

Subsector or industry code	Exceptions and/or limitations
212231 Lead Ore and Zinc Ore Mining	
212234 Copper Ore and Nickel Ore Mining	
212299 Other Metal Ore Mining	
221111 Hydroelectric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221112 Fossil Fuel Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221113 Nuclear Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221119 Other Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221121 Electric Bulk Power Transmission and Control	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221122 Electric Power Distribution	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221330 Steam and Air Conditioning Supply	Limited to facilities engaged in providing combinations of electric, gas, and other services, not elsewhere classified (N.E.C.) (previously classified under SIC 4939, Combination Utility Services Not Elsewhere Classified.)
424690 Other Chemical and Allied Products Merchant Wholesalers	
424710 Petroleum Bulk Stations and Terminals	
425110 Business to Business Electronic Markets	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
425120 Wholesale Trade Agents and Brokers	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
562112 Hazardous Waste Collection	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC);
562211 Hazardous Waste Treatment and Disposal	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562212 Solid Waste Landfill	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562213 Solid Waste Combustors and Incinerators	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562219 Other Nonhazardous Waste Treatment and Disposal	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562920 Materials Recovery Facilities	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>

[FR Doc. E8-4387 Filed 3-5-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 761**

[EPA-HQ-RCRA-2008-0123; FRL-8538-6]

RIN 2050-AG42

Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, LLC**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, and distribution in commerce of polychlorinated biphenyls (PCBs). For purposes of TSCA, "manufacture" is

defined to include import into the Customs Territory of the United States (U.S.). TSCA section 6(e)(3)(B) gives EPA the authority to grant petitions to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. On November 14, 2006, Veolia ES Technical Solutions, LLC, (Veolia) submitted a petition to EPA to import up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. In this document, EPA is proposing to grant Veolia's petition and soliciting comment on this proposed decision.

DATES: Comments must be received on or before April 21, 2008.

If a hearing is requested on or before April 7, 2008, an informal hearing will be held at a location and on a date to be announced in a future **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-

RCRA-2008-0123 by one of the following methods:

- **www.regulations.gov:** Follow the on-line instructions for submitting comments.
- **E-mail:** Comments may be sent by electronic mail to: rcra-docket@epa.gov, Attention Docket ID No. EPA-HQ-RCRA-2008-0123.
- **Fax:** Comments may be faxed to 202-566-9744, Attention Docket ID No. EPA-HQ-RCRA-2008-0123.
- **Mail:** Comments may be sent to Environmental Protection Agency, EPA Docket Center (EPA/DC), Resource Conservation and Recovery Act (RCRA) Docket, 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-RCRA-2008-0123. Please include a total of two copies.
- **Hand Delivery:** Comments may be hand delivered to the Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID

No. EPA-HQ-RCRA-2008-0123. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2008-0123. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, 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 www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, 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 www.regulations.gov, your e-mail address will be captured automatically 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 comments. 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 the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 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 telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is 202-566-0270. Copies cost \$0.15/page.

FOR FURTHER INFORMATION CONTACT: William Noggle, Office of Solid Waste, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8769; e-mail address: noggle.william@epa.gov. Mail inquiries may be directed to the Office of Solid Waste (OSW), (5304W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action primarily applies to the petitioner, Veolia. However, you may be potentially affected by this action if you process, distribute in commerce, or dispose of PCB waste generated by others, i.e., you are an EPA-approved PCB waste handler. Potentially affected categories and entities include, but are not necessarily limited to:

Categories	NAICS codes	Examples of potentially affected entities
Waste Treatment and Disposal	5622	Facilities that manage PCB waste.
Materials Recovery Facilities	56292	Facilities that manage PCB waste.

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 section 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 40 CFR part 761. 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. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through www.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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.

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

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

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

- Explain your views as clearly as possible.

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

II. Background

A. What Action Is the Agency Proposing To Take?

In this notice of proposed rulemaking, the Agency is proposing to grant a petition submitted by Veolia ES Technical Solutions, LLC (Veolia) to import PCB waste for disposal. In the absence of an exemption, the import of PCBs is banned by section 6(e)(3) of TSCA. The petition, dated November 14, 2006, is for an exemption to import

up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. Veolia's facility is authorized by EPA under TSCA to dispose of PCBs.

B. What Is the Agency's Statutory Authority for Taking This Action?

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits most uses of PCBs after October 11, 1977, the manufacture (which includes import) of PCBs after January 1, 1979, and prohibits the processing and distribution in commerce of PCBs after July 1, 1979. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs, except for the distribution in commerce of PCBs that were sold for purposes other than resale before July 1, 1979. Section 6(e)(1) also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in section 6(e)(2) and (3).

Section 6(e)(3)(B) stipulates that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that:

(i) An unreasonable risk of injury to health or the environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl. (15 U.S.C. 2605(e)(3)(B)(i)-(ii)).

The Administrator may prescribe terms and conditions for an exemption and may grant an exemption for a period of not more than one year from the date the petition is granted. In addition, section 6(e)(4) requires that a rule under section 6(e)(3)(B) be promulgated in accordance with sections 6(c)(2), (3) and (4), which provide for a proposed rule, the opportunity for written comments and an informal public hearing, if requested, and a final rule.

EPA's procedures for rulemaking under section 6 of TSCA are found under 40 CFR Part 750. This part includes Subpart B—Interim Procedural Rules for Manufacturing Exemptions, which describes the required content for manufacturing exemption petitions and the procedures that EPA follows in rulemaking regarding these petitions. These rules are codified at 40 CFR 750.10 through 750.21.

III. Findings Necessary To Grant Petitions

A. No Unreasonable Risk Finding

Before granting an exemption petition, section 6(e)(3)(B)(i) of TSCA requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or to the environment in the United States. EPA expects a petitioner to demonstrate in its petition that the activity will not pose an unreasonable risk. (See 40 CFR 750.11.)

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or to the environment against the benefits to society from granting or denying each petition. See generally, 15 U.S.C. 2605(c)(1). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment.* In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors. A more complete discussion of these factors is provided in the preamble to the 1988 PCB proposed rule published in the **Federal Register** of August 24, 1988.

a. *Health effects.* EPA has determined that PCBs cause significant human health effects, including cancer, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs exhibit neurotoxicity, as well as reproductive and developmental toxicity. PCBs are readily absorbed through the skin and are absorbed at even faster rates when inhaled. Because PCBs are stored in animal fatty tissue, humans are also exposed to PCBs through ingestion of animal products.

b. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released into the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained. PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

c. *Risks.* Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs

may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize eventual risk. EPA has previously determined that some activities, including the disposal of PCBs in accordance with 40 CFR part 761, pose no unreasonable risks. Other activities, such as long-term storage of PCB waste, are generally considered by EPA to pose unreasonable risks.

2. *Benefits and costs.* The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. As discussed in section IV, EPA has taken benefits and costs into consideration when evaluating this exemption petition.

B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that "good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for [PCBs]." EPA expects a petitioner to demonstrate in its petition why this standard is met. (See 40 CFR 750.11.) EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner can demonstrate that time and effort have been expended to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what was done to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs.

To satisfy this finding for requests for an exemption to import PCBs for disposal, a petitioner must show why such activities should occur in the United States and what steps have been taken to develop a substitute. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with exemption petitions for traditional manufacture and distribution in commerce, the issue of the development of substitute chemicals seems to have little bearing on whether to grant a petition for exemption that would allow the import into the United States for disposal of PCB waste. However, because section 6(e)(3)(B) allows a petitioner to request an exemption from any of the prohibitions

listed in section 6(e)(3)(A), EPA believes that it is appropriate to apply the standard in a way that is relevant to the particular exemption requested. Therefore, EPA believes that to effectuate Congress' intent, the relevant "good faith" issue for an exemption request to import PCBs for disposal is whether the disposal of the waste could and/or should occur outside the United States. (Alternatively, one could read the standard to mean that efforts must have been made to develop substitutes for the PCBs that are in the waste to be imported for disposal, an interpretation that would nearly always be met.)

IV. Proposed Disposition of Pending Exemption Petition

A. Summary of the Petition

On November 14, 2006, Veolia petitioned EPA for a one-year exemption to import from Mexico approximately 20,000 tons of waste containing PCBs at concentrations of 50 or more parts per million (ppm). This material includes both solid and liquid PCB wastes, including electrical equipment (e.g., transformers, capacitors, switches and circuit breakers), dielectric fluids, used oils and solvents containing PCBs, debris (e.g., gloves, rags, small parts, packaging material), compacted empty drums, and contaminated soil. The PCB concentrations of the wastes are between 50 ppm and 500,000 ppm. The PCB waste is currently in temporary storage at customer facilities in Mexico, and would be collected and managed by Veolia's Mexican affiliate RIMSA prior to import. According to the petition, RIMSA operates the only authorized treatment plant and landfill disposal facility in Mexico, as well as eleven transfer stations.

Veolia would truck the PCB waste from the various RIMSA facilities in Mexico to Veolia's TSCA-approved facility in Port Arthur, Texas. The road distance from the Mexican-U.S. border to the Port Arthur facility is approximately 460 miles from either the Brownsville or Laredo entry point. RIMSA would place the waste containing PCBs in drums or other DOT- and EPA-approved containers for shipment. Handling and shipping would include blocking, bracing, overpacking, and inclusion of spill containment devices, as required by applicable transportation regulations. The trucks will meet all DOT hazardous materials transportation standards, including proper placarding and marking, as well as any applicable EPA requirements, e.g., § 761.40(b).

All imported PCB waste would be transported to, and disposed of, at the Veolia Treatment Complex and Incineration Facility, located at Highway 73, West of Taylors Bayou, in Port Arthur, Texas 77640. The incinerator holds a Resource Conservation and Recovery Act (RCRA) permit from the State of Texas for hazardous waste disposal and TSCA authorization from EPA for PCB disposal. USEPA ID #TXD000838896. The 150 million BTU/hr rotary kiln incinerator is 16 feet in diameter and 60 feet long. A secondary combustion chamber destroys volatilized organics. Under TSCA, it is authorized to burn solids, sludges, energetic liquids, lean water and containerized wastes at any PCB concentration. A minimum 99,999% Destruction Removal Efficiency (DRE) for PCBs is achieved in compliance with TSCA. The facility is permitted to handle up to 150,000 tons per year of RCRA and TSCA waste and auxiliary fuel with hourly constraints on individual feed devices, feed concentrations, and heat releases. In accordance with the incinerator's TSCA approval and RCRA Part B permit, all resulting residues from the process are disposed of in a RCRA Subtitle C landfill permitted to take such waste. The facility also contains an analytical laboratory to test incoming wastes.

1. Information Regarding No Unreasonable Risk Provided by the Petitioner

Veolia asserts in its petition that granting the petition would significantly decrease the probability of health and environmental harm and would benefit society by eliminating PCB-contaminated wastes from storage that could otherwise result in releases to the environment in North America.

Veolia argues that shipment of these PCBs to its Port Arthur TSCA-approved facility would provide the safest, most regulated type of PCB disposal, citing its compliance with DOT regulations and the shipping practices previously described. Veolia notes that EPA has previously concluded that the transportation of PCB waste in accordance with the DOT hazardous materials regulations for PCBs poses no unreasonable risks, citing EPA's statements in the 1996 PCB Import Rule (61 FR 11096, at 11097–11098). Veolia also cites EPA's reference in that rule to DOT statistics that indicated only one serious incident involving PCB transport between January 1, 1990 and November 15, 1994, in comparison to 16,074 incidents involving other hazardous materials during a similar timeframe, including 14 serious

incidents involving Class 7 radioactive materials (61 FR at 11098). Veolia states that, in preparation for its petition, it made inquiries at DOT and the American Trucking Association to determine whether more recent statistical data were available, and was advised that such statistical surveys have not been continued because PCBs are a Class 9 material and most research is now concentrated on higher risk classes.

Regarding disposal risk, Veolia notes that the Port Arthur incinerator has provided for the thermal treatment of considerable quantities of PCBs and hazardous wastes, destroying in 2003 approximately 21,000 tons of domestic PCB waste, about 35% of the total hazardous wastes incinerated at the facility. Since Veolia's TSCA disposal authorization was granted in 1992, Veolia maintains it has a very good compliance record. Veolia points to its facility managers' "open lines of communications" with EPA and the Texas Commission on Environmental Quality (TCEQ) and their quick and diligent work to resolve any issues that may arise. Veolia references EPA's prior determination that the disposal of PCBs in accordance with the TSCA regulations in 40 CFR part 761 poses no unreasonable risk, citing the PCB Import Rule (61 FR at 11098) and referencing a January 31, 2003, EPA final rule granting a Defense Logistics Agency import petition (68 FR 4934). Veolia notes that the Port Arthur TSCA-approved incinerator meets or exceeds all protective standards in 40 CFR part 761. Veolia notes further that when the import of PCB waste was allowed under the PCB Import Rule [1996–1997], it disposed of a significant volume of PCB waste imported from Mexico at its Port Arthur facility, and that it complied with all TSCA PCB requirements during that process.

In terms of benefits, Veolia states: "The benefits of disposing of PCBs that are in storage in Mexico are substantial. Continued indefinite storage and lack of disposal capacity in Mexico increase the risk of exposure to RIMSA personnel, to people living in and around the customer facilities where the PCBs are stored, and to the environment, should spills occur due to human error or severe weather, such as hurricanes or earthquakes. Storage containers can deteriorate, increasing the likelihood of PCB exposure to personnel who must monitor such items and repack them if they suspect leakage. Frequent handling creates multiple opportunities for spills or exposure." Veolia notes that continued storage of PCBs in Mexico may pose an unreasonable risk to health

or the environment, quoting conclusions made by EPA in support of the 1996 PCB Import Rule:

EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment. (61 FR 11099)

Veolia then states that PCBs stored outside the United States pose a risk in the United States that can be addressed by disposal at EPA-approved facilities, again quoting EPA:

Based on the persistence of PCBs in the global environment and EPA's finding that any exposure to human beings or the environment may be significant, EPA believes that the safe disposal of PCBs in approved U.S. facilities poses less risk of injury to health or the environment in the U.S. than the continued presence of PCBs in other countries, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere. (61 FR 11099)

Finally, Veolia cites EPA's statement that the benefits of disposal in the United States outweigh the risks:

While PCBs currently in storage or in the environment outside the United States pose less immediate risk of injury to health and the environment in the United States than PCBs in the United States today, they do pose some risk. EPA believes that the benefits of the removal of these PCBs outside the United States outweigh any risks associated with their disposal in TSCA-approved facilities. (61 FR 11098).

Veolia concludes that: "The benefit of prompt disposal at Veolia's incineration facility in Port Arthur, Texas, outweighs any risk associated with returning the PCB wastes to the U.S. for proper disposal. Granting this petition presents no unreasonable risks and will serve to mitigate or lessen the risk to human health and the environment from continued indefinite storage of the PCB wastes in Mexico."

2. Information Regarding Good Faith Efforts Provided by the Petitioner

Veolia's petition states that Mexico has no facilities to dispose of PCB wastes above 50 ppm concentration. Specifically, the petition states, "Mexico does have storage and handling facilities for PCBs, but disposal capacity is simply not available. According to the recent Mexican Environment Minister, Alberto Cardenas, no new sites have been authorized for hazardous waste disposal in the last 15 years. *Daily Environment*, Dec. 10, 2003, page A-8. In Mexico, most organic hazardous wastes are disposed in cement kilns, but PCBs are banned from such disposal, as they are in the United States. Based on the low volume of PCB wastes in the

country, there is no economic justification for private companies to build a facility for disposal of PCBs in Mexico." Veolia also cites several sources that assert that much hazardous waste in Mexico is improperly tracked and managed.

Veolia also argues that disposal of Mexican PCB wastes in Europe is not a viable alternative: Specifically, the petition states, "Disposal of the PCB wastes in Europe is not economically sound. In the past, some generators in Mexico have shipped PCBs by ocean carrier across the Atlantic Ocean to overseas facilities, usually in France or Finland. However, such shipments are significantly more expensive than transport to the United States and can pose higher risks because of the additional handling required for intermodal transport (truck to ship to truck). For example, the typical cost of sea transportation for one 40 foot container with a capacity of 76 55-gallon drums from Vera Cruz Port, Mexico, to Rotterdam, Holland, for trans-shipment to France is about \$7,000, not including land transportation costs to and from the ports. By comparison, the cost of truck shipment from Monterrey, Mexico, to the Port Arthur facility is about \$2,700. Thus, just the transportation cost for overseas shipments is 3 times more expensive."

B. EPA's Proposed Finding and Decision on the Petition

EPA proposes to grant Veolia's petition, based on the following proposed findings.

1. No Unreasonable Risk Determination

a. *Risks Associated with Disposal at Veolia.* EPA finds generally that the disposal of imported PCB waste at an EPA-approved PCB disposal facility poses no unreasonable risks as these facilities have been approved on the basis of that standard. In addition, risks to human health and the environment associated with the long-term storage of this waste in Mexico far outweigh the risks associated with the requested exemption.

b. *Risks Associated with Transportation.* EPA finds that the transportation of waste under the requested exemption would pose no unreasonable risk if conducted in accordance with all applicable laws and regulations, as described in the petition. As noted above, EPA allows the domestic processing and distribution in commerce of PCBs and PCB items for disposal in compliance with 40 CFR Part 761, and in issuance of the PCB Import for Disposal rule, EPA investigated and sought comment on the

risks inherent in the transportation of imported PCB waste, and determined those risks to be insignificant. (61 FR 11096 at 11097). EPA affirmed these conclusions in granting petitions from the Defense Logistics Agency to import PCB waste from Japan in 2003 (68 FR 4934) and 2007 (72 FR 53152). For these and the following reasons, EPA finds that there is no unreasonable risk from the transport of this waste to the United States for disposal:

i. Risk results from a combination of exposure (likelihood, magnitude and duration) and the probability of effects occurring under the conditions of exposure. Because the probability of a transport accident occurring is low, as the DOT data indicate, the likelihood of exposure to PCBs is commensurately low. Consequently, the likelihood of adverse effects to human health or the environment is minimal.

ii. The PCB-containing materials would be packaged in a manner consistent with federal, state, and local regulations addressing the storage and transport of hazardous materials.

iii. Given that PCBs are hazardous and pose a potential risk to health and the environment, and given the exposure likelihood, frequency, and duration are so low that even though PCBs are considered to be highly hazardous, risk (combined exposure and hazard) would not be unreasonable to human health or the environment.

iv. The potential for human health risks are further mitigated by duration of exposure. PCBs are most hazardous following long-term (chronic) exposures. Under the transport scenario proposed, any exposures to humans (i.e., accidental or emergency situation) would be of relatively short duration. Hence, the low probability of exposure occurring combined with the relatively short-term duration of exposure, should one occur, further supports a qualitative conclusion that there is no unreasonable risk to human health.

v. The long-term concern is the potential for accumulation in the ecological environment. In a worst case scenario, where all of the PCBs in a given truck-load would be released due to an unforeseen and highly unlikely catastrophic event during transport, PCB-exposed biological receptors could be adversely affected in the vicinity of the release (and there would be the potential for long-range dispersal). However, this scenario is highly unlikely because it would require a complete failure of all safeguards in place. EPA believes that the alternative of storing the PCBs indefinitely poses

more risk than transport. Further, should an accident occur, emergency response authorities would be invoked to mitigate and/or remediate exposures.

c. Benefits of Granting This Petition.

i. Avoiding the Risks of Long-Term Storage. EPA believes that granting this petition to import 20,000 tons of waste contaminated with PCBs greater than 50 ppm will benefit the United States and the environment in general in several ways. As Veolia notes, the continued long-term storage of PCB waste in Mexico poses risks of exposure to human health and the environment—risks that can be greatly reduced through the action proposed in this petition.

ii. Ensuring Proper and Safe Disposal. Granting this petition will ensure the proper and safe disposal of this PCB waste in Veolia's TSCA-approved disposal facility and eliminate the risk of improper disposal and environmental release in Mexico, with its concomitant cross-border risks to the United States.

iii. Ensuring the Safety of Mexican Citizens. EPA considers the reduction of risk to Mexican citizens to be advantageous, especially in light of the United States commitment to work with Mexico (and Canada) toward the virtual elimination of PCBs from the North American environment, as specified in the 1996 North American Regional Action Plan for PCBs under the North American Commission for Environmental Cooperation (CEC).

d. Conclusion. For the reasons described above, EPA finds that granting the petition would pose no unreasonable risk of injury to health or the environment.

2. Good Faith Efforts To Find Substitutes Met

EPA asserts that Veolia has demonstrated good faith efforts to identify alternatives to disposal of this PCB waste in the United States. EPA is aware of the lack of adequate PCB disposal capacity in Mexico. While EPA disagrees with Veolia's contention that there is no PCB disposal capacity in Mexico, EPA recognizes that the available disposal capacity is nonetheless very limited in both the quantity and concentration of the PCB waste it can process. For instance, in 1996, the CEC reported that S.D. Myers de México, S.A. de C.V., operates a mobile disposal unit for the treatment of PCB waste, but only up to a concentration of 5,000 ppm and with a capacity of 150 tons a month. (*Status of PCB Management in North America*) S.D. Myers's facility is the only Mexican PCB disposal facility identified by UNEP in 2004 (*Inventory of World-Wide*

PCB Destruction Capacity, Second Issue). Attempts to establish large hazardous waste incinerators with the capacity to handle large volumes and high concentrations of PCBs failed in Tijuana in the 1980s (TEESA) and Veracruz in 2005 (Altecín S.A. de C.V.). The fact that Mexican facilities have had to ship high-concentration PCBs overseas to Europe for disposal only highlights the lack of adequate domestic disposal capacity.

EPA believes that the shipment of PCB waste from Mexico to Europe is not a preferable alternative to PCB disposal in the United States. Such trans-Atlantic shipments greatly increase the distances involved in the transportation of this waste, as well as the amount of handling involved in the transfer of waste between ship and trains or truck, and therefore increase the risk that an accidental release of PCBs could occur during transit. Such releases could occur in U.S. waters, as container ships traveling from Mexico to Europe may make port calls along the U.S. coast during their journey. In addition, the high cost of this trans-Atlantic disposal option discourages the prompt removal of PCBs from use and storage, as well as their proper disposal. Reducing the cost of PCB disposal will encourage Mexican PCB equipment owners and PCB waste storers to dispose of these materials by proper means, reducing illegal disposal and its associated risk to human health and the environment.

Given these circumstances, EPA finds that Veolia has made good faith efforts to identify alternatives to this proposed exemption, and the Agency is persuaded that disposal in Mexico or in a third country is not a practicable or preferable alternative for this PCB waste, relative to disposal in the United States.

3. For all of the aforementioned reasons, EPA finds that Veolia has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and proposes to grant this petition. In this rulemaking, EPA is also proposing certain terms and conditions in order to ensure no problems with stranded or returned waste shipments occur. Specifically:

- Veolia must have full financial responsibility for the disposal of any PCB waste imported under this petition; Veolia's financial assurance is detailed in the TSCA storage and disposal approval granted for the Port Arthur facility.

- If necessary, such as in the case of a Port Arthur facility shutdown, Veolia can and will arrange for alternative disposal of this waste at another TSCA-approved disposal facility in the United States; and

- Disposal of the imported PCB waste must occur within one year of import. This condition is based on 40 CFR 761.65(a)(1).

V. References

1. Veolia ES Technical Solutions, LLC Petition from Greig R. Siedor, Vice President and Chief Legal Officer, to EPA, OPPT. Subject: Petition for Import Exemption for PCB Wastes Pursuant to Toxic Substances Control Act section 6(e). November 14, 2006. 9 pp.
2. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions. Final Rule. EPA-HQ-OPPT-2005-0042. **Federal Register** (72 FR 53152, September 18, 2007) (FRL-8143-4). Available at <http://www.epa.gov/fedrgstr>.
3. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions. Final Rule. EPA-HQ-OPPT-2002-0013. **Federal Register** (68 FR 4934, January 31, 2003) (FRL-7288-6). Available at <http://www.epa.gov/fedrgstr>.
4. EPA, OPPTS. Disposal of Polychlorinated Biphenyls; Import for Disposal. Final Rule. **Federal Register** (61 FR 11096, March 18, 1996) (FRL-5354-8). Available at <http://www.epa.gov/fedrgstr>.
5. EPA, Office of Toxic Substances (OTS). Polychlorinated Biphenyls; Manufacturing, Processing, Distribution in Commerce Exemptions. Proposed Rule. OPTS-66008F. **Federal Register** (53 FR 32326, August 24, 1988).
6. Commission for Environmental Cooperation. *Status of PCB Management in North America*. ISBN 0-921894-28-7, (1996): 158 pp. Available at: www.cec.org.
7. UNEP. Inventory of World-Wide PCB Destruction Capacity, Second Issue, (December 2004): 78 pp. Available at: <http://www.chem.unep.ch/pops/>.
8. Commission for Environmental Cooperation/PCB Task Force. *PCB Regional Action Plan; Sound Management of Chemicals Project*, (December 1996): 25 pp. Available at: www.cec.org.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA is proposing to grant this petition by Veolia to import PCBs for disposal at its Port Arthur facility. Veolia would then be subject to the existing EPA regulations regarding the disposal of PCBs in 40 CFR part 761. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements

contained in the existing regulations 40 CFR Part 761 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0112, EPA ICR number 1446.08. A copy of the OMB approved Information Collection Request (ICR) may be obtained from the Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1682.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. EPA is proposing to grant this petition submitted by Veolia to import PCBs for disposal at its Port Arthur facility. Only Veolia, which is not a small entity, would be regulated by this proposed rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that

may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA is proposing to grant a petition submitted by Veolia to import PCBs for disposal at its Port Arthur facility. If the petition is granted, and Veolia imports PCBs for disposal, Veolia would be required to comply with the existing regulations on PCB disposal at 40 CFR Part 761. The only mandate that would be imposed by this proposal would be imposed on Veolia. In addition, EPA has determined that this proposal would not significantly or uniquely affect small governments. The Veolia petition states that the PCBs will be disposed of in Veolia's TSCA-approved facility. No new facilities, which could affect small government resources if a permit is required, are contemplated. EPA believes that the disposal of PCBs in a previously approved facility in the amount specified in this proposal would have little, if any, impact on small governments. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA's proposal would grant a petition submitted by Veolia to import PCBs and dispose of them in its TSCA-approved disposal facility in Port Arthur, Texas, in accordance with existing regulations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this

proposed rule from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. EPA’s proposal would grant a petition submitted by Veolia to import PCBs and dispose of them in its TSCA-approved disposal facility in Port Arthur, Texas, in accordance with existing regulations. EPA does not believe that this activity will have any impacts on the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. However, in the spirit of Executive Order 13175, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA is proposing to grant the petition from Veolia to import PCBs and dispose of them at its TSCA-approved PCB disposal facility in Port Arthur, Texas, in accordance with existing regulations. Because the facility will be operating within their EPA-approved quantities,

the risk for storage and disposal of PCB-containing waste is already assumed by the surrounding communities.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to PCBs.

H. Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898, (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States.

EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency’s goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA’s policies, programs, and activities. Our goal is to ensure that all citizens live in clean and sustainable communities. In response to Executive Order 12898, and to the concerns voiced by many groups outside the Agency, EPA’s Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA asserts that no environmental justice issues are associated with this proposed rule. Veolia’s Port Arthur facility has been approved by EPA to dispose of PCB waste since 1992 to store and treat PCBs, ensuring protection of human health and environment. The proposed rule also will not allow Veolia to import more waste than the Port Arthur facility is approved to store and treat. Therefore, the proposal will not result in any disproportionately negative impacts on minority or low-income communities.

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: February 28, 2008.

Susan Parker Bodine,

Assistant Administrator for Solid Waste and Emergency Response.

Therefore, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

Subpart E—Exemptions

2. Section 761.80 is amended by adding paragraph (k) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(k) The Administrator grants Veolia ES Technical Solutions, LLC's November 14, 2006 petition for an exemption for 1 year to import up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. This petition is subject to the following terms and conditions:

(1) Veolia accepts complete financial liability for the transportation, storage and disposal of all PCB waste imported into the United States under this petition.

(2) In the eventuality that Veolia is unable to dispose of any PCB waste imported under this petition at its Port Arthur facility, Veolia shall arrange for the disposal of that PCB waste in an alternative TSCA-approved facility in the United States.

(3) For purposes of compliance with the 1 year storage for disposal limit under § 761.65(a), the date of removal from service for disposal for PCB waste imported under this petition is the date the PCB waste enters the United States.

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[FR Doc. E8-4429 Filed 3-5-08; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MB Docket No. 99-25; FCC 07-204]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether additional low power FM (LPFM) service and technical rule changes are warranted, including: establishing a second-adjacent channel waiver standard; implementing a licensing presumption that would protect certain operating LPFM stations from subsequently proposed community of license modifications; imposing an obligation on full-service station applicants to assist an LPFM station potentially impacted by implementation of its new station or modification proposal; creating contour protection-based licensing standards for LPFM

stations; and establishing LPFM-FM translator protection priorities.

DATES: Comments for this proceeding are due on or before April 7, 2008; reply comments are due on or before April 21, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 99-25, by any of the following methods:

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

- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, Holly.Saurer@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking (Second Further Notice)*, FCC 07-204, adopted on November 27, 2007, and released on December 11, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains information collection requirements subject to the

Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Summary of the Notice of Proposed Rulemaking

1. The Commission adopts a series of wide-ranging rule changes to strengthen and promote the long-term viability of the LPFM service, and the localism and diversity goals that this service is intended to advance. We also recommend to Congress that it remove the requirement that LPFM stations protect full-power stations operating on third adjacent channels. We intend to resolve the following issues within six months. The next filing window for a non-tabled aural broadcast service will be for new LPFM stations. We plan to open this window after the Commission has resolved the issues raised in this *Second Further Notice*, and has resolved other issues that could significantly impact the availability of future spectrum for LPFM applicants, including the disposal of substantially all of the applications filed in the recent NCE FM window.

2. Based on numerous meetings with LPFM service proponents, filings, and presentations at various forums and hearings convened by the Commission over the past two years, we believe that it is appropriate to consider whether additional LPFM service and technical rule changes are warranted. We seek comment on the several issues set forth below.

A. Section 73.807 Second-Adjacent Channel Waiver Standard

3. The *Third Report and Order*, 73 FR 3202, January 17, 2007, details an interim processing policy that the Commission will use to consider § 73.807 of the rules waiver requests from certain LPFM stations. As set forth more fully therein, when implementation of a full-service station community of license modification would result in an increase in