

have broad investigative or oversight authority, and the Service has implied that the amended rules are an attempt by the Commission to expand its authority and oversee operations in a manner not contemplated by the statute.

Second, the Postal Service contends that Congress does not want it to have to make information of this nature public "indiscriminately." The Act includes a special test applicable to Freedom of Information Act (FOIA) requests. The Postal Service does not have to provide "information of a commercial nature" which "under good business practice would not be publicly disclosed" in response to a FOIA request. 39 U.S.C. 410(c)(2). The Postal Service correctly observes that private businesses in the United States seldom disclose detailed information about their operating costs.

The Postal Service argues that because it is standard Commission practice to post public documents on its Web site, including data received as periodic reports, the Service should not provide such detailed information to the Commission. The Postal Service seems to concede that the Commission might have use for these materials, and for explanations of changes since the most recent rate case, but it contends that allowing internet access to this information would be contrary to Congress' vision of the Postal Service following good business practices.

The Current Commission Position

The Commission has not found either Postal Service argument persuasive, as explained fully in Order No. 1386. The Commission has concluded that its responsibility under section 3603 to establish rules to carry out its functions under the Act does provide the authority to assure that sufficient information is available in a timely fashion to facilitate meaningful public participation and to enable the Commission to provide informed recommendations in response to Postal Service rate and classification requests.

The Commission also has concluded that information required by its rules is not equivalent to a citizen's FOIA request. While citizens can file a FOIA request seeking information on any topic without any showing of need, the Commission's rules focus on information needed to carry out its statutory functions. The Act requires public participation in all Commission proceedings, and thus contemplates public access to relevant data. In past rate cases, the Postal Service has made all of the contested information available without suggesting that there

was any need to restrict public access to it.

The Commission always has recognized that when the Postal Service or any other participant provides items for use in a Commission proceeding that it shows to be trade secrets or other sensitive business information, and that disclosure of this information could result in commercial harm, such items should be made subject to appropriate protective conditions. Similarly, the Commission has been willing to accommodate in its periodic reporting rules, Postal Service requests that specific information be protected as commercially sensitive, after balancing the asserted risk of harm against the needs of the public to remain informed. See Docket No. RM89-3, Order No. 839, at 7-8 (deferring filing dates for billing determinants of competitive products).

Comments

The Postal Service has indicated its interest in further exploring the possibility of ways to refine procedures for controlling dissemination of information provided as periodic reports. This might be accomplished through additions to rule 102. Those responding to this notice are invited to advise on the most important policies and principles that should guide the Commission in evaluating potential action in regard to this situation. Commenters also may suggest procedures for obtaining a desired outcome or specific proposals for changes to Commission rules.

Ordering Paragraphs

It is ordered:

1. Interested persons are invited to submit comments on the Commission's Advance Notice of Proposed Rulemaking on or before December 6, 2004. Any reply comments should be submitted by January 6, 2005.

2. The Secretary shall cause this Advance Notice of Proposed Rulemaking to be published in the **Federal Register**.

Attachment

Materials Required by Rule 102 That the Postal Service Has Not Provided

1. The In-Office Cost System (IOCS) data for FY 2003 used to distribute attributable mail processing and in-office carrier costs to classes of mail in the Cost and Revenue Analysis (CRA) report.

2. The City Carrier Cost System (CCCS) data for FY 2003 used to distribute attributable city carrier costs to classes of mail in the CRA.

3. The Rural Carrier Cost System (RCCS) data for 2003 used to distribute

attributable rural carrier costs to classes of mail in the CRA.

4. The National Mail Count data for 2003. These data are used to determine attributable rural carrier costs.

5. MODS input data used to estimate mail processing cost variabilities by activity.

6. SAS computer programs showing how FY 2003 attributable mail processing costs were estimated and distributed to mail classes in the CRA.

7. Revenue, Pieces, and Weight reports by rate category for the first three quarters of FY 2004.

By the Commission.

Issued: November 8, 2004.

Steven W. Williams,

Secretary.

[FR Doc. 04-25298 Filed 11-12-04; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 720

[OPPT-2003-0058; FRL-7342-2]

RIN 2070-AJ04

TSCA Inventory Nomenclature for Enzymes and Proteins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This ANPRM alerts interested parties that EPA is considering new procedures and regulations for naming enzymes and proteins when listing such substances on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory (Inventory). More specifically, this ANPRM outlines four identification elements that EPA currently believes are appropriate for use in developing unique TSCA Inventory nomenclature for proteinaceous enzymes. This ANPRM also solicits public comment on several specific questions relating to this initiative.

DATES: Comments must be received on or before December 15, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OPPT-2003-0058, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *Agency Website:* <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and

comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* oppt.ncic@epa.gov.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand delivery/courier:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, Attention: Docket ID number OPPT-2003-0058. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPPT-2003-0058. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.epa.gov/edocket/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal**

Register of May 31, 2002 (67 FR 38102) (FRL-7181-7).

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566-0280.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use chemical substances which are subject to TSCA jurisdiction. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS 325), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.
- Petroleum and coal product industries (NAICS 324), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 720.22. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 720 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

This ANPRM is alerting stakeholders that EPA is considering changing procedures and requirements for naming enzymes and proteins for the purpose of listing those substances on the TSCA Inventory. Specifically, EPA has identified four elements that it currently believes are appropriate for use in creating unique and unambiguous identities for proteinaceous enzymes on the TSCA Inventory. Through this ANPRM, EPA is also soliciting public comment on the scientific appropriateness and technical feasibility of using the identification elements summarized herein.

B. What is the Agency's Authority for Taking this Action?

Section 8(b) of TSCA requires EPA to "compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States" (the TSCA Inventory). In order to fulfill this requirement, EPA must continuously update and keep current various types of information, including, but not limited to, the information used to identify any new chemical substance that is reported to be manufactured or processed in the United States. EPA also makes corrections, when necessary, of previously reported information on the TSCA Inventory.

C. TSCA Inventory Background

As stated above, TSCA section 8(b) requires EPA to compile, keep current, and publish a list of chemical substances which are manufactured (including imported) or processed in the United States. This listing, known as the "TSCA Inventory," informs the public of which chemical substances are being manufactured, imported, or processed

in the United States for commercial purposes. For the TSCA Inventory to accurately inform the public, it must be continuously and accurately updated as new information becomes available. The updating process includes adding to the Inventory the identities of new chemical substances that are being introduced into U.S. commerce and corrections when necessary of the identities of previously reported substances. The Agency has developed policies regarding the identification of chemical substances for the purpose of assigning a unique description of each substance on the TSCA Inventory. Published nomenclature guidance is currently available for polymeric substances, substances containing varying carbon chain lengths, complex reaction products, mixtures, and chemical substances of unknown or variable compositions. Approximately 81,500 chemical substances, as defined in section 3 of TSCA, are on the TSCA Inventory at this time.

In its implementation of TSCA, EPA defines chemical substances as either "existing" chemicals or "new" chemicals. The only way to determine if a substance is new or existing is by consulting the TSCA Inventory. Any substance that is listed on the TSCA Inventory is an existing chemical, otherwise it is a new chemical. If a substance is a new chemical, generally it can be manufactured or imported for non-exempt commercial purposes only when a Premanufacture Notice (PMN) is submitted at least 90 days before the manufacture or import of such substance begins (see section 5(a) of TSCA and 40 CFR part 720). During this 90-day review period EPA will evaluate the proposed manufacture, processing, use, distribution in commerce, and disposal of the substance, and if necessary, prohibit or limit any activity that may result in an unreasonable risk of injury to human health or the environment. A new chemical substance also can be manufactured or imported if it is subject to an exemption from full premanufacture reporting, for example a Low Volume Exemption or a Test Marketing Exemption (see 40 CFR part 723 and 40 CFR 720.38). In addition a new chemical substance is excluded from premanufacture reporting under certain conditions such as manufacture or import of small quantities for research and development or if the substance does not meet the TSCA definition of chemical substance as defined in 40 CFR part 720.3(e) (see 40 CFR 720.30).

D. Inventory Listings of Enzymes

When EPA promulgated the TSCA Inventory Reporting Regulations of 1977 (42 FR 64572, December 23, 1977), the Agency did not provide specific guidance regarding how complex biological compounds should be identified. However, EPA did publish the TSCA Candidates List to provide examples of the types of substances that would be reportable for the Inventory. That list included enzymes. As a result, approximately 150 enzymes were reported and listed on the TSCA Inventory without specific agency guidance regarding how they should be unambiguously identified. The original Inventory listings for non-enzymatic proteins and other complex biological compounds are based on information originally reported to EPA that varies widely in the type and specificity of information included.

The enzymes currently on the TSCA Inventory are identified by a Chemical Abstract Services (CAS) Registry Number and Chemical Abstracts 9th Collective Index Name. The names assigned to these enzymes by EPA vary in the type and specificity of information included due to wide variation in the type and amount of information originally reported to EPA. For some enzymes, the name is broad, defining only the most generic catalytic activity of the enzyme (e.g., proteinase).

As a result of the existing broad and generic TSCA Inventory enzyme listings, it has been difficult for EPA to determine whether enzyme substances are new and distinct, or covered under existing listings. In most cases, newly developed enzymes appear to be subsumed under one of the current broad and generic TSCA Inventory enzyme listings, which means that, although they are newly developed, they appear to be existing chemicals. This, in turn, means that EPA is reviewing very few new enzymes under section 5 of TSCA, despite the ongoing innovation in this field as to the specificity and functions of commercially available enzymes. Under the existing nomenclature system, therefore, EPA may not be addressing all of the newly developed enzymes and considering the potential risks that may be associated with these substances under section 5 of TSCA. A more specific nomenclature system would allow EPA to assess newly developed enzymes and take actions needed to prevent potential unreasonable risks to health and the environment that may be associated with these substances under section 5 of TSCA before they occur.

In addition, the broad TSCA Inventory enzyme listings, the lack of clear reporting guidelines, and the absence of policy concerning what structural variation or changes trigger reporting, also make it difficult for manufacturers to determine whether enzyme substances are new or covered under existing listings. Recognizing that enzyme listings on the Inventory were broad, EPA developed an interim policy that manufacturers of enzymes should contact EPA regarding submission of a *bona fide* intent to manufacture before producing any enzyme. EPA also routinely advised submitters of a Notice of Bona Fide Intent to Manufacture that the Agency may modify the method of listing enzymes on the Inventory and that this could require reporting at a higher level of detail than is required at present. This case-by-case determination creates uncertainty and an unnecessary burden for both the Agency and PMN submitters. More specific guidelines for identifying enzymes on the TSCA Inventory would make the process of deciding whether an enzyme is new or existing more predictable and transparent.

In order to more effectively meet its statutory obligation under TSCA to prevent unreasonable risk to human health and the environment and to maintain a complete and accurate list of all chemical substances manufactured, imported, or processed, EPA believes it is necessary to refine its policies with regard to enzyme identification

reporting requirements. The timely development of identification reporting guidelines for enzymes is essential, given the increasing use of enzymes in commerce, the wide variety of enzymes that are being produced, and the development of new and different manufacturing techniques.

III. Identification Elements

A. Description of Identification Elements

EPA has identified four elements that it currently believes are appropriate to use in combination to create unambiguous listings for proteinaceous enzymes on the TSCA Inventory:

1. Function.
2. Source.
3. Processing.
4. Amino acid sequence.

EPA believes that no individual element provides sufficient identification information by itself. Rather, EPA anticipates that all four elements will provide useful and necessary information for the unambiguous identification of proteinaceous enzymes and that some combination of these and/or additional identification elements may be appropriate for other enzymes and proteins.

The function of an enzyme refers to its catalytic activity. The internationally accepted nomenclature conventions of the Nomenclature Committee of the International Union of Biochemistry and Molecular Biology (NC-IUBMB) describe and differentiate enzymes based on

catalytic activity. Function, or catalytic activity, could be incorporated as an element of chemical identity of an enzyme on the TSCA Inventory using this standard enzyme nomenclature.

Source refers to the organism from which the gene encoding the enzyme was derived and the organism or manufacturing platform (e.g., tissue culture) in which the enzyme is produced. The two sources may be the same or differ when the enzyme gene from one organism is introduced through genetic engineering into a different organism or through the use of a synthetic sequence.

Processing refers to procedures used to isolate the enzyme from the production organism or manufacturing platform, procedures used to purify it, or any chemical reactions to which the enzyme is subjected to produce the final product.

The amino acid sequence of an enzyme or protein is known as its primary structure. The amino acid sequence is a systematic representation of the linear chain of amino acids connected via amide bonds that produce a polypeptide.

An example of enzyme nomenclature using these identification elements would be neopullulanase (*Enzyme Commission* 3.2.1.135), produced by *Bacillus stearothermophilus*, treated with acetic acid, with amino acid sequence:

BILLING CODE 6560-50-S

Position

1 M R K E A I Y H R P A D N F A Y A Y D S E T L H L R L R T K
 31 K D D I D R V E L L H G D P Y D W Q N G A W Q F Q M M P M R
 61 K T G S D E L F D Y W F A E V K P P Y R R L R Y G F V L Y S
 91 G E E K L V Y T E K G F Y F E V P T D D T A Y Y F C F P F L
 121 H R V D L F E A P D W V K D T V W Y Q I F P E R F A N G N P
 151 S I S P E G S R P W G S E D P T P T S F F G G D L Q G I I D
 181 H L D Y L V D L G I T G I Y L T P I F R S P S N H K Y D T A
 211 D Y F E V D P H F G D K E T L K T L I D R C H E K G I R V M
 241 L D A V F N H C G Y E F A P F Q D V W K N G E S S K Y K D W
 271 F H I H E F P L Q T E P R P N Y D T F R F V P Q M P K L N T
 301 A N P E V K R Y L L D V A T Y W I R E F D I D G W R L D V A
 331 N E I D H E F W R E F R Q E V K A L K P D V Y I L G E I W H
 361 D A M P W L R G D Q F D A V M N Y P F T D G V L R F F A K E
 391 E I S A R Q F A N Q M M H V L H S Y P N N V N E A A F N L L
 421 G S H D T S R I L T V C G G D I R K V K L L F L F Q L T F T
 451 G S P C I Y Y G D E I G M T G G N D P E C R K C M V W D P M
 481 Q Q N K E L H Q H V K Q L I A L R K Q Y R S L R R G E I S F
 511 L H A D D E M N Y L I Y K K T D G D E T V L V I I N R S D Q
 541 K A D I P I P L D A R G T W L V N L L T G E R F A A E A E T
 571 L C T S L P P Y G F V L Y A I E H W

BILLING CODE 6560-50-C

This is one version of enzyme nomenclature using these four identification elements. Actual nomenclature would vary widely depending on use of all four elements, nomenclature used for each element, and the level of detail ultimately used for each element.

B. Issues for Public Comment

EPA is soliciting comments on all aspects of the discussion presented in this document regarding nomenclature issues for enzymes and proteins, for purposes of listing these chemical substances on the TSCA Inventory. EPA is particularly interested in receiving comments on the following topics.

EPA has identified four elements (listed in Unit III.A.), that it currently believes are appropriate to derive unique nomenclature for the purpose of unambiguously listing proteinaceous enzymes on the TSCA Inventory. EPA is seeking comments on the scientific appropriateness of using these identification elements, the level of detail necessary to create specific, unambiguous TSCA Inventory listings, the technical feasibility of providing such information, and any additional or alternative elements that could be used to identify proteinaceous enzymes on the TSCA Inventory.

Are the identification elements proposed for proteinaceous enzymes scientifically appropriate and sufficiently comprehensive for non-proteinaceous enzymes and non-enzymatic proteins? Are there additional or alternative identification elements that should be used in creating TSCA Inventory listings for non-proteinaceous enzymes and non-enzymatic proteins? If so, what are these alternatives, and why is it believed that these alternatives are preferable.

IV. Do Any Statutory or Executive Order Reviews Apply to this Action?

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this ANPRM is a "significant regulatory action" under section 3(f) of the Executive order. The Agency therefore submitted this document to OMB for the 10-day review period afforded under this Executive order. Any changes made in response to OMB comments during that review have been documented in the docket as required by the Executive order.

Since this ANPRM does not impose or propose any requirements, and instead seeks comments and suggestions for the Agency to consider in developing a subsequent notice of proposed

rulemaking, the various other review requirements that apply when an agency imposes requirements do not apply to this action.

As part of your comments on this ANPRM you may include any comments or information that you have regarding these requirements. In particular, any comments or information that would help the Agency to assess the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note); or to consider environmental health or safety effects on children pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency will consider such comments during the development of any subsequent notice of proposed rulemaking as it takes appropriate steps to address any applicable requirements.

List of Subjects in 40 CFR Part 720

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 1, 2004.

Michael O. Leavitt,
Administrator.

[FR Doc. 04-25307 Filed 11-12-04; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[WT Docket No. 04-344; RM-10821; FCC
04-207]

Maritime Communications

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission initiates a rulemaking proceeding to identify the electromagnetic spectrum that should be used for maritime Automatic Identification Systems (AIS) in the United States and its territorial waters. AIS is an important tool for enhancing maritime safety and homeland security, and the Commission is concerned that recent developments may have created uncertainty in the maritime community regarding the very high frequency (VHF) channels to be used for AIS, and that this in turn could impede efforts to expedite the broad deployment of AIS. The Commission has received conflicting petitions and other pleadings on this subject from the National Telecommunications and Information Administration (NTIA), which is representing the interests of the Federal Government, including the United States Coast Guard (USCG or Coast Guard) and the Department of Transportation (including the Saint Lawrence Seaway Development Corporation) in this matter, and from MariTEL, Inc. (MariTEL), the licensee of all nine of the maritime VHF Public Coast (VPC) station service areas. Based on these petitions and pleadings, as well as responsive comments from other stakeholders in the maritime community, the Commission proposes to designate VHF maritime Channels 87B and 88B for exclusive AIS use domestically, in keeping with the international allocation of those channels for AIS, because the Commission tentatively concludes that the use of those channels will best secure to the United States the maritime safety and homeland security benefits of AIS. In addition, the Commission tentatively concludes that it should deny MariTEL's pending petitions that conflict with this proposal.

DATES: Submit comments on or before December 30, 2004, and reply comments are due on or before January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking ("NPRM") in WT Docket No. 04-344, FCC 04-207, adopted on August 26, 2004, and released on October 15, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at *bmillin@fcc.gov*.

1. Section 80.371(c)(3) of the Commission's Rules, 47 CFR 80.371(c)(3), directs the licensee of VHF Public Coast Service Areas (VPCSA) 1-9, *i.e.*, MariTEL, and the Coast Guard to negotiate in good faith to select two narrowband offset channel pairs to be dedicated to AIS use, and specifies that if an agreement cannot be reached, the Coast Guard may petition the Commission to select the channel pairs. Although MariTEL and the Coast Guard did in fact reach an agreement to designate frequencies 157.375 MHz and 161.975 MHz for AIS and executed a Memorandum of Agreement (MOA) to that effect, MariTEL later exercised its right to terminate the MOA. Following termination of the MOA, NTIA petitioned the Commission on behalf of the Coast Guard to select Channels 87B and 88B for AIS and to work with NTIA to reallocate the channels for exclusive AIS use nationwide on a shared Federal Government/non-Federal Government basis. After reviewing various proposals submitted by MariTEL and NTIA, including their technical submissions, and the comments filed in response to a number of public notices relating to this matter, the Commission tentatively agrees with NTIA and the Coast Guard, as well as the vast majority of commenters, that the public interest would be served by designating Channels 87B and 88B for exclusive AIS use in the nine maritime VPCSA. The

Commission therefore grants the petition for rulemaking filed by NTIA on October 24, 2003, RM-10821 to the extent that it seeks initiation of a rulemaking proceeding to consider this issue, denies the Emergency Petition for Declaratory Ruling filed by MariTEL on October 15, 2003, and adopts the instant *Notice of Proposed Rule Making* in which it proposes to designate Channels 87B and 88B for exclusive AIS use in the nine maritime VPCSA.

2. Designating Channels 87B and 88B for AIS in the United States and its territorial waters would permit seamless worldwide AIS operations. If the United States were to designate channels other than 87B and 88B for AIS, vessels entering United States waters would have to switch to those alternative channels, instead of being able to use the same channels that were employed in international waters. Commenters indicate that requiring such switching would increase the risk of vessel collisions. If ships must switch channels as they approach and transit an AIS "fence" between international and United States waters, there is a risk that they will disappear temporarily from the screens of vessel traffic management systems as well as from the screens of AIS receivers located on the bridges of vessels.

3. Further, domestic use of Channels 87B and 88B for AIS would facilitate the speedy and efficient deployment of AIS, allowing the United States to take full advantage of existing AIS standards and infrastructure. Mandating the use of other channels could prolong implementation schedules for future PAWSS installations and delay full implementation of AIS as a component of homeland security because of the need for additional technical analysis, possible design changes, and conceivably more extensive shore infrastructure to accommodate AIS channel shifting. In addition, AIS operations on Channels 87B and 88B already have been deployed in, for example, the Saint Lawrence Seaway. A switch to other channels on the United States side would not only necessitate a costly reconfiguration of the AIS network on the Seaway but, more importantly, would compromise the ability of the United States to coordinate with Canada in monitoring vessel traffic on the Seaway and in other areas, since Canada uses Channels 87B and 88B for AIS. In addition to implementation delays and coordination difficulties, the use of channels other than 87B and 88B would affect the United States adversely because it would cause the U.S. Government to expend considerably more time, money and resources to