

Additional identification procedures may be required in some instances.

**CONTESTING PROCEDURE:**

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR Part 16.

**RECORD SOURCE CATEGORIES:**

Record subjects provide identification information. EPA personnel add information about dates and type of access authorized.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8789-9]

**Notice of Nationwide Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) for Projects With Debt Incurred on or After October 1, 2008 and Before February 17, 2009 That Are Refinanced Through the Clean or Drinking Water State Revolving Funds Using Assistance Provided Under ARRA**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a nationwide waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for eligible projects for which debt was incurred on or after October 1, 2008 and before February 17, 2009, the date of enactment of ARRA. This action permits the use of non-domestic iron, steel, and manufactured goods in such projects funded by ARRA that may otherwise be prohibited under section 1605(a).

**DATES:** *Effective Date:* April 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Dougherty, Director, Office of Ground Water and Drinking Water, (202) 564-3750 or Jim Hanlon, Director, Office of Wastewater Management, (202) 564-0748, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a nationwide waiver of the requirements of section 1605(a) of

Public Law 111-5, Buy American requirements, for eligible projects for which a Clean or Drinking Water State Revolving Fund (SRF) has concluded or will conclude an assistance agreement using ARRA funds to refinance a debt incurred on or after October 1, 2008, and before February 17, 2009.

The basis for the nationwide waiver is the authorization in the SRF appropriations heading of ARRA for refinancing using ARRA funds of certain debt obligations, as follows:

That notwithstanding section 603(d)(2) of the Federal Water Pollution Control Act and section 1452(f)(2) of the Safe Drinking Water Act, funds may be used to buy, refinance or restructure the debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008.

In the ordinary course of SRF business, refinancing of any existing debt obligations of assistance recipients eligible for refinancing is an allowable type of assistance under the sections referenced in the ARRA provision above, largely irrespective of when the debt was incurred. As the purpose of the SRF provisions of ARRA was to stimulate economic recovery by funding current infrastructure construction, the purpose of this ARRA provision was not to provide more advantageous financing for any projects whose construction had substantially already occurred. Rather, with the House of Representatives' passage of H.R. 7110 in late September 2008 giving notice of Congress' strong interest in economic recovery legislation, this refinancing provision was intended to include within the favorable financing terms of ARRA, eligible projects undertaken after that time (and within the Fiscal Year 2009 timeframe of ARRA as a supplemental appropriation) in anticipation of ARRA.

Moreover, as the debate on the legislation that ultimately became ARRA continued through November and December, 2008 into January and February, 2009, States and utilities increasingly reported that action on eligible projects that State SRFs wished to support and for which there was available funding under the base SRF program were being deferred, in the hope of obtaining more advantageous financing terms from the ARRA appropriation. In part because this deferral of financing and construction for genuinely "shovel ready" projects was in direct conflict with the most fundamental economic recovery purposes of ARRA, Congress adopted this refinancing provision to enable eligible projects which began creating jobs after October 1, 2008, to receive ARRA funding to recognize and support those projects' contribution to economic

recovery. This is confirmed in the declaration of the Joint Explanatory Statement of the Conference (H. Rpt. 111-16, at 444) that "[t]o ensure that funds are used to create jobs, the bill also limits the use of the revolving funds to buy, refinance, or restructure debt incurred prior to October 1, 2008."

The proponents of projects that fall within the scope of this SRF refinancing provision for ARRA had, in order to obtain the initial financing, specified designs which may include elements which have limited or often no domestic availability, many may have solicited bids from prospective contractors, and some subsequently awarded construction contracts, and in some cases began construction, prior to the February 17, 2009, enactment of ARRA. All of these actions were in fulfillment of Congress' intention in passing ARRA and in particular, adopting this SRF refinancing provision, to create jobs and spur economic recovery "by commencing activities and expenditures as expeditiously as possible." (See ARRA Section 3.)

Moreover, in all cases of initial financing prior to February 17, the project proponents were proceeding in good faith and without fair notice as to the existence and statutory scope of any Buy American requirement.

The imposition of ARRA's Buy American requirements on projects eligible for SRF assistance whose assistance applicants had already obtained financing on or after October 1, 2008 and prior to February 17, 2009, the date on which those requirements were imposed, would in all cases entail time-consuming delay and thus displace the "shovel ready" status of these projects. This would frustrate Congress' specific and explicit intent to allow for the use of ARRA funds to refinance those projects through the SRFs, as well as for expeditious construction generally. ARRA Section 1605(b)(1) authorized the Administrator to waive the requirements of Section 1605(a) in any case or category of cases in which she finds that applying subsection (a) would be inconsistent with the public interest.

Therefore, for the foregoing reasons, imposing ARRA's Buy American requirements for the category of cases described herein is not in the public interest. This supplementary information constitutes the "detailed written justification" required by Section 1605(c) for waivers "based on a finding under subsection (b)."

**Authority:** Public Law 111-5, section 1605.

Dated: April 1, 2009.

**Michael H. Shapiro,**

*Acting Assistant Administrator for Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8790-3]

### Science Advisory Board Staff Office; Request for Nominations of Experts To Provide Advice on Mold Issues in Indoor Environments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice request for nominations.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office is requesting nominations to form an Ad Hoc panel, under the auspices of the SAB, to provide advice to the EPA on mold issues in indoor environments.

**DATES:** Nominations should be submitted by April 28, 2009 per the instructions below.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Request for Nominations may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343-9984; via e-mail at [kooyoomjian.jack@epa.gov](mailto:kooyoomjian.jack@epa.gov) or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at <http://www.epa.gov/sab>. The EPA technical contact for this review is Dr. Mary E. Clark, Assistant Director for Science, Office of Radiation and Indoor Air (ORIA), who may be contacted via telephone at (202) 343-9348 or by e-mail at [clark.marye@epa.gov](mailto:clark.marye@epa.gov).

#### SUPPLEMENTARY INFORMATION:

**Background:** Physical inspection for water damage and mold is a key part of the Office of Radiation and Indoor Air's (ORIA's) mold remediation guidance (<http://www.epa.gov/mold/>). EPA's current indoor air guidance does not recommend routine sampling for mold. Rather, guidance for mitigating indoor mold states that if mold growth occurs in a building, the water problem must be fixed and the mold growth removed. The Agency's Office of Research and Development (ORD) has developed a tool, the Environmental Relative Moldiness Index (ERMI) (<http://www.epa.gov/microbes/moldtech.htm>) to screen indoor environments. The ERMI relies on collection of a dust

sample from the building in question. Deoxyribonucleic Acid (DNA) from mold in the dust is analyzed using a mold-specific quantitative Polymerase Chain Reaction (PCR) methodology. The analytical results are then compared to the ERMI, which generates a numeric score that predicts whether the tested space is likely to have higher or lower mold levels than outdoors, and by extension, predicts whether occupants are more or less likely to be exposed to mold. The analysis also indicates some of the types of mold present. The ERMI may also have utility in screening buildings where mold is suspected, but not visible.

ORD and ORIA view the ERMI as a prototype research tool at the current state of development. However, the Agency has received questions from the general public, other government agencies and non-governmental organizations concerning mold issues. There have also been requests for guidance on the broader use of the ERMI and its relationship to existing EPA mold sampling, as well as other mold issues. Since the ERMI has not been validated for such applications, the Agency is interested in clarifying the role and use of ERMI in mold remediation guidance, especially in the aftermath of water-related emergencies, such as Hurricanes Katrina and Rita. The Agency has requested that the SAB provide advice on the technical applicability and limitations of the ERMI; its utility for identifying natural background and mold contaminated environments, identifying mold species and associated mycotoxins; the need for guidance on the use of ERMI for emergency response situations (such as flooding); the pros and cons of ERMI; and other approaches that might be employed.

**Request for Nominations:** The SAB Staff Office is requesting nominations to form an Ad Hoc panel to provide advice to the Agency on mold issues as described above. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The Ad Hoc panel will provide advice through the chartered SAB, and will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies.

To address EPA's need for scientific and technical advice, the SAB Staff Office is seeking individuals with nationally recognized expertise, experience, knowledge, and field

experience in the following disciplinary areas with a specific focus on mold growth, exposure, effects, biodeterioration, building evaluation, and mold remediation in indoor environments:

(1) Epidemiology related to molds, fungi and bacteria; Microbiology related to molds, fungi and bacteria;

(2) Toxicology of molds, fungi and bacteria;

(3) Risk assessment related to indoor air quality, dampness and mold producing and mold biodeterioration conditions;

(4) Measurement statistics, bio-statistics, modeling and analysis of data on mold remediation;

(5) Emergency response and remediation associated with environmental microbiology and bio-aerosols;

(6) Environmental medicine, industrial hygiene, public health, or other medical fields related to mold exposures; and

(7) Risk perception and risk communication.

**Process and Deadline for Submitting Nominations:** Any interested person or organization may nominate qualified individuals to this Ad Hoc panel in the areas of expertise described above. Nominations should be submitted in electronic format through the SAB Web site at the following URL <http://www.epa.gov/sab>; or directly via the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* link found at URL: <http://www.epa.gov/sab/panels/paneltopics.html>. Please follow the instructions for submitting nominations carefully. To be considered, nominations should include all of the information required on the associated forms. Anyone unable to submit nominations using the electronic form and who has any questions concerning the nomination process may contact Dr. K. Jack Kooyoomjian, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than April 28, 2009.

For nominees to be considered, please include: Contact information; a curriculum vitae; a biosketch of no more than two paragraphs (containing information on the nominee's current position, educational background, areas of expertise and research activities, service on other advisory committees and professional societies; the candidate's special expertise related to the panel being formed; and sources of recent grant and/or contract support).

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified