

attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2010-9338 Filed 4-21-10; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2005-NM-0007; FRL-9140-1]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Transportation Conformity Requirement for Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the New Mexico State Implementation Plan (SIP) at New Mexico Administrative Code 20.11.3, concerning transportation conformity rules for Bernalillo County, New Mexico. The plan revision is intended to ensure consistency with amendments to the federal Transportation Conformity Rule. These plan revisions meet statutory and regulatory requirements, and are consistent with EPA's guidance.

DATES: Written comments should be received on or before May 24, 2010.

ADDRESSES: Please see the related direct final rule, which is located in the "Rules and Regulations" section of this **Federal Register**, for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Riley, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-8542; fax number 214-665-7263; e-mail address riley.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: This document proposes to take action on SIP revisions submitted by the Governor of New Mexico on behalf of the Albuquerque Environmental Health Department. We have published a direct final rule approving the State's SIP revisions in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based upon this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: April 9, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010-9197 Filed 4-21-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 268 and 302

[EPA-HQ-RCRA-2010-0310, FRL-9140-3]

RIN 2050-AG55

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Saccharin and Its Salts From the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) to remove saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. EPA is also proposing to amend the regulations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to remove saccharin and its salts from the list of hazardous substances. This proposed rule is in response to a petition submitted to EPA by the Calorie Control Council (CCC), to remove saccharin and its salts from the above lists. EPA is proposing to grant CCC's petition based on a review of the evaluations conducted by key public health agencies concerning the carcinogenic and other potential toxicological effects of saccharin and its salts, as well as EPA's own assessment of the waste generation and management information for saccharin

and its salts, which demonstrate that saccharin and its salts do not meet the criteria in the hazardous waste regulations for remaining on EPA's lists of hazardous constituents, hazardous wastes, and hazardous substances.

DATES: Comments must be received on or before June 21, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2009-0310 by one of the following methods:

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

- *E-mail:* Comments may be sent by electronic mail (e-mail) to rcra.docket@epamail.epa.gov, Attention Docket ID No. EPA-HQ-RCRA-2009-0310.

- *Mail:* Comments may be submitted by mail to: OSWER Docket, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-RCRA-2009-0310. Please include a total of two copies of your comments.

- *Hand Delivery:* Deliver your comments to: EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-RCRA-2009-0310. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2009-0310. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 <http://www.regulations.gov>, your e-mail address will be automatically captured and included as a part of the comment

that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The Public Meeting Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the OSWER Docket and the Public Reading Room is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: Mr. Narendra Chaudhari, Office of Resource Conservation and Recovery (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 703-308-0454; e-mail address: chaudhari.narendra@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This proposed rule could directly affect businesses that generate or manage unused commercial products that contain saccharin or its salts as the sole active ingredient. The wastes affected by this proposed rule are listed as EPA Hazardous Waste No. U202 (see 40 CFR 261.33(f)). If finalized, these wastes will no longer be listed hazardous wastes. This action may also affect entities that need to respond to releases of these wastes as CERCLA hazardous substances, since saccharin and its salts will no longer be CERCLA hazardous substances. Persons in charge of vessels or facilities from which saccharin or its salts are released will no

longer be required to immediately notify the National Response Center of the release under section 103 of CERCLA and will not be subject to the liability provisions under section 107 of CERCLA. The table below provides a guide for readers regarding entities that likely would be directly or indirectly affected by this action, based on the information available from the 2007 Biennial Report.¹

Industry Sectors Potentially Affected by the Proposed Rule

NAICS Code	Industry description for NAICS Code
5417	Scientific Research and Development Services.
31193	Flavoring Syrup and Concentrate Manufacturing.
32541	Pharmaceutical and Medicine Manufacturing.
32562	Toilet Preparation Manufacturing. ²
54171	Research and Development in the Physical, Engineering, and Life Sciences.
49311	General Warehousing and Storage.
61131	Colleges, Universities, and Professional Schools.
312111	Soft Drink Manufacturing.
325411	Medicinal and Botanical Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing [manufacturers of saccharin].

This action, however, may affect other entities not listed in the table. To determine whether your facility is affected by this action, you should examine 40 CFR parts 261, 268 and 302 carefully, along with the final regulatory language amending Chapter I of the Code of Federal Regulations (CFR). This language is found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

¹ EPA, in partnership with the States, biennially collects information regarding the generation, management, and final disposition of hazardous wastes regulated under RCRA. See the 2007 Biennial Report on the EPA Web site <http://www.epa.gov/epawaste/inforesources/data/index.htm>.

² Saccharin and its salts are used in personal-care products such as mouthwash, dental cleaners, and lipstick, which come under Toilet Preparation Manufacturing (NAICS Code 32562).

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

1. Submitting CBI

Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information submitted on 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 the procedures set forth in 40 CFR part 2. For further information on the procedures for submitting CBI data, contact Ms. LaShan Haynes (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (e-mail address and telephone number: haynes.lashan@epa.gov, (703) 605-0516).

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 alternative and substitute language for your requested changes.
- Describe any assumptions that you used and provide any technical information and/or data that you used.
- If you estimate potential burden or costs, 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.

Preamble Outline

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- X. Relationship to Other Rules
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 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Statutory Authority

EPA proposes these regulations under the authority of §§ 1006, 2002(a), 3001 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, by the Hazardous and Solid Waste Amendments of 1984

(HSWA), 42 U.S.C. 6905, 6912(a), 6921 and 6922. These statutes combined are commonly referred to as the "Resource Conservation and Recovery Act" (RCRA) and will be referred to as such for the remainder of this action.

Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602, is the authority under which the CERCLA aspects of this rule are promulgated.

II. List of Abbreviations and Acronyms

BRS	Biennial Reporting System
CAG	Carcinogen Assessment Group
CBI	Confidential Business Information
CCC	Calorie Control Council
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DHHS	Department of Health and Human Services
EPA	U.S. Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act of 1986
FDA	Food and Drug Administration
HSWA	Hazardous and Solid Waste Amendments of 1984
IARC	International Agency for Research on Cancer
LC 50	Lethal Concentration 50%
LD 50	Lethal Dose 50%
LDRs	Land Disposal Restrictions
NAICS	North American Industrial Classification System
NOEL	No Effect Level
NTP	National Toxicology Program
OMB	Office of Management and Budget
ROC	Report on Carcinogens
RQ	Reportable Quantity
WHO	World Health Organization

III. Overview

A. What Is EPA Proposing in This Rule?

EPA is proposing to grant a petition submitted by the Calorie Control Council (CCC) under 40 CFR 260.20 to remove saccharin and its salts from the lists of hazardous constituents (40 CFR part 261, Appendix VIII), hazardous wastes (40 CFR 261.33(f)), and hazardous substances (40 CFR 302.4).

B. Why Is EPA Proposing This Rule?

Under § 260.20, any person may petition the EPA Administrator to modify or revoke any provision in Parts 260 through 266, 267, 268, and 273 of 40 CFR. The CCC argued in a petition it submitted to EPA (which is included in the docket for this proposed rule) that the current scientific evidence, as viewed by key public health agencies, such as the National Toxicology Program (NTP) and the International Agency for Research on Cancer (IARC), does not support classifying saccharin as a potential human carcinogen, which was EPA's original basis for placing saccharin and its salts on its lists. EPA's

evaluation of this petition considered the original basis for the listing, NTP's and IARC's more recent conclusions about the risk of carcinogenicity of saccharin and its salts, and other factors or criteria required for making a listing determination. Based on this evaluation, EPA has determined that saccharin and its salts do not present any significant risk to human health or the environment. Therefore, EPA is proposing to grant CCC's petition by proposing to remove saccharin and its salts from the lists of hazardous constituents (40 CFR part 261, Appendix VIII), hazardous wastes (40 CFR 261.33(f)), and hazardous substances (40 CFR 302.4).

C. What Information Did EPA Consider in Its Decision To Propose This Rule?

EPA's analysis of whether or not to remove saccharin and its salts from its lists began with a review of the information in CCC's petition. This was followed by a review of the supporting information referred to in CCC's petition. The key supporting information for assessing the potential health risks from saccharin and its salts came from NTP and IARC. The NTP and IARC recently re-evaluated the available scientific evidence for saccharin and its salts and provided their findings on the carcinogenicity of these substances. (See Section V.A.) Since EPA originally listed saccharin based solely upon the evidence that it is a potential human carcinogen, it was important to consider the recent findings of NTP and IARC. In addition, EPA considered all other factors that could cause it to list saccharin and its salts as hazardous wastes, as well as hazardous constituents (Appendix VIII of Part 261) and hazardous substances (Part 302).

IV. Background

A. How Does EPA Identify a Chemical Substance as a Hazardous Constituent, Hazardous Waste, or Hazardous Substance?

EPA's regulations establish two ways of identifying solid wastes as hazardous wastes under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties ("characteristics") or if it is included on a specific list of wastes that EPA has determined are hazardous ("listing" a waste as hazardous) because the Agency has concluded that they may pose a substantial present or potential hazard to human health or the environment if improperly managed. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: Ignitability,

corrosivity, reactivity, and toxicity (*see* 40 CFR 261.21–261.24). As a generator, you must determine whether or not a waste exhibits any of these characteristics by testing, or by using your knowledge of the process that generated the waste (*see* § 262.11(c)).

EPA “lists” wastes as hazardous if they meet the criteria set out in 40 CFR 261.11. The regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed to date. Under § 261.33(e) and (f), the Agency includes two lists of commercial chemical products or manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates, that are hazardous wastes if and when they are discarded or intended to be discarded. The phrase “commercial chemical product or manufacturing chemical intermediate” refers to a chemical substance that is manufactured or formulated for commercial or manufacturing use, and consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

The Agency lists a chemical in § 261.33(e) as an acutely hazardous waste if it meets the criteria in § 261.11(a)(2), which states that the waste “has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness.”

The Agency lists a chemical in § 261.33(f) as a hazardous waste if it meets the criteria in § 261.11(a)(1) and/or § 261.11(a)(3). Section 261.11(a)(1) requires that the waste “exhibits any of the characteristics of hazardous waste identified in subpart C.” Section 261.11(a)(3) requires that the waste contains hazardous constituents identified in 40 CFR part 261, Appendix VIII, and after considering a number of factors, “* * * the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.” EPA places chemicals on the list of hazardous constituents in Appendix VIII “if they

have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.”

Whenever a hazardous waste or waste stream is identified or listed as hazardous under section 3001 of RCRA, it automatically becomes a hazardous substance under the statutory provisions of section 101(14) of CERCLA.

B. What Is the History of the Listings for Saccharin and Its Salts?

In 1980, as part of its final and interim final regulations implementing § 3001 of RCRA, EPA promulgated the lists of hazardous constituents (40 CFR part 261, Appendix VIII) and commercial chemical products or manufacturing chemical intermediates identified as hazardous wastes (40 CFR 261.33(f)) that included saccharin and its salts (45 FR 33084, May 19, 1980 and 45 FR 78532, November 25, 1980). The hazardous constituents listed in Appendix VIII were those which had been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms, and included substances that had been identified by the Agency’s Carcinogen Assessment Group (CAG). Saccharin was one of the constituents identified by CAG as a potential human carcinogen. The identification of saccharin by CAG, which led to its inclusion in Appendix VIII of Part 261, is the sole reason the Agency listed saccharin as EPA Hazardous Waste No. U202 in 40 CFR 261.33(f). The Agency added “and salts” to the saccharin listing in the November 25, 1980 rulemaking, since normal commercial use includes both forms. The substances listed on 40 CFR 261.33(f) are commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products that are hazardous wastes if and when they are discarded or intended to be discarded.

Saccharin and its salts are included in 40 CFR 302.4 and designated as hazardous substances under section 102(a) of CERCLA, if they are listed under section 3001 of RCRA.

C. Who Submitted a Petition to the EPA and What Do They Seek?

On April 30, 2003, the CCC submitted a rulemaking petition to EPA, under 40 CFR 260.20, seeking removal of saccharin and its salts from the lists of hazardous constituents (40 CFR part 261, Appendix VIII), hazardous wastes (40 CFR 261.33(f)), and hazardous substances (40 CFR 302.4). In the petition, CCC argued that the key public health agencies, such as NTP and IARC had recently concluded, based on the

current scientific evidence, that saccharin is not a potential human carcinogen. CCC also argued that, since EPA listed saccharin and its salts on the lists of hazardous constituents, hazardous wastes, and hazardous substances based solely on their potential as human carcinogens, there is no longer any basis for EPA to continue to include saccharin and its salts on these lists, and, therefore, believe that they should be removed from these lists. To examine CCC’s complete petition, *see* the docket for this proposed rule.

V. EPA’s Evaluation of the Petition Based on the Available Toxicological Information and Waste Generation and Management Information for Saccharin and Its Salts

Saccharin is a white crystalline powder which is about 300 times sweeter than sucrose. It is typically available commercially either in the acid form (saccharin) or as salts (sodium saccharin or calcium saccharin). The use of the name saccharin has been applied to all three forms of this chemical. Saccharin and its salts are used primarily as non-nutritive sweeteners. The most common uses are in diet soft drinks, as a table-top sweetener, and in products, such as juices, sweets, chewing gum and jellies. They are also used in cosmetics (*e.g.*, toothpaste, mouthwash, and lipstick), pharmaceuticals (*e.g.*, for coatings on pills), and electroplating (*e.g.*, as a brightener in nickel-plating baths).

EPA listed saccharin and its salts on the lists of hazardous constituents (40 CFR part 261, Appendix VIII), hazardous wastes (40 CFR 261.33(f)), and hazardous substances (40 CFR 302.4) based solely upon the evidence that it is a potential human carcinogen. EPA’s evaluation of CCC’s petition includes consideration of the original basis for the listings in light of the most recent scientific evidence about the risk of carcinogenicity of saccharin and its salts. However, EPA has also evaluated the petitioner’s requests against the listing criteria and factors that would need to be considered today under the regulations.

A. Evaluation of Toxicological Information for Saccharin and Its Salts To Assess the Petition

There have been numerous scientific studies conducted over the past several decades for the purpose of determining the toxicological effects, in particular carcinogenic effects, from the use of saccharin and its salts. The NTP and IARC have recently re-evaluated the available scientific information on saccharin and its salts relevant to its

carcinogenic and other toxicological effects. In 1996, CCC submitted a nomination to (or petitioned) the NTP to consider removing saccharin from its Report on Carcinogens (ROC) "based upon mechanistic data related to development of urinary bladder cancers in rats." NTP re-evaluated the available scientific information for saccharin and published its decision on CCC's petition in 2000, as part of its 9th ROC. In 1999, IARC published the results of its latest re-evaluation of the available scientific information for saccharin and its salts. The evaluations on the carcinogenicity and other toxicological effects of saccharin and its salts by NTP and IARC are summarized below. See the "NTP Report on Carcinogens Background Document for Saccharin" (which will now be referred to as NTP's Background Document) and part of the IARC Monographs Volume 73 concerning saccharin and its salts, which are included in the docket for this rulemaking. EPA believes it is appropriate to accept the saccharin evaluations performed by NTP and IARC. The NTP decision to delist saccharin from the ROC included scientific peer reviews, as well as public comment. IARC's evaluation on the carcinogenicity of saccharin and its salts provides additional support in EPA's assessment of CCC's petition.

1. Evaluation of Information on the Carcinogenicity of Saccharin and Its Salts by NTP and IARC

NTP initially listed saccharin as "reasonably anticipated to be a human carcinogen" in its 2nd ROC, published in 1981, based on sufficient evidence, at that time, of carcinogenicity in experimental animals. Specifically, the listing was based on increased incidence of bladder tumors in experimental animals, especially male rats, when they were fed sodium saccharin. However, saccharin was removed, or delisted, by NTP in its 9th ROC, published in 2000. The delisting decision for saccharin was made on the basis of a formal review process adopted by NTP, which included two Federal and one non-government scientific peer review and public comment and review.

In the ROC and its background document, NTP summarized its evaluation supporting the decision to remove saccharin as "reasonably anticipated to be a human carcinogen" as follows:

There is evidence of the carcinogenicity of saccharin in rats but less convincing evidence in mice. Mechanistic studies indicate that the observed urinary bladder cancers in rat studies are related to urinary pH, osmolality, volume, presence of

precipitate and urothelial damage with attendant hyperplasia following dietary concentrations of 3% or higher with inconsistent findings at lower dietary concentrations. The factors thought to contribute to tumor induction by sodium saccharin in rats would not be expected to occur in humans. The mouse data are inconsistent and require verification by additional studies. Results of several epidemiology studies indicate no clear association between saccharin consumption and urinary bladder cancer. Although it is impossible to absolutely conclude that it poses no threat to human health, sodium saccharin is not reasonably anticipated to be a human carcinogen under conditions of general usage as an artificial sweetener.

The available epidemiology studies, according to NTP, mostly examined associations between urinary bladder cancer and artificial sweeteners, rather than saccharin *per se*. The time trend data for bladder cancer from these studies were thought to be essentially noninformative with no clear indication that the increased use of saccharin or artificial sweeteners, beginning in the 1940's, was associated with any general increase in bladder cancer when controlled for confounding factors, mainly smoking. NTP's decision to delist saccharin, as stated in the ROC, was as follows:

Saccharin will be delisted from the Report on Carcinogens, because the rodent cancer data are not sufficient to meet the current criteria to list this chemical as *reasonably anticipated to be a human carcinogen*. This is based on the perception that the observed bladder tumors in rats arise by mechanisms not relevant to humans, and the lack of data in humans suggesting a carcinogenic hazard.

IARC first evaluated saccharin in 1980 and concluded the following:

There is *sufficient evidence* that saccharin alone, given at high doses, produces tumours of the urinary tract in male rats * * * (IARC, 1980).

In 1999, IARC presented its last re-evaluation, taking into consideration all new data on saccharin and its salts. It found that, based on a review of human studies on the carcinogenicity of artificial sweeteners, that there is "no consistent pattern of dose-response relationship between use of artificial sweeteners and cancers of the urinary bladder or lower urinary tract is apparent in the available literature." The animal studies in rats with sodium saccharin did show urinary bladder tumors in the 2-generation studies. However, the incidence of bladder tumors was significant only at higher doses (greater than 3% of the diet). Based on this re-evaluation, IARC concluded the following:

There is *inadequate evidence* in humans for the carcinogenicity of saccharin salts used as sweeteners.

There is *sufficient evidence* in experimental animals for the carcinogenicity of sodium saccharin.

There is *inadequate evidence* in experimental animals for the carcinogenicity of saccharin (acid form) and calcium saccharin.

In making its overall evaluation of the carcinogenic risk from saccharin and its salts, IARC stated the following:

In making its evaluation, the Working Group concluded that sodium saccharin produces urothelial bladder tumours in rats by a non-DNA-reactive mechanism that involves the formation of urinary calcium phosphate-containing precipitate, cytotoxicity and enhanced cell proliferation. This mechanism is not relevant to humans because of critical interspecies differences in urine composition.

Saccharin and its salts are *not classifiable as to their carcinogenicity to humans* (Group 3).

2. Evaluation of Information on Other Toxicological Effects of Saccharin and Its Salts by NTP and IARC

In addition to the evaluation of information on saccharin's carcinogenicity, NTP's Background Document and IARC's 1999 re-evaluation (as presented in IARC Monograph Volume 73) included information and analysis on other toxicological effects of saccharin and its salts. Specifically, saccharin, in the form of sodium saccharin, has generally been tested in rats by feeding the rats diets containing specified amounts of sodium saccharin. It has not been found to be acutely toxic in rats based on the criterion for listing hazardous wastes under § 261.11(a)(2). The LD 50 values for sodium saccharin by oral administration in rats ranged from 14 g/kg (14,000 mg/kg) to 17 g/kg (17,000 mg/kg) of body weight, which is significantly higher than the oral LD 50 value for rats of less than 50 mg/kg specified under the listing criterion. A 2-generation feeding study in rats that were given 1% to 7.5% sodium saccharin in their diet indicated that a 1% dietary level (500 mg/kg of body weight) of sodium saccharin represented a no-effect level (NOEL). There was also no significant increase in the incidence of urinary bladder tumors at the 3% dietary level of sodium saccharin. Generally, the studies on mutagenicity, genotoxicity, developmental and reproductive toxicity using saccharin and sodium saccharin have shown negative results. For more detailed information and analysis on other toxicological effects of saccharin and its salts, see NTP's Background Document

and IARC's 1999 re-evaluation in the docket for this proposed rule.

B. Evaluation of Waste Generation and Management Information for Saccharin and Its Salts To Assess the Petition

1. Quantity and Types of Wastes Generated

Saccharin and its salts are listed hazardous wastes, if the waste arises from the discard of a commercial chemical product, manufacturing chemical intermediate, or off-specification material (EPA Hazardous Waste No. U202 in 40 CFR 261.33(f)). The U-waste code applies only if the chemical is present in a pure or technical grade form, or is the sole active ingredient in the chemical formulation; in addition, the chemical must be unused.

The U202 listing is narrow and does not apply to other discarded materials that merely contain saccharin or its salts, *e.g.*, discarded products that contain saccharin as a sweetening agent. Nor does the listing apply to manufacturing process wastes that may contain saccharin or its salts, except for unused or off-specification saccharin or its salts that are discarded. Therefore, U202 is primarily generated by companies that manufacture saccharin or its salts, use saccharin or its salts in product formulations (*e.g.*, soft drinks, cosmetics, pharmaceuticals), and by companies that are discarding small quantities of unused or off-specification saccharin or its salts, such as some laboratories.

Facilities are required by EPA to report the amount of hazardous waste, including U202 generated biennially (every two years) as part of the Biennial Report System, or BRS. Based on the information available from the BRS for the years 2001, 2003, 2005, and 2007, generators reported a total of 123 specific wastes listed as U202 during this time period (some generators reported multiple U202 wastes over the years in question). The total amount of U202 waste generated over this time period was 20 tons for all industries/NAIC Codes; for 2007, there were 4.1 tons of U202 reported for 29 separate wastes.

Most of the U202 wastes appear to be discarded unused or off specification material and "lab packs," which package hazardous items for shipping and disposal. A limited number of other wastes are also reported, including contaminated debris/soil, organic and aqueous liquids, and other unidentified material. Although wastes were reported as "generated" by hazardous waste treatment, storage, and disposal

facilities, the BRS data indicate that nearly all of these wastes were not generated onsite, but rather were received from offsite for storage/packing and subsequent transfer for treatment or disposal. To avoid counting wastes twice (*i.e.*, the reported wastes from the generator and again from the waste facility packing/transferring the waste), one can subtract out the amounts of waste reported by hazardous waste collection and treatment facilities. Removing the U202 wastes generated at these hazardous waste handling facilities gives a total of 14.7 tons generated from 2001 through 2007, and a total of 2.9 tons for 2007 alone. Therefore, the total quantity of U202 generated is quite small compared to the total volume of hazardous waste generated, both on an annual basis and over the course of four reporting years.³

2. Factors Considered for Waste Listing

Saccharin and its salts were listed as hazardous waste under the criterion for listing given in 40 CFR 261.11(a)(3). Under this criterion, the Agency can list a waste if it contains any of the toxic constituents identified in 40 CFR part 261, Appendix VIII and, after considering a number of factors, the Agency concludes that the waste poses a "substantial present or potential hazard to human health or the environment" when improperly managed. The nature of the toxicity of a chemical contained in a waste is one of the factors to be considered in listing a waste as "toxic" (*see* § 261.11(a)(3)(i)). The Agency cited toxicity as the "decisive" factor in listing commercial chemical products under § 261.33(f), because the waste is typically the chemical itself (*see* EPA's Background Document for § 261.33, April 1981). Saccharin and its salts were listed as toxic constituents on Appendix VIII of part 261 and subsequently identified as hazardous wastes in § 261.33(f) based solely on their potential for carcinogenic effect in humans. Therefore, if the toxicological basis for listing saccharin and its salts on Appendix VIII of Part 261 is removed, then the basis for listing in § 261.33(f) no longer exists.

Other factors considered in listing a waste under § 261.11(a)(3) are related to the potential of the chemical to migrate if improperly managed, and include the chemical's persistence and

accumulation potential. However, these other factors are not critical in a listing evaluation for commercial chemical products containing saccharin and its salts, because the low toxicity of these chemicals revealed in scientific studies, including a lack of potential carcinogenic effect in humans, means that any risk from a plausible management scenario (*e.g.*, disposal in a landfill) would not be sufficient to cause a substantial present or potential hazard. In addition, the quantity of waste generated from the discard of saccharin and its salts by individual facilities and on a nationwide basis (§ 261.11(a)(3)(viii)) is relatively small, as described previously, which further reduces any potential hazard that might arise from disposal of the waste. The generators are distributed across the nation, located in 42 different counties according to the BRS data, reducing the likelihood of significant codisposal in the same landfill.

Additionally, one of the other factors for EPA to consider is action taken by other governmental agencies and regulatory programs (§ 261.11(a)(3)(x)). These actions also demonstrate that saccharin and its salts do not present a substantial hazard. These actions include: (1) The determinations by NTP and IARC that saccharin is not a potential human carcinogen, as discussed previously; (2) the State of California's removal of saccharin and its salts from its list of chemicals known to cause cancer or reproductive toxicity (under its Safe Drinking Water and Toxic Enforcement Act of 1986, known as "proposition 65")⁴; and (3) the FDA's approval of a variety of uses of saccharin in food, cosmetics, and drugs, and elimination of the warning label on food containing saccharin.⁵ Saccharin and its salts continue to be used widely as a non-nutritive sweetener in food products and are also used in products, such as toothpaste, mouthwash, chewing gum, confections, and pharmaceuticals.

Furthermore, as noted previously in section V.A.2., the information reviewed indicates that saccharin and its salts are not acutely toxic, and as such, they would not meet the criterion for listing hazardous wastes under § 261.11(a)(2). Moreover, saccharin and its salts do not

⁴ California EPA, Office of Environmental Health Hazard Assessment, Notice to Interested Parties for Chemical Delisted Effective April 6, 2001 and Notice to Interested Parties for Chemical Delisted Effective January 17, 2003 (available in the docket for this proposed rulemaking).

⁵ Section 517, Title V, Appendix A, Consolidated Appropriations Act of 2001 (Pub. L. 106-554, 114 Stat. 2763), repealed 21 U.S.C. 343(o), the saccharin warning statement requirement.

³ For comparison, BRS shows that approximately 47 million tons of hazardous waste was generated in 2007 (*see* <http://www.epa.gov/osw/inforesources/data/br07/national07.pdf>). Also in 2007, approximately 137 million tons of municipal waste went to landfills and other disposal (*see* <http://www.epa.gov/epawaste/nonhaz/municipal/msw99.htm>).

meet the criterion under § 261.11(a)(1), because saccharin and its salts are not expected to exhibit any of the characteristics of hazardous waste, *i.e.*, ignitability, corrosivity, reactivity, and toxicity, as described in 40 CFR 261.21 through 261.24.

Finally, the Agency needed to consider only one factor in listing saccharin and its salts as hazardous substances under CERCLA. Under the statutory provisions of section 101(14) of CERCLA, a hazardous waste that exhibits one or more of the hazardous waste characteristics or specifically is listed as a hazardous waste under RCRA becomes a hazardous substance under CERCLA.⁶ As a result, saccharin and its salts were listed in 40 CFR 302.4 and designated as hazardous substances under section 102(a) of CERCLA. Therefore, if the U202 hazardous waste listing under RCRA is removed, there would be no basis for listing saccharin and its salts as hazardous substances under CERCLA.

VI. EPA's Conclusions and Rationale for Proposing To Grant the Petition

EPA believes that saccharin and its salts, based on the results of the latest reviews of the available scientific information performed by NTP and IARC, do not pose a present or potential risk of causing toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. This is because saccharin and its salts: (1) Are not found to be highly toxic in scientific studies; (2) are not reasonably expected to have carcinogenic effects in humans and carcinogenic effects in experimental animals (*i.e.*, rats) have been observed mainly at higher doses (greater than 3% of the diet) that cannot reasonably be expected to be available in the environment outside of laboratory conditions; and (3) are not reasonably expected to be mutagenic or teratogenic. Therefore, there is no basis for retaining saccharin and its salts as a hazardous constituent listed on Appendix VIII of Part 261.

EPA also believes that saccharin and its salts, based on a review of the evaluations conducted by NTP and

IARC concerning the carcinogenic and other potential toxicological effects of saccharin and its salts, as well as EPA's own assessment of the waste generation and management information for saccharin and its salts, do not meet the criteria for listing them as hazardous wastes under 40 CFR 261.11. This is because saccharin and its salts: (1) Are not known to exhibit any of the characteristics of hazardous wastes identified in 40 CFR 261.21 through 261.24; (2) are not found to be acutely toxic in studies with animals; (3) are not found to be highly toxic in non-acute (longer-term) scientific studies; (4) are not discarded annually in a quantity which could reasonably be considered to pose a "substantial present or potential hazard to human health or the environment" when improperly treated, stored, transported, or disposed of, or otherwise managed; and (5) are not considered hazardous by other government agencies and regulatory programs. Therefore, there is no basis for retaining the listing for saccharin and its salts as a hazardous waste under 40 CFR 261.33(f).

EPA's listing of saccharin and its salts as hazardous substances under CERCLA (40 CFR 302.4) was based solely upon these substances being listed as U202 hazardous wastes under RCRA (40 CFR 261.33(f)). Therefore, since the Agency is proposing to remove saccharin and its salts as U202 listed hazardous wastes and saccharin and its salts are not designated or listed as hazardous substances on any of the other environmental statutes identified in section 101(14) of CERCLA that defines the term "hazardous substance," there exists no basis for retaining saccharin and its salts on CERCLA's list of hazardous substances (40 CFR 302.4). Based on the above conclusions, EPA is proposing to grant CCC's petition to remove saccharin and its salts from the lists of hazardous constituents (40 CFR part 261, Appendix VIII), hazardous wastes (40 CFR 261.33(f)), and hazardous substances (40 CFR 302.4).

VII. Status of Land Disposal Restrictions for U202 Listed Wastes

As discussed in the previous section, the Agency is proposing to remove saccharin and its salts from the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded (40 CFR 261.33(f)). These chemicals are specifically listed as RCRA Hazardous Waste No. U202 under 40 CFR 261.33(f). The regulations under 40 CFR part 268, prohibit the land disposal of RCRA hazardous waste unless they meet a certain level or have been treated by a

technology specified by EPA prior to land disposal. See the table "Treatment Standards for Hazardous Wastes" in § 268.40. The land disposal restrictions (LDRs) only apply to solid wastes that are RCRA hazardous wastes. Therefore, if saccharin and its salts are removed from the list of hazardous wastes based on this proposal, they would not be subject to the LDRs. Therefore, EPA is also proposing to remove saccharin and its salts from the table "Treatment Standards for Hazardous Wastes" in § 268.40.

VIII. State Authorization

A. Applicability of the Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the Federal program, and to issue and enforce permits in the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State is obligated to enact equivalent authorities within specified timeframes. However, the new Federal requirements do not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA is directed by the statute to implement the requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

⁶In addition, hazardous substances include: (1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act; (2) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Emergency Response, Compensation, and Liability Act; (3) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act; (4) any hazardous air pollutant listed under section 112 of the Clean Air Act; and (5) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. Saccharin and its salts are not included on any of these lists.

Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. *See also* 40 CFR 271.1(i). Therefore, authorized States may, but are not required to adopt Federal regulations, both HSWA or non-HSWA, that are considered less stringent than previous Federal requirements.

B. Effect on State Authorization

This rule is promulgated pursuant to non-HSWA authority. The changes proposed in this rule are less stringent than the current Federal requirements. Therefore, States will not be required to adopt and seek authorization for these changes. EPA will implement the changes in this rule only in those States which are not authorized for the RCRA program. Nevertheless, EPA believes that this rule has considerable merit, and the Agency thus strongly encourages States to amend their programs and become Federally-authorized to implement this rule once it becomes final.

IX. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Designation and List of Hazardous Substances and Reportable Quantities

Section 101(14) of CERCLA defines the term "hazardous substance" as those substances designated or listed under several other environmental statutes and those substances designated by EPA as hazardous under CERCLA section 102(a). In particular, CERCLA section 101(14)(C) incorporates by reference any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act. CERCLA section 102(a) authorizes EPA to designate as hazardous those substances that, when released into the environment, may present substantial danger to the public health, welfare or the environment, and to establish the reportable quantity (RQ) for all CERCLA hazardous substances. CERCLA section 102(b) sets a RQ of one pound (statutory RQ) for hazardous substances, except those for which RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). A list of CERCLA hazardous substances with their corresponding RQs is provided in Table 302.4 at 40 CFR part 302. CERCLA section 103 requires any person who releases a CERCLA hazardous substance in an amount equal to or greater than its RQ

to report the release immediately to the National Response Center.

On April 4, 1985, EPA issued a final rule, "Notification Requirements, Reportable Quantity Adjustments; Final Rule and Proposed Rule" (*see* 50 FR 13456). The final rule retained the statutory RQ of one pound for saccharin and its salts with a note that the final RQ is subject to change when the assessment of potential carcinogenicity and/or chronic toxicity is completed.

On March 16, 1987, EPA proposed to adjust the statutory RQ for saccharin and its salts to 100 pounds (45.5 kg) (*see* 52 FR 8140), which EPA finalized on August 14, 1989 (*see* 54 FR 33418). Saccharin and its salts, at the time of RQ adjustment, were classified as weight of evidence Group C,⁷ potency Group 3⁸ substances and received a "low" hazard ranking.

In this proposal, the Agency is proposing to remove saccharin and its salts from the list of CERCLA hazardous substances in conjunction with the removal of saccharin and its salts from the list of hazardous constituents (40 CFR part 261, Appendix VIII) and the list of commercial chemical products deemed hazardous waste (40 CFR 261.33(f)). With removal of the RCRA hazardous waste listing, the Agency does not have an independent basis upon which to retain saccharin and salts as CERCLA hazardous substances. That is, the Agency's designation of saccharin and its salts under section 102(a) was based solely upon its inclusion as a hazardous substance under section 101(14)(C) of CERCLA.

X. Relationship to Other Rules

This action is not intended, and should not be inferred to affect the status of saccharin under any statute or program other than RCRA and CERCLA. The granting of CCC's petition does not remove saccharin from the EPCRA § 313 list, which requires annual reporting of environmental releases of toxic chemicals.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory

⁷ Group C (possible human carcinogen) includes hazardous substances with "limited" evidence of carcinogenicity in animals and "inadequate evidence," "no data," or "no evidence" from human epidemiologic studies.

⁸ Group 3—"low" hazard category. RQ levels are assigned to the hazard rankings as follows: High (one pound RQ), medium (10 pound RQ), and low (100 pound RQ).

action." Pursuant to the terms of Executive Order 12866, although the annual effect of this proposed rule is expected to be less than \$100 million, the Agency has determined that this proposed rule is a significant regulatory action because it contains novel policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). In fact, EPA expects that the total annual respondent burden from this proposed rule would result in a net reduction in national annual paperwork burden to the affected facilities because of elimination of hazardous waste, and CERCLA hazardous substance reporting requirements. EPA also expects this rule to result in net annual cost savings to these same facilities from reduced waste management costs, by the expected shift of waste management from RCRA Subtitle C hazardous waste management, to RCRA Subtitle D nonhazardous waste management.

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 economic 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. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities” (5 U.S.C. sections 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule.

This action is designed to lower the cost of waste management for affected entities, by removing saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded under RCRA and from the list of hazardous substances under CERCLA. We have therefore concluded that today’s proposed rule will relieve regulatory burden for all affected small entities. 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

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This is because this proposed rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action 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. This proposed rule primarily affects generators of certain hazardous wastes from the discard of unused commercial products

that contain saccharin and its salts. There are no State and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than \$500,000 in any one year. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule reduces regulatory burden and should not adversely affect energy supply, distribution or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) 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.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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 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 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 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).

The Agency’s assessment, based on the small quantity of saccharin and its salts that are estimated to be discarded by affected facilities and their relatively

low toxicity, is that there is no significant risk to human health or the environment from managing saccharin and its salts in nonhazardous waste landfills (the plausible management scenario). As noted previously in section V.B.2., the facilities that generate these small quantities of waste are distributed across the nation, which makes it unlikely that any one segment of the population would be impacted disproportionately from management of this nonhazardous waste. However, the Agency continues to be interested in any potential environmental justice concerns as a result of this proposed rule and welcomes comments on issues related to such concerns.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 15, 2010.

Lisa P. Jackson,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

§ 261.33 [Amended]

2. Section 261.33 is amended by removing the entries for the U202 hazardous waste in the table under paragraph (f).

Appendix VIII [Amended]

3. Appendix VIII to part 261 is amended by removing the entries for “Saccharin” and “Saccharin salts” from the table “Hazardous Constituents.”

PART 268—LAND DISPOSAL RESTRICTIONS

4. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

§ 268.40 [Amended]

5. Section 268.40 is amended by removing the entry for waste code U202 from the table “Treatment Standards for Hazardous Wastes.”

Appendix VII [Amended]

6. Appendix VII to part 268 is amended by removing the entry for waste code U202 from Table 1, “Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the LDRs—Comprehensive List.”

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

7. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

8. In § 302.4, the table is amended by removing the entry for “Saccharin, & salts.”

[FR Doc. 2010-9167 Filed 4-21-10; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WP Docket No. 10-72; FCC 10-45]

Amendment of the Commission's Rules Regarding Amateur Radio Service Communications During Government Disaster Drills

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission adopted a document seeking comment on its proposal to amend the Commission's amateur radio service rules with respect to amateur radio operations during government-sponsored emergency preparedness and disaster readiness drills and tests. Specifically, the Commission proposes to amend the rules to provide that, under certain limited conditions, amateur radio operators may transmit messages during emergency and disaster preparedness drills, regardless of whether the operators are employees of entities participating in the drill.

DATES: Comments are due on or before May 24, 2010 and reply comments are due on or before June 7, 2010.

ADDRESSES: You may submit comments, identified by WP Docket No. 10-72 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.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People With Disabilities:* Contact the Commission 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: Jeffrey Cohen, Senior Legal Counsel, Public Safety and Homeland Security Bureau, at (202) 418-0799, or by e-mail at Jeff.Cohen@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's *Notice of Proposed Rulemaking (NPRM)* in WP Docket No. 10-72, FCC 10-45, adopted on March 18, 2010, and released on March 24, 2010. This document is available to the public at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-45A1.doc.

Synopsis of the NPRM

1. In this *NPRM*, the Commission proposes to amend its amateur radio service rules with respect to amateur radio operations during government-sponsored emergency preparedness and disaster readiness drills and tests. Although public safety land mobile radio systems are the primary means of radio-based communications for emergency responders, experience has shown that amateur radio has played an important role in preparation for, during, and in the aftermath of, natural and man-made emergencies and disasters. Current rules provide for amateur radio use during emergencies. At the same time, the rules prohibit