maximum contaminant level of 2 mg/L (2 ppm) established by EPA under the Safe Drinking Water Act.

Many commenters requested clarification of EPA's characterization of the regulatory status of barium sulfate under the Resource Conservation and Recovery Act (RCRA) and the disposal of drilling fluids. Specifically, one commenter stated that EPA did not clarify that discharges of drilling fluids are in fact exempt from EPCRA as well as RCRA. Another commenter stated that EPA should clarify the statement in the proposed rule that there are no Federal regulations prohibiting land disposal of drilling fluids to include the possibility of state regulations. EPA agrees with the commenters that some clarification is needed on these issues. 40 CFR 261.4(b)(5) exempts from Federal regulation as hazardous waste drilling fluids and other wastes from the exploration, development, or production of crude oil, natural gas, or geothermal energy. Therefore, EPA regulations do not prohibit the land disposal of drilling fluids. This activity, however, may be regulated by state agencies. In addition, the commenter added that underground injection controls pursuant to the Safe Drinking Water Act and the National Pollutant Discharge Elimination System program under the Clean Water Act also regulate drilling waste. EPA does not agree with the comment that disposal of drilling fluids is totally exempt from EPCRA reporting. Although the discharge of drilling fluids is not specifically reportable under EPCRA section 313, the drilling fluids may contain a reportable component and the discharge of that chemical would require reporting if all applicable criteria are met.

One commenter wanted clarification of the statements "Although the TCLP may indicate that barium sulfate is not a hazardous waste as defined by RCRA. . ." and later, "Furthermore, drilling fluids are specifically exempted and are not considered hazardous wastes under RCRA including those containing barium sulfate, even if the barium sulfate itself meets the TCLP (40 CFR 261.4)" (page 32624, column 1, second and third full paragraphs). To clarify, barium sulfate is not a listed hazardous waste as defined by RCRA. Furthermore, the exemption under 40 CFR 261.4(b)(5) for barium sulfate in drilling fluids may apply. EPA notes that barium is one of the contaminants tested for in the Toxicity Characteristics (TC) of 40 CFR 261.24. However, due to its limited water solubility, barium sulfate is not expected to produce an extractable concentration of barium that exceeds the maximum allowable concentration of soluble barium (100 mg/L) using the Toxicity Characteristic Leaching Procedure (TCLP) as described in 40 CFR 261.24. Thus, in these cases, land disposal of barium sulfate is not regulated under RCRA subtitle C. However, EPA reiterates that the TCLP is not conducted under anaerobic (reducing) conditions and that it is possible for barium sulfate to liberate soluble barium under such conditions. Thus, even though land disposal of barium sulfate is permissible under RCRA if TC levels for barium are not exceeded, such disposal may lead to the availability of soluble barium.

One commenter claimed that throughout the proposal EPA placed too much emphasis on the release of barium ion from barium sulfate under anaerobic conditions. In addition, the commenter added that it is unlikely that disposal of drilling fluids as solid wastes would "encourage perched water and anaerobic digestion of barium sulfate in low sulfate environments." In the proposed rule EPA wanted to make clear that although barium sulfate is poorly soluble (i.e., does not significantly dissociate to barium and sulfate ions) in water, it is still possible for this substance to liberate barium ion in water as a result of anaerobic degradation. In the proposed rule EPA cited several studies which clearly show that barium ion concentrations can become elevated as a result of anaerobic degradation of barium sulfate. EPA agrees with the commenter that it is probably unlikely that discharge of barium sulfate-containing drilling fluids will encourage the formation of stagnant waterbodies, where anaerobic degradation is likely to occur. In its discussions on the availability of barium ion from barium sulfate (units IV.D. and E. of the proposed rule) the Agency did not specifically address discharges of drilling fluids containing barium sulfate. Although EPA cited studies that showed elevated barium ion concentrations in experiments which used drilling fluids that contained barium sulfate, the main purpose of these discussions is to illustrate that under certain environmental conditions barium ion can become available from barium sulfate, regardless of the source of the barium sulfate.

One commenter stated in the proposal that EPA does not clearly make the distinction that barium is not a heavy metal (page 32626, column 3, first full paragraph). EPA agrees that barium is not a heavy metal, and it is not EPA's intent to imply that barium is or can be viewed as a heavy metal. EPA was describing how the solubility of barium sulfate may be influenced by factors other than sulfate concentration. EPA used references which describe how substances normally found in the environment (e.g., fulvic and humic acids, bicarbonate, and hydroxyl ions) or soil particle grain size can enhance the solubility of otherwise poorly soluble metal salts, such as salts of heavy metals. EPA maintains that the cited studies provide sufficient evidence that the solubility of any metal salt may be significantly affected by a variety of naturally occurring environmental conditions. The same commenter provided additional information on the toxicity of barium ion. EPA is considering this information but is not addressing it in this final rule since it is not relevant to this delisting. In accordance with the May 23, 1991 guidance, this delisting decision is made on the basis of availability of barium ion and not on barium ion toxicity. If the ion is not available, its inherent toxicity is irrelevant because it cannot cause adverse effects. Today's action is not intended, and should not be inferred to affect the status of $BaSO_4$ under any statute or program other than the Toxic Chemical Release Inventory reporting under EPCRA section 313 and PPA section 6607.

IV. Rulemaking Record

The record supporting this final rule is contained in the docket number OPPTS–400063A. All documents, including an index of the docket, are available in the TSCA Document Receipt Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Document Receipt Office is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Section 3(f) of the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this final rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the final rule. Because this final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This final rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 16, 1994.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended to read as follows:

Part 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. In § 372.65(c), by adding the following language to the barium compounds listing "(except for barium sulfate, (CAS No. 7727–43–7)."

[FR Doc. 94–15578 Filed 6–27–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 763

[OPPTS–62114B; FRL–4776–7]

Technical Amendment in Response to Court Decision on Asbestos; Manufacture, Importation, Processing and Distribution Prohibitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: EPA is revising the language of the Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-containing Products; Labeling Requirements Rule (also known as the Asbestos Ban and Phase Out or ABPO Rule) in the Code of Federal Regulations (CFR) to conform to a court decision that vacated and remanded part of the ABPO Rule and to an EPA factfinding conducted in accordance with the court's decision. The ABPO Rule prohibited the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products in three stages over 7 years beginning in 1990. On October 18, 1991, the United States Court of Appeals for the Fifth Circuit (the court) vacated and remanded most of the ABPO Rule. In a subsequent clarification, the court said the rule continued to govern asbestos-containing products that were not being manufactured, imported, or processed on July 12, 1989. EPA conducted a factfinding and concluded that six asbestos-containing product categories in the ABPO Rule were not being manufactured, processed, or imported on July 12, 1989, and thus are still subject to the rule. This document revises the CFR to conform to the findings of EPA in accordance with the court decision, and requires no notice and public comment.

EFFECTIVE DATE: This document is effective on June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 12, 1989 (54 FR 29460), EPA issued a final rule under section 6 of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2605) that prohibited the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products in three stages over 7 years (40 CFR 763.160 through 763.179). Stage 1 of the ban went into effect in August 1990. Stages 2 and 3 were scheduled to go into effect in 1993 and 1996 respectively.

On October 18, 1991, the United States Court of Appeals for the Fifth Circuit vacated and remanded most of the ABPO Rule. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir., 1991). In a latter clarification, the court stated that product categories in the ABPO Rule that were no longer being manufactured, imported, or processed on July 12, 1989, when the ABPO Rule was issued were still subject to the rule. *Id.* at 1230. The court left it to EPA to resolve any factual disputes about which product categories in the ABPO Rule were no longer in commerce on July 12, 1989.

As a result, in order to determine which product categories in the ABPO Rule were still subject to the rule, EPA published a document in the **Federal Register** of April 2, 1992 (57 FR 11364), that requested information on the commercial status on July 12, 1989, of 14 product categories in the rule that may no longer have been manufactured, processed, or imported when the rule was published on July 12, 1989. In addition, EPA solicited information on the commercial status of any other product category in the ABPO Rule that also may no longer have been manufactured, processed, or imported on July 12, 1989. EPA supplemented the original information in the RIA with the comments received in response to the **Federal Register** notice and with additional research.

EPA published a document in the **Federal Register** of November 5, 1993 (58 FR 58964), that announced its findings concerning the regulatory status of the product categories in the ABPO Rule. EPA concluded that six asbestos-containing product categories were not being manufactured, processed, or imported on July 12, 1989, and thus are still subject to the rule. The remaining product categories were being manufactured, processed, or imported on July 12, 1989, and are no longer subject to the rule.

Accordingly, EPA is issuing this document to revise the language of the ABPO Rule in the CFR to conform to the October 1991 court decision that remanded the rule and to the November 1992 factual findings of EPA, in accordance with the court decision.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Hazardous substances.

Dated: June 21, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 763 is amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By revising § 763.163 to read as follows.

§ 763.163 Definitions.

For purposes of this subpart:

Act means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Agency means the United States Environmental Protection Agency.

Asbestos means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite; and actinolite.

Asbestos-containing product means any product to which asbestos is deliberately added in any concentration or which contains more than 1.0 percent asbestos by weight or area.

Chemical substance, has the same meaning as in section 3 of the Act.

Commerce has the same meaning as in section 3 of the Act.

Commercial paper means an asbestos-containing product which is made of paper intended for use as general insulation paper or muffler paper. Major applications of commercial papers are insulation against fire, heat transfer, and corrosion in circumstances that require a thin, but durable, barrier.

Corrugated paper means an asbestos-containing product made of corrugated paper, which is often cemented to a flat

backing, may be laminated with foils or other materials, and has a corrugated surface. Major applications of asbestos corrugated paper include: thermal insulation for pipe coverings; block insulation; panel insulation in elevators; insulation in appliances; and insulation in low-pressure steam, hot water, and process lines.

Customs territory of the United States means the 50 States, Puerto Rico, and the District of Columbia.

Distribute in commerce has the same meaning as in section 3 of the Act, but the term does not include actions taken with respect to an asbestos-containing product (to sell, resale, deliver, or hold) in connection with the end use of the product by persons who are users (persons who use the product for its intended purpose after it is manufactured or processed). The term also does not include distribution by manufacturers, importers, and processors, and other persons solely for purposes of disposal of an asbestos-containing product.

Flooring felt means an asbestos-containing product which is made of paper felt intended for use as an underlayer for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

Import means to bring into the customs territory of the United States, except for: (1) Shipment through the customs territory of the United States for export without any use, processing, or disposal within the customs territory of the United States; or (2) entering the customs territory of the United States as a component of a product during normal personal or business activities involving use of the product.

Importer means anyone who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. *Importer* includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term includes as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(4) The transferee, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of 19 CFR Part 144.

Manufacture means to produce or manufacture in the United States.

Manufacturer means a person who produces or manufactures in the United States.

New uses of asbestos means commercial uses of asbestos not identified in § 763.165 the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989.

Person means any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof, or any municipality; any interstate body and any department, agency, or instrumentality of the Federal Government.

Process has the same meaning as in section 3 of the Act.

Processor has the same meaning as in section 3 of the Act.

Rollboard means an asbestos-containing product made of paper that is produced in a continuous sheet, is flexible, and is rolled to achieve a desired thickness. Asbestos rollboard consists of two sheets of asbestos paper laminated together. Major applications of this product include: office partitioning; garage paneling; linings for stoves and electric switch boxes; and fire-proofing agent for security boxes, safes, and files.

Specialty paper means an asbestos-containing product that is made of paper intended for use as filters for beverages or other fluids or as paper fill for cooling towers. Cooling tower fill consists of asbestos paper that is used as a cooling agent for liquids from industrial processes and air conditioning systems.

State has the same meaning as in section 3 of the Act.

Stock-on-hand means the products which are in the possession, direction, or control of a person and are intended for distribution in commerce.

United States has the same meaning as in section 3 of the Act.

3. By revising § 763.165 to read as follows:

§ 763.165 Manufacture and importation prohibitions.

(a) After August 27, 1990, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: flooring felt and new uses of asbestos.

(b) After August 26, 1996, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: commercial paper, corrugated paper, rollboard, and specialty paper.

(c) The import prohibitions of this subpart do not prohibit:

(1) The import into the customs territory of the United States of products imported solely for shipment outside the customs territory of the United States, unless further repackaging or processing of the product is performed in the United States; or

(2) Activities involving purchases or acquisitions of small quantities of products made outside the customs territory of the United States for personal use in the United States.

4. By revising § 763.167 to read as follows:

§ 763.167 Processing prohibitions.

(a) After August 27, 1990, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 26, 1996, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(b).

5. By revising § 763.169 to read as follows:

§ 763.169 Distribution in commerce prohibitions.

(a) After August 25, 1992, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1997, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(b).

(c) A manufacturer, importer, processor, or any other person who is subject to a ban on distribution in commerce in paragraph (a) or (b) of this section must, within 6 months of the effective date of the ban of a specific asbestos-containing product from distribution in commerce, dispose of all their remaining stock-on-hand of that product, by means that are in compliance with applicable local, State, and Federal restrictions which are current at that time.

6. By revising § 763.171 to read as follows:

§ 763.171 Labeling requirements.

(a) After August 27, 1990, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(a) shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and

processors' stock-on-hand as of August 27, 1990.

(b) After August 25, 1995, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(b), shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 25, 1995.

(c) The label shall be placed directly on the visible exterior of the wrappings and packaging in which the product is placed for sale, shipment, or storage. If the product has more than one layer of external wrapping or packaging, the label must be attached to the innermost layer adjacent to the product. If the innermost layer of product wrapping or packaging does not have a visible exterior surface larger than 5 square inches, either a tag meeting the requirements of paragraph (d) of this section must be securely attached to the product's innermost layer of product wrapping or packaging, or a label must be attached to the next outer layer of product packaging or wrapping. Any products that are distributed in commerce to someone other than the end user, shipped, or stored without packaging or wrapping must be labeled or tagged directly on a visible exterior surface of the product as described in paragraph (d) of this section.

(d)(1) Labels must be either printed directly on product packaging or in the form of a sticker or tag made of plastic, paper, metal, or other durable substances. Labels must be attached in such a manner that they cannot be removed without defacing or destroying them. Product labels shall appear as in paragraph (d)(2) of this section and consist of block letters and numerals of color that contrasts with the background of the label or tag. Labels shall be sufficiently durable to equal or exceed the life, including storage and disposal, of the product packaging or wrapping. The size of the label or tag must be at least 15.25 cm (6 inches) on each side. If the product packaging is too small to accommodate a label of this size, the label may be reduced in size proportionately to the size of the product packaging or wrapping down to a minimum 2.5 cm (1 inch) on each side if the product wrapping or packaging has a visible exterior surface larger than 5 square inches.

(2) Products subject to this subpart shall be labeled in English as follows:

NOTICE

This product contains *ASBESTOS.* The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are *violations of Federal law.*

(e) No one may intentionally remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, except when the product is used or disposed of.

7. In § 763.173 by revising the section heading and paragraphs (a), (b), (c), and (g) to read as follows:

§ 763.173 Exemptions.

(a) Persons who are subject to the prohibitions imposed by §§ 763.165, 763.167, or 763.169 may file an application for an exemption. Persons whose exemption applications are approved by the Agency may manufacture, import, process, or distribute in commerce the banned product as specified in the Agency's approval of the application. No applicant for an exemption may continue the banned activity that is the subject of an exemption application after the effective date of the ban unless the Agency has granted the exemption or the applicant receives an extension under paragraph (b)(4) or (5) of this section.

(b) Application filing dates. (1) Applications for products affected by the prohibitions under §§763.165(a) and 763.167(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(2) Applications for products affected by the ban under §763.169(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(3) Applications for products affected by the ban under §§763.165(b) and 763.167(b) may not be submitted prior to February 27, 1995. Complete applications received after that date, but before August 25, 1995, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1995, will be either granted or denied by EPA as soon as is feasible.

(4) Applications for products affected by the ban under § 763.169(b) may not be submitted prior to February 26, 1996. Complete applications received after that date, but before August 26, 1996, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1996, will be either granted or denied by EPA as soon as is feasible.

(5) The Agency will consider an application for an exemption from a ban under § 763.169 for a product at the same time the applicant submits an application for an exemption from a ban under § 763.165 or § 763.167 for that product. EPA will grant an exemption at that time from a ban under § 763.169 if the Agency determines it appropriate to do so.

(6) If the Agency denies an application less than 30 days before the effective date of a ban for a product, the applicant can continue the activity for 30 days after receipt of the denial from the Agency.

(7) If the Agency fails to meet the deadlines stated in paragraphs (b)(3) and (b)(4) of this section for granting or denying a complete application in instances in which the deadline is before the effective date of the ban to which the application applies, the applicant will be granted an extension of 1 year from the Agency's deadline date. During this extension period the applicant may continue the activity that is the subject of the exemption application. The Agency will either grant or deny the application during the extension period. The extension period will terminate either on the date the Agency grants the application or 30 days after the applicant receives the Agency's denial of the application. However, no extension will be granted if the Agency is scheduled to grant or deny an application at some date after the effective date of the ban, pursuant to the deadlines stated in paragraphs (b)(3) and (b)(4) of this section.

(c) Where to file. All applications must be submitted to the following location: TSCA Docket Receipts Office (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Rm E–G99, 401 M St., SW., Washington, DC 20460, ATTENTION: Asbestos Exemption. For information regarding the submission of exemptions containing information claimed as confidential business information (CBI), see § 763.179.

* * * * *

(g) If the application does not include all of the information required in paragraph (d) of this section, the Agency will return it to the applicant as incomplete and any resubmission of the application will be considered a new application for purposes of the availability of any extension period. If

the application is substantially inadequate to allow the Agency to make a reasoned judgment on any of the information required in paragraph (d) of this section and the Agency chooses to request additional information from the applicant, the Agency may also determine that an extension period provided for in paragraph (b)(5) of this section is unavailable to the applicant.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AC07

Conferring Designated Port Status on Boston, MA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service confers designated port status on Boston, Massachusetts pursuant to section 9(f) of the Endangered Species Act of 1973. The direct importation and exportation of fish and wildlife, including parts and products, will now be permitted through Boston, Massachusetts. Under this final rule, Boston, Massachusetts will be added to the list of Customs ports of entry designated for the importation and exportation of wildlife. A public hearing on this proposal was held on December 8, 1993, in the Massachusetts Port Authority, Maritime Department, Fish Pier East II, Northern Avenue, Boston, Massachusetts 02210.

EFFECTIVE DATE: This rule is effective on July 28, 1994.

FOR FURTHER INFORMATION CONTACT: Special Agent A. Eugene Hester, Assistant Regional Director, U.S. Fish and Wildlife Service, P.O. Box 779, Hadley, Massachusetts, ((413) 253–8340).

SUPPLEMENTARY INFORMATION:

Background

Designated ports are the cornerstone of the process by which the Fish and Wildlife Service (Service) regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish or wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

On January 4, 1974, the Service promulgated a final rule designating eight Customs ports of entry for the importation and exportation of wildlife (39 FR 1158). A ninth port was added on September 1, 1981, when a final rule was published naming Dallas/Fort Worth, Texas a designated port (46 FR 43834). On March 15, 1990, a final rule was published naming Portland, Oregon as the tenth designated port of entry (55 FR 9730). An eleventh port was added on May 20, 1992, when the final rule was published naming Baltimore, Maryland as a designated port (57 FR 21355).

A proposed rule, including a notice of public hearing was published in the **Federal Register** of November 12, 1993 (58 FR 59978).

Need for Final Rulemaking

Containerized air and ocean cargo has become the paramount means by which both live wildlife and wildlife products are transported into and out of the United States. The use of containerized cargo by the airline and shipping industries has compounded the problems encountered by the Service and by wildlife importers and exporters in the Boston area. In many instances, foreign suppliers will containerize entire shipments and route them directly to Boston. If, upon arrival, the shipment contains any wildlife, those items must be shipped under Customs bond to a designated port for clearance. In most cases, this has involved shipping wildlife products to New York, New York, the nearest designated port, but reshipment has been both time consuming and expensive. To alleviate this problem, Boston importers and exporters have attempted to direct entire shipments, even though they contain only a small number of wildlife items, to a designated port prior to their arrival at Boston. This method of shipment meets the current regulatory requirements of the Service; however, it is again time consuming and entails additional expense. It is also contrary to the increasing tendency of foreign suppliers to ship consignments directly to regional ports such as Boston. In addition, time is a key element when transporting live wildlife and perishable wildlife products. Without designated port status, business in Boston cannot import and export wildlife products directly, and consequently may be unable to compete economically with merchants in other international trading centers located in designated ports. With airborne and maritime shipments into and out of Boston steadily increasing, the Service has concluded that the port should be designated for wildlife imports and exports. Conferring this status on Boston serves not only the interests of business in the region, but will also facilitate the mission of the Service in two ways. First, clearance of wildlife shipments in Boston will relieve inspectors at the port of New York who are now handling cargo for both ports. Second, it will eliminate the need for the administrative processing of permits by the Regional office that are issued to Boston area importers who are able to qualify for those permits on the basis of demonstrated economic hardship. Also, Boston's growth as a major east coast port of entry combined with modernization of shipping routes, make it an essential commercial link to the New England area.

Results of Public Hearing and Written Comments

Section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f), requires that the public be given an opportunity to comment at a hearing prior to the Secretary of the Interior conferring designated port status on any port. Accordingly, the Service held a public hearing on November 8, 1993, from 9 a.m. to 12 Noon. The hearing was held in the Massachusetts Port Authority, Maritime Department, Fish Pier East II, Northern Avenue, Boston, Massachusetts 02210. Seven persons presented oral and/or written testimony at the hearing, representing Maritime Department at the Massachusetts Port Authority, Advance Brokers, Boston Customs Broker and Freight Forwarders Association, Tower International, International Cargo Systems, and Liberty International. Most of the witnesses stated that shipping to New York or another designated port for inspections when small numbers of wildlife items are involved is detrimental to the economic well being of their clients. They felt that designation would allow their companies and their customers to become more competitive on both time and cost. The Boston Customs Brokers and Freight Forwarders Association had reviewed port inspection statistics and felt that the volume of shipments in Boston justifies designated port status as they are larger than some currently designated ports. International Cargo Systems, is a freight forwarder whose primary business involves seafood, is anticipating a 30 percent increase in business if Boston becomes a designated port. Liberty International complained