



Recent Federal Developments April 15, 2007

TSCA/FIFRA/EPCRA/NTP

EPA Announces Availability Of Disposal Instructions On Non-Antimicrobial Residential/Household Use Pesticide Product Labels -- On March 21, 2007, the U.S. Environmental Protection Agency (EPA) announced the availability of Pesticide Registration (PR) Notice 2007-1, which is entitled "Disposal Instructions on Non-Antimicrobial Residential/Household Use Pesticide Product Labels." 72 Fed. Reg. 13280. PR Notices are issued by EPA's Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions. The PR Notice provides guidance to registrants concerning the updating and revision of PR Notice 2001-6 to clarify that the use of a toll-free number is optional in the disposal instructions on non-antimicrobial residential/household use pesticide product labels. If registrants choose to change or remove a toll-free number from the disposal instructions on their label, this notice provides guidance on making such changes. The PR Notice is available on the Internet at http://www.epa.gov/PR_Notices/pr2007-1.htm.

EPA Announces 2005 TRI Data Availability -- On March 23, 2007, EPA released the 2005 Toxics Release Inventory (TRI) data. Created under the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, the TRI program requires certain facilities to report annually on their chemical releases and other waste management activities to EPA and the states. In addition, the Pollution Prevention Act of 1990 mandates collection of data from these facilities on certain chemicals treated on-site, recycled, and combusted for energy recovery. According to EPA, close to 95 percent of facilities submitted reports electronically. Approximately 23,500 facilities reported on almost 650 toxic chemicals for 2005. Analyses are available on EPA's website that provide context for understanding the full picture presented by the 2005 data. The data released at a national level on March 23, 2007, were released on a facility-specific basis last September. A summary of the 2005 TRI data and background materials are available on the Internet at <http://www.epa.gov/tri/>.

Joint Inerts Task Force Formed -- On March 22, 2007, EPA announced that the Joint Inerts Task Force was formed recently by industry members to support inert ingredient tolerance exemptions that were revoked by EPA because of insufficient data. The Task Force consists of representatives for CropLife America, Chemical Producers and Distributors Association, and various registrants. Information on the Joint Inerts Task Force is available at <http://www.epa.gov/opprd001/inerts/jitf.pdf>.

EPA Considers Revising FIFRA Regulations For PIPs -- On April 4, 2007, EPA published an Advance Notice of Proposed Rulemaking (ANPR) announcing possible revisions to the current pesticide establishment and production regulations for producers of plant-incorporated protectants. 72 Fed. Reg. 16312. According to EPA, it is considering amending the regulations because of the differences between plant incorporated protectants (PIP) and other types of



pesticides. In the ANPR, EPA defines PIPs as “pesticidal substances that are intended to be produced and used in a living plant, or the produce thereof, and the genetic material necessary for the production of such a pesticidal substance, and also include any inert ingredient contained in the plant, or the produce thereof.” EPA states that, given these characteristics, PIPs may not be produced in the manner EPA contemplated when it promulgated the current establishment and production regulations for other types of pesticides. In the ANPR, EPA provides a list of the general regulatory provisions applicable to PIPs that EPA is considering amending, and requests comment on the completeness of the list and the scope of any potential changes to the regulations. Comments are due **June 13, 2007**. In a related notice published on April 11, 2007, EPA announced that it will convene two public meetings to discuss the ANPR. 72 Fed. Reg. 18191. The meetings will be in Chicago, Illinois, and Arlington, Virginia, on **May 2, 2007**, and **May 22, 2007** respectively.

EPA Releases Pesticide Data Submitters List -- On March 31, 2007, EPA released the current edition of its pesticide data submitters list. The list contains names and addresses of pesticide registrants who wish to be compensated when their data are used to support the registration of other companies’ pesticides. The list is available on the Internet at <http://www.epa.gov/oppmsd1/DataSubmittersList/>.

EPA Releases PFOA Stewardship Program Baseline Year Summary Report -- On March 28, 2007, EPA released a report that establishes the baseline for assessing progress in reducing emissions and product content levels of perfluorooctanoic acid (PFOA) by companies that elected voluntarily to participate in the PFOA Stewardship Program. On January 25, 2006, EPA invited eight companies to reduce PFOA releases and its presence in products by 95 percent by no later than **2010** and to work toward eliminating these sources of exposure five years after that but no later than **2015**. By March 1, 2006, EPA received 100 percent participation from invited companies.

The companies’ reports will outline their progress in terms of company-wide percentage achievements both for U.S. operations and for the company’s global business. Companies will also provide EPA with detailed information on their emissions and product content reductions to support their public progress reports. EPA will post new summary reports on the web shortly after receipt of the progress reports. More information about the PFOA Baseline Study is available at <http://www.epa.gov/oppt/pfoa/pubs/sumrpt.htm>. The baseline reports on the emissions and product content levels that existed before the program began, and includes separate entries for the companies’ U.S. and global operations. Progress made toward meeting the program’s goals will be measured against this baseline. Companies will submit their first progress reports on **October 31, 2007**.



OPP Offers Tips For Avoiding CSF And Product Chemistry Issues With Biopesticides -- On March 28, 2007, OPP posted a web page entitled “Tips for Avoiding Confidential Statement of Formula or Product Chemistry Issues with Biopesticides.” The page offers recommendations that EPA states may assist registrants in “reducing common mistakes when preparing and submitting biopesticide product chemistry data and the Confidential Statement of Formula (CSF).” EPA groups the recommendations into general recommendations for registering a biopesticide; CSF tips; and product chemistry tips. Under product chemistry tips, EPA provides specific topics for biochemical pesticides, microbial pest control agents, and PIPs. For complex biopesticide applications, EPA suggests applicants consider hiring a regulatory consultant to facilitate registration. Both The Acta Group, L.L.C. and Bergeson & Campbell, P.C. are included on this list. The page is available on the Internet at http://www.epa.gov/pesticides/biopesticides/regtools/product_chem_csf.htm.

EPA Updates FIFRA Section 18 Database -- EPA announced on April 12, 2007, that it has updated its database of actions taken under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 18. Section 18 authorizes EPA to allow state and federal agencies to use a pesticide for an unregistered use for a limited time if “emergency conditions” exist. For each emergency exemption request, the database includes the site of the planted crop, the pest allegedly causing the emergency, the state or federal agency that applied for the exemption, the date of application, and EPA’s response. If a tolerance was established, the database provides the date that tolerance was published in the *Federal Register* and the date the tolerance expires. The database is available on the Internet at <http://cfpub1.epa.gov/oppref/section18/search.cfm>.

ED Releases Comparative Analysis Of Industrial Chemical Policies -- On April 4, 2007, Environmental Defense (ED), in cooperation with Pollution Probe in Canada, released a report entitled *Not That Innocent: A Comparative Analysis of Canadian, European Union and United States Policies on Industrial Chemicals, which identifies best practices for chemicals assessment and management*. The report compares how chemicals are treated under statutes such as the Toxic Substances Control Act (TSCA), the Canadian Environmental Protection Act, and the Registration, Evaluation, Authorization, and Restriction of Chemicals, and in so doing, offers much information on these various chemical control programs.

According to the report, chemical policies in the U.S., Canada, and European Union (EU) include common elements related to the core functions they are intended to serve: identifying and prioritizing chemicals of concern; identifying and tracking chemicals and their production and use; facilitating or requiring the generation and submission of risk-relevant information; assessing information to determine hazard/exposure/risk; imposing controls to mitigate risk; and sharing and disclosing information and protecting confidential business information (CBI). The report is available on the Internet at http://www.environmentaldefense.org/documents/6149_NotThatInnocent_Fullreport.pdf.



EPA Proposes Exempting Food Packaging Materials Treated With Pesticides From The Definitions Of “Pesticide Chemical” And “Pesticide Chemical Residue” -- On April 6, 2007, EPA issued a proposed rule that would exempt the components of food packaging material (*e.g.* paper and paperboard, coatings, adhesives, and polymers) that are treated with a pesticide from the definitions of “pesticide chemical” and “pesticide chemical residue” under Section 201(q) of the Federal Food, Drugs, and Cosmetic Act (FFDCA). 72 Fed. Reg. 17068. The regulatory text of the April 6, 2007, proposed rule is identical to that in EPA’s December 6, 2006, direct file rule, which EPA withdrew on January 25, 2007, due to adverse comments. Under the proposed rule, ingredients in food packaging treated with a pesticide would be exempt from regulation by EPA under FFDCA Section 408 as pesticide chemical residues. Further, a food that bears or contains such ingredients would not be subject to enforcement by the Food and Drug Administration (FDA) under FFDCA Section 402(a)(2)(B) since the ingredients would no longer be pesticide chemical residues. Instead, such ingredients would be subject to regulation by the FDA as food additives under FFDCA Section 409.

FDA generally regulates such food additives in food packaging as food contact substances under FFDCA Section 409(h). The proposed rule would expand the scope of the provision in 40 C.F.R. Section 180.4 that currently applies only to food packaging impregnated with an insect repellent. EPA states that the proposed rule, as with the rule it would amend, applies only to the food packaging materials themselves; it would not otherwise limit EPA’s FFDCA jurisdiction over pesticides or limit FDA’s jurisdiction over substances subject to FDA regulation as food additives. According to the proposed rule, EPA, in consultation with FDA, and FDA believe the proposed rule “would eliminate the duplicative FFDCA jurisdiction and economize federal government resources while continuing to protect human health and the environment.” Even after the final rule is promulgated, under FIFRA, EPA would continue to regulate the food packaging as an inert ingredient of the pesticide product and regulate the pesticide active ingredient in the treated food packaging under both FIFRA and the FFDCA. Comments on the proposed rule are due **April 23, 2007**.

EPA Issues Q&A on Pesticide Labeling -- On April 13, 2007, EPA made available on its website under “what’s new,” a distributor Q&A for the Pesticide Labeling Questions and Answers Web Page. The website is available at http://www.epa.gov/pesticides/regulating/labels/label_review_faq.htm#distributors.

CAA/CWA

EPA Issues Final Reporting Rule Regarding “Exception Events” -- On March 22, 2007, EPA issued a final rule governing the review and handling of air quality monitoring data influenced by “exceptional events.” 72 Fed. Reg. 13560. Exceptional events are defined to include events for which the normal planning and regulatory process established by the Clean Air Act (CAA) is not appropriate. In the final rule, EPA implements CAA Sections 319(b)(3)(B) and 107(d)(3)



authority to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the National Ambient Air Quality Standards (NAAQS) and avoids designating an area as nonattainment, redesignating an area as nonattainment, or reclassifying an existing nonattainment area to a higher classification if a state adequately demonstrates that an exceptional event has caused an exceedance or violation of a NAAQS. EPA also requires states to take reasonable measures to mitigate the impacts of an exceptional event. The rule is effective **May 21, 2007**.

EPA Issues ANPR On Residual Risk Issues -- On March 29, 2007, EPA issued an ANPR and requested comments on hazardous air pollutant emissions and other model input data that EPA intends to use to assess residual risk from certain industrial major source categories. 72 Fed. Reg. 14734. Twenty-two industrial source categories subject to 12 national emission standards for hazardous air pollutants (NESHAP) will be considered, based on the February 2006 version of the National Emissions Inventory. EPA seeks comments on the emissions and source data found at the Risk and Technology Review website at <http://www.epa.gov/ttn/atw/rrisk/rtrpg.html>. Comments are due by **May 29, 2007**.

U.S. Supreme Court Rules That EPA Has Power To Regulate Greenhouse Gases -- On April 2, 2007, the U.S. Supreme Court, addressing global warming for the first time, ruled that carbon dioxide from motor vehicles is an “air pollutant” under the CAA and thus is subject to regulation by EPA. *Massachusetts v. EPA*, No. 05-1120 (2007), available at <http://www.supremecourtus.gov/opinions/06pdf/05-1120.pdf>. The five to four opinion does not mean that EPA necessarily will -- or even that it must -- regulate carbon dioxide and the other three greenhouse gases that were the focus of the litigation. In any case, such regulatory action by EPA would not be completed for years. The decision certainly will spur further initiatives by states, such as California (which was among the challengers), to combat greenhouse gas emissions, and will bolster efforts and rhetoric from the new, Democrat-led, Congress, as well. The auto industry, which has been in the cross-hairs of the current challenge, will doubtless cast about for ways to apportion more broadly any resulting regulatory burdens.

The litigation arose out of a petition by various organizations to EPA for regulatory action under CAA Title II, which addresses emissions from motor vehicles. The petitioners asked EPA to take steps toward regulating carbon dioxide and the three other gases at issue under CAA Section 202(a)(1). That provision directs the EPA Administrator “by regulation [to] prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Among the stated reasons for EPA’s denying the petition was that it was not authorized to issue the requested regulations because carbon dioxide and the other gases were not air pollutants, as defined under CAA Section 302(g).



The Court rejected EPA's position. The majority's concern about the consequences of global warming is evident from the opinion, which begins: "A well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere." The Court goes on to state that "[t]he harms associated with climate change are serious and well recognized . . . including 'the global retreat of mountain glaciers, reduction in snow-cover extent, the earlier spring melting of rivers and lakes, [and] the accelerated rate of rise of sea levels during the 20th century relative to the past few thousand years'"

It bears noting that the fifth vote comprising the majority came from Justice Anthony Kennedy, in a swing role of increasing importance in the wake of Justice Sandra Day O'Connor's retirement. President Bush's additions to the Court, Chief Justice John Roberts and Justice Samuel Alito, both were in the minority.

EPA Proposes NESHAP For Area Sources -- On April 4, 2007, EPA proposed six NESHAPs for seven area source categories. 72 Fed. Red. 16636. The proposed emissions standards and associated requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one subpart. The proposed emissions standards for new and existing sources are based on EPA's proposed determination as to what constitutes the generally available control technology or management practices for each area source category. Comments must be received by **May 4, 2007**, unless a public hearing is requested by **April 16, 2007**. If a hearing is requested on the proposed rule, written comments are due by **May 21, 2007**.

EPA Proposes Expedited Approval Of Test Procedures For Analysis Of Contaminants Under The SDWA -- On April 10, 2007, EPA announced its intent to implement an expedited process for approving alternative testing methods for existing regulations for drinking water contaminants. 72 Fed. Reg. 17902. The Safe Drinking Water Act (SDWA) authorizes EPA to approve the use of alternative testing methods through publication of a *Federal Register* notice instead of through rulemaking procedures. EPA plans to use this streamlined authority to make additional methods available for analyzing drinking water compliance and unregulated contaminant monitoring samples. EPA believes the expedited approach will provide public water systems, laboratories, and primacy agencies with more timely access to new measurement techniques and greater flexibility in the selection of analytical methods, thereby reducing monitoring costs while maintaining public health protection. Comments on the expedited process are due **June 11, 2007**.

RCRA/CERCLA

EPA Proposes Revisions To The Definition Of Solid Waste -- On March 26, 2007, EPA proposed revising the definition of solid waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA), the federal hazardous waste management regulatory scheme. 72



Fed. Reg. 14172. The proposal seeks to streamline regulation of hazardous secondary materials, and would revise the all important definition of “solid waste” to exclude certain hazardous secondary materials, such as solvents, metals, and certain other chemicals, from RCRA regulation to provide for the recycling of such materials. According to EPA, the proposal is “de-regulatory in nature because certain recyclable materials that have heretofore been subject to the hazardous waste regulations would no longer be regulated as hazardous waste.” EPA states that the proposed revisions are “not intended to bring new wastes into the RCRA regulatory system.”

The publication of this definition of solid waste proposal follows EPA’s efforts in 2003, at which time EPA proposed to exclude certain types of recycling activities involving hazardous secondary materials from the federal hazardous waste regulations. After evaluating comments on the 2003 proposal and undertaking several background studies, EPA developed the 2007 proposal. According to the 2007 proposal, the revised regulatory scheme would provide exclusions for: materials that are generated and reclaimed under the control of the generator; materials that are generated and transferred to another person or company for reclamation under specific conditions; and materials that EPA deems non-waste through a case-by-case petition process.

Integral to these proposed revisions is EPA’s definition of “legitimate recycling.” EPA defines legitimate recycling activity to ensure that the streamlined requirements will benefit only this activity, rather than treatment or disposal under the guise of recycling.

According to the proposal, to be recycled legitimately (1) the material must provide a useful contribution to the recycling process, and (2) the recycling must yield a valuable product or intermediate. Under the proposal, two additional factors that should be considered in making the “legitimate recycling” determination are: (1) whether the recycled material is managed as a valuable commodity; and (2) whether the recycled product does not contain toxic constituents at equivalent or significantly greater levels than non-recycled product. Significantly, EPA has not proposed changes for recycled materials that are: (1) considered inherently waste-like; (2) used in a manner constituting disposal; or (3) burned for energy recovery. Any currently regulated material managed in these ways must still comply with the federal hazardous waste regulations. Comments must be submitted by **May 25, 2007**.

NANOTECHNOLOGY

Senate Requests GAO Review Of NNI -- In a March 15, 2007, letter, the Senate Committee on Commerce, Science, and Transportation and the Congressional Nanotechnology Caucus requested that the Government Accountability Office (GAO) review the National Nanotechnology Initiative (NNI), which was created to accelerate the discovery, development, and deployment of nanoscale science and technology. For fiscal year (FY) 2006, NNI received \$1.2 billion in research and development funding, and 22 federal agencies, including EPA, FDA,



the Consumer Product Safety Commission, and the Occupational Safety and Health Administration, participate in NNI. According to the letter, one key expectation for NNI was “to ensure that adequate attention and research funding was made available to gain a better understanding of the potential environmental, health, and safety risks associated with nanomaterials.” The letter states that the Committee and Caucus “are extremely concerned that this has not happened and that there is a lack of transparency with regard to how much federal attention and funding this important aspect of the initiative is receiving.”

ICON Launches Nanotechnology Journal -- The International Council on Nanotechnology (ICON) and Rice University’s Center for Biological and Environmental Nanotechnology (CBEN) announced on March 22, 2007, they have launched a monthly online journal that contains citations and links to articles on the environment and health impacts of nanotechnology. The ICON and CBEN coalition launched the first online database of nanomaterial scientific findings in August 2005, but the new journal -- *The Virtual Journal of Nanotechnology Environment, Health & Safety (VJ-Nano EHS)* -- “has taken the concept one step further,” the coalition said. The virtual journal organizes the information contained in the existing database into a reader-friendly monthly journal format. New features include a rotating guest editorship and a series of papers on topics of interest taken from the database. Contents of the journal are searchable. In the future, the coalition said, the journal will include a section on the most cited nanotechnology EHS papers. The virtual journal is available at <http://icon.rice.edu/virtualjournal.cfm>.

PEN Issues LCA Report -- On March 20, 2007, the Woodrow Wilson International Center for Scholars Project on Emerging Nanotechnologies (PEN) released a report entitled *Nanotechnology and Life Cycle Assessment: A Systems Approach to Nanotechnology and the Environment*, which summarizes the results of the October 2-3, 2006, workshop organized by PEN and the European Commission on life cycle assessment (LCA). LCA is a cradle-to-grave analysis of how a material affects ecosystems and human health. According to the report, the purpose of the October 2-3, 2006, workshop was to determine whether existing LCA tools and methods are adequate to use on a new technology. The report provides an overview of LCA and nanotechnology, discusses the current state of the art, identifies current knowledge gaps that may prevent the proper application of LCA in this field, and offers recommendations on the application of LCA for assessing the potential environmental impacts of nanotechnology, nanomaterials, and nanoproducts. The report is available on the Internet at http://www.nanotechproject.org/file_download/168.

Joint Economic Committee Of Congress Releases A New Study On Nanotechnology -- In mid-March, Representative Jim Saxton (R-NJ), the ranking minority member of the Joint Economic Committee (JEC), released a new Congressional study on nanotechnology. The study is available at http://www.house.gov/jec/publications/110/nanotechnology_03-22-07.pdf. On balance an extremely positive report, the JEC Study “discusses the range of sciences currently



covered by nanotechnology,” describes “what nanotechnology is and how it relates to previous scientific advances,” as well as “the most likely future development of different technologies in a variety of fields,” and includes a review of the federal government’s current nanotechnology policy. Importantly also, the report urges three changes pertinent to the use of nanotechnology in products: product labeling; disclosure to FDA of safety testing and publication of any adverse results; and enhanced public education in the area of nanotechnology.

LEGISLATIVE DEVELOPMENTS

Senate And House Pass Bill Approving Chemical Security Provisions -- On March 29, 2007, the Senate passed legislation as part of the FY 2007 supplemental spending bill (H.R. 1591) that would preclude the Department of Homeland Security (DHS) from issuing chemical security rules preempting state laws that are more stringent than federal law. In addition, the spending bill would allow citizens to sue chemical facilities or DHS, and allow DHS to require specific security measures when deemed necessary. The House approved the bill on March 23, 2007. Despite Congressional approval of the measure, President Bush has stated he will veto the overall bill, which contains provisions intended largely to fund the wars in Iraq and Afghanistan.

The Senate-approved bill includes language requiring DHS to issue security requirements, including minimum standards, for chemical facilities that DHS deems present the “greatest risk” and which are not regulated under federal law. The bill also includes language drafted by Senator Frank Lautenberg (D-NJ) that would block a provision in a December 2006 DHS-proposed rule. The Lautenberg language is intended to preserve states’ rights to promulgate more stringent programs unless they conflict with federal law. As proposed, DHS’s rule would have established federal security requirements for chemical plants and preempt state laws on chemical security. DHS issued its interim final rule on April 9, 2007, and in it, DHS clarified that nothing in the rule is intended to displace other federal requirements. DHS stated that the rule does not necessarily preempt state laws, but it will preempt state laws and requirements that conflict or interfere with the rule or its purpose. Under the interim final rule, DHS will issue opinions on particular state and local laws and will seek the input and views of a state before making a final determination on whether the federal rule preempts individual state requirements.

Also, on March 15, 2007, Representative Sheila Jackson Lee (D-TX) introduced the Chemical Facility Security Improvement Act (CFSIA) (H.R. 1530), which mirrors language the House approved. Both the FY 2007 supplemental spending bill and the CFSIA bill address four areas of concern in the DHS interim final rule: (1) preemption of state laws; (2) use of specific security measures; (3) information protection; and (4) private rights of action. The CFSIA bill would require vulnerability assessments and site security plans to be treated as sensitive information, as would the chemical security provisions in the spending bill.



Committee Approves Rail Security Bill -- The House Homeland Security Committee approved legislation (H.R. 1401) on March 13, 2007, that seeks to bolster transportation security with plans to authorize more than \$6 billion in grants and a requirement for rail carriers to re-route security-sensitive materials around “high threat urban areas” when other routes exist. The Rail and Public Transportation Act of 2007 would require DHS to assign each provider of transportation to a risk-based tier, and would require rail and public transportation systems to submit vulnerability assessments and security plans to DHS for approval. It also requires DHS, in consultation with the Department of Transportation (DOT), to issue a rail and public transportation strategic information sharing plan to strengthen the intelligence updates provided to federal, state, and local agencies, and appropriate stakeholders. The Committee approved an amendment Representatives Edward J. Markey (D-MA) and Eleanor Holmes Norton (D-DC) offered that would require rail carriers to re-route security-sensitive materials around high-threat urban areas and other areas when there are more secure routes available. The amendment would apply only to materials believed to pose the greatest threat to an area.

Bill Would Regulate Ammonium Nitrate -- The House Homeland Security Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology approved on March 29, 2007, legislation (H.R. 1680) that would give DHS the authority to regulate the sale and purchase of ammonium nitrate to prevent its use by terrorists. The Secure Handling of Ammonium Nitrate Act would require DHS to establish a threshold percentage for ammonium nitrate in a substance within 90 days of the bill’s enactment. Under H.R. 1680, owners of ammonium nitrate facilities and purchasers of the substance would be required to register with DHS. Owners of facilities engaged in selling or transferring ammonium nitrate would have to maintain for three years a record of each sale or transfer of ownership. DHS would have to establish a process for the periodic inspection and auditing of these records. Those who are licensed to produce, sell, or purchase ammonium nitrate exclusively for use as an explosive material would be exempt from the bill’s provisions.

House Approves FOIA Reform Bills -- The House of Representatives on March 14, 2007, passed a bill (H.R. 1309) intended to strengthen the Freedom of Information Act (FOIA) by giving those requesting information new tools to prompt government action and imposing consequences on agencies that miss deadlines. The Senate Judiciary Committee on April 12, 2007, approved The Openness Promotes Effectiveness in our National Government Act (OPEN Government Act) (S. 849) to update and strengthen FOIA.

Among other changes to FOIA, both the Senate and the House bills would expand the ability to obtain reimbursement of attorney fees when challenging agency denials in court. The bills would also clarify that the 20-day statutory clock for agencies to respond to requests begins to run immediately upon an agency’s receipt of a request. The measures also require agencies to give requesters tracking numbers and access to a telephone or Internet hotline to obtain information about the status of their requests.



In addition, the legislation establishes a new position for a FOIA ombudsman to aid requesters and mediate disputes. In the House bill, the ombudsman would be located at the National Archives and Records Administration. The Senate bill would house the ombudsman at the Administrative Conference of the United States (ACUS), a small agency that Congress eliminated in the mid-1990s. The previous Congress re-authorized ACUS, which sought to improve government administrative practices, but ACUS has not received funding and effectively remains defunct.

Senate Committee Approves Resolution On Climate Change Negotiations -- The Senate Foreign Relations Committee approved by voice vote on March 28, 2007, a “sense of the Senate” resolution (S. Res. 30) urging President Bush to re-start U.S. participation in international climate change negotiations aimed at curbing global greenhouse gas emissions. The Committee reported the resolution without debate as part of a larger package of nominations and other legislation, although two Republicans on the Committee, Senators Chuck Hagel (NE) and David Vitter (LA), later requested that their votes on the climate resolution be recorded as “no” votes. Senators Joseph Biden (D-DE) and Richard Lugar (R-IN) introduced the resolution on January 16, 2007. The resolution would not be binding on the Bush Administration. Approval of the resolution essentially would reverse a 1997 sense-of-the-Senate resolution that warned the Clinton Administration against signing the Kyoto Protocol. The resolution would direct the Bush Administration to resume international climate negotiations with the “objective of securing United States participation in binding agreements” that “advance and protect the economic and national security interests of the United States.” Under the resolution, the U.S. also should negotiate commitments to curb greenhouse gas emissions “by all countries that are major emitters of greenhouse gases,” which would include developing nations.

Climate Change Bill Re-Introduced -- Representative Henry Waxman (D-CA) reintroduced on March 20, 2007, the Safe Climate Act, which would work to reduce total U.S. greenhouse gas emissions to 80 percent below 1990 levels by **2050**. Originally introduced in June 2006, the Act seeks to reduce emissions by freezing total U.S. greenhouse gas emissions at **2009** levels in **2010**. Beginning in **2011**, the legislation would mandate a two percent annual reduction in emissions to 1990 levels by **2020**, and five percent annual reductions beginning in **2021** that would reduce carbon dioxide emissions levels by **2050** to 80 percent below 1990 levels. The bill would achieve emission reductions by trading carbon credits across all sectors of the economy and by improving energy efficiency, encouraging conservation, and promoting renewable sources of power (such as solar and wind power) and renewable fuels (such as ethanol and biodiesel). EPA and the Department of Energy (DOE) would implement the bill jointly. The legislation would charge EPA with setting a carbon cap and launching the cap-and-trade program. EPA would also be responsible for setting greenhouse gas emissions standards for the automobile industry that are at least as stringent as California’s standards. DOE would be charged with establishing national standards to increase the share of retail electricity generated



from renewable sources to 20 percent by **2020**, and to require that at least one percent of energy supplies be obtained through energy-efficiency improvements.

Farm Bill Would Include Actions On Conservation, Renewable Energy, And Climate Change

-- On March 15, 2007, Representatives Ron Kind (D-WI) and Jim Gerlach (R-PA), and Senator Robert Menendez (D-NJ) introduced legislation (H.R. 1551) that would encourage conservation, renewable energy, organic farming, and actions to address climate change. The Healthy Farms, Food, and Fuels Act of 2007 would maintain the current maximum enrollment of 39.2 million acres for the Conservation Reserve Program, which addresses cropland, and expand conservation programs for many other areas. The bill would expand the Wetland Reserve Program, which rewards farmers and ranchers who restore lost wetlands, by raising the maximum enrollment in the program from 2.275 million acres to five million acres. Energy provisions in the bill include language intended to ensure that agricultural wastes, such as rice and wheat straw, are considered biomass to encourage their use to make fuel. Funding for renewable energy grants would be increased from \$23 million to \$250 million by FY **2012**, and a greenhouse gas reduction advisory panel would be established to study strategies to reduce greenhouse gas emissions.

Renewable Fuels Focus Of Bill -- A bill (S. 987) introduced on March 26, 2007, by Senators Jeff Bingaman (D-NM) and Pete Domenici (R-NM), would require that the U.S. motor fuel supply include nine billion gallons of ethanol or other renewable fuel in **2008** and 36 billion gallons by **2022**. Current law requires 7.5 billion gallons in **2012**. Senators Larry Craig (R-ID), Ken Salazar (D-CO), Maria Cantwell (D-WA), and Mel Martinez (R-FL) are co-sponsoring the bill, which is intended to encourage domestic production of biofuels. One biofuel that the Committee on Energy and Natural Resources has explored, and Committee members appear to support, is coal-to-liquid biofuel. In addition to requiring 36 billion gallons of renewable fuels in **2022**, the bill would require three billion gallons of advanced biofuels (those not derived from feed grains) in **2016**, increasing to 21 billion gallons in **2022**. Advanced biofuels include ethanol made from grass, wood chips, and other cellulosic sources, rather than from corn, which currently is used to produce nearly all ethanol. In addition, the bill would include measures to encourage development of a national infrastructure to distribute renewable fuels and a vehicle fleet that can use the fuels, including federal loan guarantees of up to \$250 million and grants to states. The bill also would establish seven bioenergy research centers around the country and would require the secretary of energy to undertake several studies related to expanding biofuels use.

Legislation Would Set Higher Fuel Economy Standards -- On March 14, 2007, Representatives Edward Markey (D-MA) and Todd Platts (R-PA) introduced legislation that would increase the fuel economy standards for cars and light trucks, requiring combined vehicle fleets to achieve 35 miles per gallon by **2018**. The Fuel Economy Reform Act would require average annual increases in fuel efficiency of four percent per year to reach that target. After **2018**, DOT's National Highway Traffic Safety Administration (NHTSA) would have to continue



to raise fuel economy standards by four percent each year, unless NHTSA finds this is not technologically or economically feasible.

Proposed Amendment Seeks \$1 Billion For Scientific Research -- New Mexico Senators Pete Domenici (R) and Jeff Bingaman (D) on March 21, 2007, offered an amendment to the Senate FY 2008 budget resolution (S. Con. Res. 21) that would add \$1 billion for scientific research. The money would be used to finance programs in the "America COMPETES Act" (S. 761), which Senate Majority Leader Harry Reid (D-NV), Senate Minority Leader Mitch McConnell (R-KY), and several other members introduced earlier in March. Among other things, the bill would boost funding for science, commerce, and education programs, including the National Science Foundation. Much of the money would go to DOE for basic and applied science research at the national labs.

Subcommittee Approves Provision To Regulate Foreign Solid Waste Imports -- The House Energy and Commerce Committee approved legislation (H.R. 518) on March 22, 2007, that would authorize states to regulate imports of foreign solid waste and allow EPA to implement a bilateral waste agreement between the U.S. and Canada. The Interstate Solid Waste Importation and Management Act of 2007 would direct EPA to develop regulations within two years of the law's passage to implement the 1986 Agreement Between the Government of The United States of America and Government of Canada Concerning the Transboundary Movement of Hazardous Waste, which was amended in 1992 to cover municipal solid waste. While waiting for EPA's regulations, the bill would authorize states to enact laws, regulations, or orders limiting receipt and disposal of foreign-generated municipal solid waste.

House Approves Bill To Implement MARPOL Convention Provisions -- The House of Representatives passed legislation (H.R. 802) on March 26, 2007, that would implement parts of a maritime treaty by setting emission standards for sulfur dioxide and nitrogen oxides from ships and banning ships' use of ozone-depleting substances. By a 359 to 48 vote, the House approved the Maritime Pollution Prevention Act of 2007, which would amend the Act to Prevent Pollution from Ships (33 U.S.C. Sections 1901, *et seq.*) to implement Annex VI to the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL Convention). As approved, the bill would require EPA and the Coast Guard to administer and enforce jointly emissions standards on ships, oil tankers, floating and fixed oil rigs, and cruise liners. The emissions standards are required of the U.S. as a party to the MARPOL Convention.

Chesapeake Bay Cleanup Funds Included In House Bill -- Representative Chris Van Hollen (D-MD) introduced a bill (H.R. 1766) on March 29, 2007, to boost funding for existing farm bill programs by \$200 million to \$300 million per year to help clean up the nitrogen, phosphorus, and sediment contamination in the Chesapeake Bay. The Chesapeake's Healthy and Environmentally Sound Stewardship of Energy and Agriculture Act of 2007 would authorize increases in conservation programs, specifically to improve water and soil quality and boost



renewable energy production through switchgrass in the Chesapeake Bay. The conservation programs targeted by the bill include the Environmental Quality Incentives Program, Conservation Reserve Program, Conservation Security Program, and Wetlands Reserve Program. These programs, which were authorized in the 2002 Farm Bill (Pub. L. No. 107-171), are due to expire in **September 2007**.

\$14 Billion Of Water Projects Make Headway -- The Senate Environment and Public Works Committee approved legislation on March 29, 2007, authorizing the U.S. Army Corps of Engineers to carry out a variety of navigation, flood control, water supply, environmental restoration, and other water resource projects. The Committee-approved Water Resources Development Act of 2007 contains about \$12 billion in projects. The House Transportation and Infrastructure Committee approved its own version of a \$14 billion water resources development bill (H.R. 1495) on March 15, 2007. The House bill contains a six-year backlog of navigation, flood control, water supply, environmental restoration, and other projects that Congress has considered, but never approved, since the previous authorization was enacted in 2000. In addition to authorizing new projects and modifying existing ones, the bill includes a number of provisions aimed at improving the Corps' planning and project development process. The measure would require independent peer reviews for Corps studies of larger and more controversial projects. Among the environmental provisions are mitigation requirements for dredging, navigation, and other projects that harm wetlands. Also included are a number of stipulations for environmental restoration, including a financial requirement for projects that involve nonprofit groups and other outside parties.

House Bill Would Extend Tax Breaks For Donating Development Rights -- Representatives Mike Thompson (D-CA), Dave Camp (R-MI), and 22 co-sponsors introduced legislation (H.R. 1576) on March 19, 2007, that would permanently extend tax incentives for farmers and ranchers who donate their land development rights to local land trusts, thereby creating a conservation easement. The legislation provides a tax deduction equal to the land's development value up to 50 percent of the land donor's income for all individuals except ranchers and farmers, who are capped at 100 percent of the donor's income, according to a news release announcing the introduction of the bill. The deduction could be carried forward for 15 years.

Senate Committee Approves Federal Building Energy Efficiency Measure -- On March 29, 2007, the Senate Environment and Public Works Committee approved, by voice vote, a bill that aims to reduce greenhouse gas emissions from federal buildings through use of energy-efficient light bulbs and insulation techniques. Senators Barbara Boxer (D-CA), the Committee Chair, and James Inhofe (R-OK), the Committee's ranking Republican, are co-sponsoring the Public Buildings Cost Reduction Act of 2007 (S. 992). The bill would authorize the General Services Administration to accelerate the use of energy-efficient heating and cooling systems and lights in the roughly 8,000 federal buildings it owns or leases across the country. In addition, the bill would authorize EPA to establish a \$20 million grant program for FYs **2007** through **2012**. This



program would provide up to \$1 million in matching grants to help counties and municipalities increase energy efficiency in their buildings with new techniques and green infrastructure.

MISCELLANEOUS

Companies Ask SEC To Clarify Disclosure Mandates For Quarterly Reports -- On March 19, 2007, a group of over 60 U.S. investors and major corporations asked the Securities and Exchange Commission (SEC) to clarify what companies should be disclosing about the financial impacts climate change is having on their businesses in quarterly reports. The group includes both leading corporations such as BP America, DuPont, and Merrill Lynch, and investors including the California Public Employees Retirement System, the largest U.S. public pension plan. The group asked the SEC to provide guidance on “what material issues” related to climate change companies should disclose in their regular financial reports, so that investors can assess more accurately the effects of climate change risk and related investment opportunities in their portfolios.

DHS Issues Rule To Secure “High Risk” Chemical Plants -- On April 9, 2007, DHS issued an interim final rule subjecting chemical plants considered to be at “high-risk” for terrorist attacks to federal chemical security regulation. 72 Fed. Reg. 17688. The final rule requires owners of chemical facilities housing certain quantities of specified chemicals to complete a preliminary screening assessment to determine their facility’s level of risk. Owners of facilities preliminarily qualifying as “high risk” must prepare and submit an assessment of vulnerabilities and a site security plan (SSP). These submissions will be validated through audits and site inspections.

DHS plans to implement the regulation in phases, beginning with chemical facilities believed to present the highest security risks. The regulation adopts a risk-based tiering structure so that DHS’s scrutiny of facilities increases as the level of risk increases. The new rule gives DHS authority to seek compliance through the imposition of civil penalties, up to \$25,000 per day, and the ability to shut down non-compliant facilities. DHS estimates that 1,500 to 6,500 high-risk facilities will be covered by the risk-based performance measures outlined in the rule. DHS also estimates that, assuming 5,000 facilities are subject to the rule, compliance with the rule will cost industry a total of \$8.5 billion over the next ten years. The rule is available at http://www.dhs.gov/xprevprot/laws/gc_1166796969417.shtm, and will take effect on **June 8, 2007**.

The rule also includes a proposed list of “DHS Chemicals of Interest,” and facilities possessing any of the listed chemicals at the specified quantities would be required to complete and submit a Top-Screen, which is a screening tool used to perform a preliminary consequence analysis. Comments on the list are due **May 9, 2007**. According to DHS, the comments that would be the most helpful in preparing a final list of chemicals of interest will reference specific chemicals and screening threshold quantities; explain the reason for any recommended change; and include



data, information, or authority that support such recommended change. The proposed list is available on the Internet at http://www.dhs.gov/xprevprot/laws/gc_1175537180929.shtm.

EC Reviews Directive 2002/95/EC -- On March 26, 2007, the EC announced a review of Directive 2002/95/EC (Waste Electrical and Electronic Equipment). The document announcing the review invites comments on topics and for information supply. The document informs stakeholders about the state of play and future steps. It provides the possibility to comment on the topics, identify additional topics and supply supporting information; it does not consult on concrete policy options. Before coming forward with proposals for revision of the Directive, the Commission will consult stakeholders on concrete policy options under consideration during **2008**. Written comments shall be submitted until **May 22, 2007**; a summary report on the results will be published on this website. More information is available at http://ec.europa.eu/environment/waste/weee/events_en.htm#consultation_2002-95-EC.

EPA Releases Enforcement Program Report -- On March 21, 2007, EPA's Office of Enforcement and Compliance Assurance (OECA) issued its report on enforcement activity in FY 2006. The *FY 2006 OECA Accomplishments Report and Environmental Results Through Smart Enforcement: Fiscal Year 2002* is available at <http://cfpub.epa.gov/compliance/resources/reports/accomplishment/details.cfm>. According to the report, EPA's enforcement office conducted more than 23,000 compliance inspections, initiated more than 305 criminal cases, and performed more than 352 civil investigations. OECA also resolved 1,475 voluntary disclosures in FY 2006, which ended September 30, 2006. The report provides results on the spectrum of the office's enforcement activities, including compliance assistance, inspections, and environmental justice. OECA also released an annual report focusing on its traditional enforcement figures. In its November 2006 enforcement report, EPA reported that it had obtained commitments from industry, governments, and other regulated parties to reduce pollution by nearly 900 pounds and invest almost \$4.9 billion in pollution control.

APHIS Issues Policy On Low-Level GM Material -- On March 29, 2007, the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) issued its policy for responding to low-levels of regulated genetically engineered plant materials that may occur in commercial seeds or grain. 72 Fed. Reg. 14649. APHIS's policy is to respond to occurrences of regulated materials in commercial seeds and grain with remedial action that is appropriate to the level of risk and warranted by the facts presented. Under the policy, APHIS identifies two situations where no remedial action generally would be required: when the regulated material is derived from plants that meet six specified criteria to qualify for APHIS's notification process; and situations where the genetically modified plant is similar to another genetically modified plant that has already been deregulated by APHIS with respect to both plant genotype and any novel protein(s) expressed. Copies of the policy are available at <http://www.aphis.usda.gov/newsroom/content/2007/03/llppolicy.shtml>.



EPA Issues Final Rule Revising The Acquisition Regulation -- On April 12, 2007, EPA issued a final rule revising the EPA Acquisition Regulation (EPAAR) to establish policy and procedures for acquiring environmentally preferable meeting and conference services. 72 Fed. Reg. 18401. The EPAAR revision adds a prescription and solicitation provision that EPA employees are required to use when soliciting quotes or offers for meeting and conference space and services. Under the Federal Acquisition Regulation, environmentally preferable products and services are those “that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.” The intent of the rule is to ensure that environmental preferability is considered in each purchase of commercial meeting and conference services, which furthers the EPA mission to protect human health and the environment. The rule is effective on **May 1, 2007**.

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