ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine which CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds a total of 17 new sites to the NPL; 16 sites to the General Superfund Section of the NPL and 1 site to the Federal Facilities Section of the NPL.

EFFECTIVE DATE: The effective date of this final rule is February 18, 1999.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, "Availability of Information to the Public," in the SUPPLEMENTARY INFORMATION portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603-8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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section”). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (“HRS”), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.5 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release. EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 29, 1998 (43 FR 51882).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the “Superfund”). Only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (“Remedial actions” are those “consistent with permanent remedy, taken instead of or in addition to removal actions * * *,” 42 U.S.C. 9601(24)). However, under 40 CFR 300.425(b)(2) placing a site on the NPL “does not imply that monies will be expended.” EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Although a CERCLA “facility” is broadly defined to include any area where a hazardous substance release has “come to be located” (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the “boundaries” of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the “Jones Co. plant site”) in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the “site”). The “site” is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant.

The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the “Jones Co. plant site,” does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the “nature and extent of the threat presented by a release” will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined.

Moreover, it generally is impossible to discover the full extent of where the contamination “has come to be located” before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as
Thus, as of January 4, 1999, the CCL consists of 585 sites. For the most up-to-date information on the CCL, see www.epa.gov/superfund.

Inclusion of a site on the CCL has no impact on property values. (E.g., institutional measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for the CCL to simplify its system of categorizing sites. EPA also has developed an NPL to supplement the CCL. There are 413 sites also on the NPL CCL, 172 sites were deleted from the NPL, 16 sites were deleted based on deferral to other authorities and are not considered cleaned up. In addition, the other 9 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on a request for reclassification). In November 1995, EPA initiated a new policy to delete portions of NPL sites when cleanup is complete.

As of January 4, 1999, the NPL contains the 1 site in the Federal Facility Section of the NPL and 2 sites to the General Superfund Section. Sites in each table are arranged alphabetically by site. The NPL, General Superfund Section and Table 2 contains the 1 site in the Federal Facility Section of the NPL.

The Regional dockets contain all the information in the Headquarters dockets. Documents relating to the final rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The Regional dockets are available for review at the Regional Dockets. The Headquarters dock for this rule contains the data principally relied upon by EPA in calculating or explaining the NPL score for the site (see Table 1 for any special requirements or EPA listing pertinently reflecting the site).

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A. What is Executive Order 12866?
Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency
must determine whether a regulatory action is “significant” and therefore
subject to OMB review and the requirements of the Executive Order.
The Order defines “significant regulatory action” as one that is likely
to result in a rule that may: (1) Have an annual effect on the economy of $100
million or more or adversely affect in a material way the economy, a sector of
the economy, productivity, competition, jobs, the environment, public health or
safety, or State, local, or tribal
governments and the private
sector. Section 202 of the UMRA,
Title II of the Unfunded
Mandates Reform Act of 1995
(UMRA), Public
Law 104–4, establishes requirements for
Federal Agencies to assess the effects of
their regulatory actions on State, local,
and tribal governments and the private
sector. Under section 202 of the UMRA,
EPA generally must prepare a written
statement, including a cost-benefit
analysis, for proposed and final rules
with “Federal mandates” that may
result in expenditures by State, local,
and tribal governments, in the aggregate,
or by the private sector, of $100 million
or more in any one year. Before EPA
promulgates a rule for which a written
statement is needed, section 205 of
the UMRA generally requires EPA to
materially alter the budgetary impact of
entitlements, grants, user fees, or loan
programs or the rights and obligations of recipients thereof; or (4) raise novel
legal or policy issues arising out of legal
mandates, the President’s priorities, or
the principles set forth in the Executive
Order.
B. Is This Final Rule Subject to
Executive Order 12866 Review?
No, the Office of Management and
Budget (OMB) has exempted this
regulatory action from Executive Order
12866 review.
V. Unfunded Mandates
A. What is the Unfunded Mandates
Reform Act (UMRA)?
identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

VI. Effect on Small Businesses

A. What is the Regulatory Flexibility Act?

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the rule on small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. Under section 605(b) of the RFA, EPA is not required to prepare a regulatory flexibility analysis if the Agency certifies that the rule will not have a substantial economic impact on a substantial number of small entities.

While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding a site to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of any cleanup at the site. Further, no identifiable groups are affected. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the site in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of this site to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when deciding on enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A “major rule” cannot take effect until 60 days after it is published in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement regarding the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government.
agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards practices) that are developed or adopted by voluntary consensus standards bodies. The NTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

EPA is not using technical standards as part of today’s rule, which adds sites to the NPL. Therefore, the Agency did not consider the use of any voluntary consensus standards.

IX. Executive Order 13045

A. What is Executive Order 13045?

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

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

X. Paperwork Reduction Act

A. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070-0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require the approval of OMB.

XI. Executive Order 12875

What is Executive Order 12875 and is it Applicable to This Final Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA’s prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments “to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.”

Today’s rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duty on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XII. Executive Order 13084

What is Executive Order 13084 and is it Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s
prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today’s rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**List of Subjects in 40 CFR Part 300**

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


**Timothy Fields, Jr.,**

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

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<th>TABLE 1.—GENERAL SUPERFUND SECTION</th>
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