

new cross-linked elastic fiber, CEF, is a manufactured olefin textile fiber with a cross-linked polymer network structure. Dow stated that CEF meets the broad definition of olefin fiber in the Textile Rules, 16 CFR 303.7(m), but differs from commercially available olefin fibers because of its elasticity and wide temperature tolerance, and thus is a good choice for easy-care stretch apparel applications.

Contending that the unique structure and characteristics of fibers made from CEF are inadequately described under existing generic names listed in the Textile Rules, Dow petitioned the Commission to establish a new generic subclass name and definition. After an initial analysis with the assistance of a textile expert, the Commission determined that Dow's proposed new fiber technically falls within rule 7(m)'s definition of "olefin."² The Commission further determined, however, that Dow's application for a new subclass name and definition merited further consideration. Accordingly, on May 17, 2002, the Commission announced that it had issued Dow the designation "DCC 0001" for temporary use in identifying CEF fiber pending a final determination on the merits of its application. The Commission staff further analyzed the application, and on May 24, 2002 (67 FR 36551), the Commission published a notice of proposed rulemaking ("NPR") detailing the technical aspects of Dow's fiber, and requesting public comment on Dow's application. On August 12, 2002, the comment period closed.

II. Description of the Fiber and Solicitation of Comments in the NPR

A. The Commission's Criteria for Granting a New Generic Fiber Subclass Name and Definition, and Related Issues

In the NPR, the Commission solicited comment on whether Dow's application

meets the Commission's criteria for granting applications for new generic fiber subclass names. Specifically, does the proposed subclass fiber: (1) Have the same general chemical composition as an established generic fiber category; (2) have distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure; and (3) do the distinctive feature(s) make the fiber suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited?³

Within the established 24 generic names for manufactured fibers, there are four cases where such generic name alternatives may be used: (1) Pursuant to rule 7(c), 16 CFR 303.7(c), within the generic category "polyester," the term "elasterell-p" may be used as an alternative generic description for a specifically defined subcategory of polyester fiber; (2) pursuant to rule 7(d), 16 CFR 303.7(d), within the generic category "rayon," the term "lyocell" may be used as an alternative generic description for a specifically defined subcategory of rayon fiber; (3) pursuant to rule 7(e), 16 CFR 303.7(e), within the generic category "acetate," the term "triacetate" may be used as an alternative generic description for a specifically defined subcategory of acetate fiber; and (4) pursuant to rule 7(j), 16 CFR 303.7(j), within the generic category "rubber," the term "lastrile" may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.

Although the Commission's NPR announced that Dow's fiber technically

falls within rule 7(m)'s definition of olefin, it noted that Dow's application may meet the Commission's standard for a subclass name. Alternatively, the Commission stated that CEF may fit within the current definition of olefin in rule 7(m), with or without need for clarification. Therefore, the Commission requested public comment on whether to: (1) Broaden rule 7(m)'s definition of olefin to better describe the allegedly unique molecular structure and physical characteristics of CEF and any similar fibers (without creating a new subclass for CEF); (2) amend rule 7(m)'s definition of olefin by creating a separate subclass name and definition for CEF and other similar qualifying fibers within the olefin category; or (3) deny Dow's application because CEF fiber fits within rule 7(m)'s definition of olefin without need for any change.

B. The NPR

1. Fiber Description and Proposed Subclass Name and Definition

The NPR provided a detailed description, taken from Dow's application, of CEF's chemical composition and physical and chemical properties.⁴ As a result of CEF's fiber structure, Dow maintained that CEF has the following distinctive properties that would be significant to consumers: (1) Stretch and recovery power that is far superior to that of any olefin fiber; (2) shape retention at temperatures in excess of 170° C, which enables CEF to survive rigorous manufacturing and consumer care processes; and (3) chemical resistance to solvents that typically dissolve conventional olefins. Dow asserted that olefin, widely recognized as a dependable carpet fiber that has no stretch or elastic recovery and poor high temperature stability, is an inappropriate categorization for the elastic olefin fiber, CEF, which is targeted for apparel applications. Dow stated that CEF will offer consumers a wider choice in garments containing stretch fabric, and contended that it would be confusing to consumers if CEF is called simply "olefin."

Dow, therefore, petitioned the Commission to establish the generic name "lastol" as an alternative to, and a subclass of, "olefin." In addition, Dow proposed that the Commission add the following sentence to the current definition of olefin in rule 7(m) to define CEF and similar fibers as a subclass of olefin:

⁴ 67 FR 36551, at 36552–36554 (May 24, 2002). For brevity's sake, the Commission is providing a simplified description of the fiber in this notice, and refers those who wish to see detailed technical information about the fiber to the NPR.

² Rule 7(m) defines "olefin" as "[a] manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of ethylene, propylene, or other olefin units, except amorphous (noncrystalline) polyolefins qualifying under paragraph (j)(1) of this section." 16 CFR 303.7(m). Rule 7(j)(1) defines "rubber," in part, as "[a] manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories: (1) [a] manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polyisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (noncrystalline) polyolefins." 16 CFR 303.7(j)(1). Dow's petition stated that CEF is not a rubber because CEF fibers have a low but significant level of crystallinity, whereas rubber fibers are not crystalline. In addition, CEF exhibits much higher tensile set (lower elastic recovery) than rubber when extended to greater than 100% elongation.

³ The criteria for establishing a new generic subcategory are different from the criteria to establish a new generic category. The Commission's criteria for granting applications for new generic names are as follows: (1) The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public; (2) the fiber must be in active commercial use or such use must be immediately foreseen; and (3) the granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies. The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of these criteria in consideration of any future applications for generic names, and in a systematic review of any generic names previously granted that no longer meet these criteria. The Commission announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed them on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, on Jan. 6, 1998, 63 FR 447 and 63 FR 449, and on Nov. 17, 2000, 65 FR 69486, on Feb. 15, 2002, 67 FR 7104, and on May 24, 2002, 67 FR 36551.