*B. How Can I Access Electronic Copies of This Document and Other Related Information?*

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR parts 156 and 165 is available at E–CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

## II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of June 30, 2004 (69 FR 39392). In that document, EPA reopened the comment period for the rulemaking titled ''Standards for Pesticide Containers and Containment,'' which was proposed on February 11, 1994 (59 FR 6712). In that document, EPA sought comment on proposed regulations for pesticide container design and residue removal and for containment structures at pesticide storage and container refilling operations. Because significant time has passed since the proposed rule in 1994 and a supplemental notice in 1999 (64 FR 56918, Oct. 21, 1999), EPA reopened the comment period for an additional 45 days to solicit public input on issues or technology relating to the proposed requirements that would not have been available or could not have been addressed during previous public comment opportunities. EPA is hereby extending the comment period, which was set to end on August 16, 2004, to September 15, 2004.

## III. What is the Agency's Authority for Taking This Action?

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) sections 19(e) and (f) grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for ''the design of pesticide containers that will promote the safe storage and disposal of pesticides.''

A request to extend the comment period in order to gather data for a response was received after the publication of the June 30, 2004 notice in the **Federal Register**. EPA is hereby extending the comment period by 30 days.

## IV. Do Any Statutory and Executive Order Reviews Apply to this Action?

This notice neither proposes nor takes final action regarding any substantive requirements and is procedural in nature. This notice merely keeps the docket open for further comments on a rule that has already been proposed. Therefore, it is not subject to the statutory and executive order reviews generally applicable to proposed and final rules.

## List of Subjects in 40 CFR Parts 156 and 165

Environmental protection, Packaging and containers, Pesticides and pests.

Dated: August 4, 2004.

**Susan B. Hazen,**

*Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

[FR Doc. 04–18601 Filed 8–12–04; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–7796–6]**

## National Priorities List for Uncontrolled Hazardous Waste Site, Proposed Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed 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. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes two different options to add certain areas on and around the islands of Vieques and Culebra, Commonwealth of Puerto Rico, to the NPL. The Commonwealth has identified these areas collectively in its listing request as the Atlantic Fleet Weapons Training Area (''AFWTA'').

**DATES:** Comments regarding this proposed listing must be submitted (postmarked) on or before October 12, 2004.

**ADDRESSES:** By electronic access: Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key Docket ID No. SFUND–2004–0011. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

*By Postal Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue NW.; Washington, DC 20460, Attention Docket ID No. SFUND–2004–0011.

*By Express Mail or Courier:* Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, Attention Docket ID No. SFUND–2004–0011. 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 Federal holidays).

*By E-Mail:* Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov*. Cite the Docket ID No. SFUND–2004–0011 in your electronic file. Please note that EPA's e-mail system automatically captures your e-mail address and is included as part of the comment that is placed in the public dockets, and made available in EPA's electronic public docket.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

## I. Background

### *A. What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, 100 Stat. 1613 *et seq.* As part of SARA, Congress created the Defense Environmental Restoration Program (DERP), 10 U.S.C. 2701, *et seq.*, which authorized the Secretary of Defense to carry out restoration activities on current and former military facilities. Under Executive Order 12580, the Secretary of Defense exercises the President's authority under sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c)), 119, and 121 of CERCLA with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody, or control of the Department of Defense. The Secretary of Defense has delegated this authority to the Secretary of the Navy for sites the Department of the Navy controlled after 1986, which includes both the eastern and western portions of Vieques. The U.S. Army, through the U.S. Army Corps of Engineers (USACE), executes DERP's Formerly Used Defense Sites (FUDS) Program in accordance with CERCLA and the National Contingency Plan (NCP), and is authorized under this program to conduct investigation and response actions relating to areas on Culebra that were once under Defense jurisdiction.

### *B. What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

### *C. What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities 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 28.50 or greater on the HRS are eligible for the NPL. This listing proposal is not based on scoring pursuant to the HRS. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), 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)). This is the option chosen by Puerto Rico for the Vieques and Culebra areas addressed in this listing proposal; (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 July 22, 2004 (69 FR 43755).

In addition, as a matter of policy, EPA may defer sites or portions of sites from the NPL. (See, *e.g.*, 56 FR 5601–5602, See also ''Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions,'' OSWER Directive 9375.6–11.)

*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. Response activities undertaken by DoD components pursuant to DERP receive their funding from specific environmental restoration accounts under 10 U.S.C. 2703, not from the Trust Fund.

*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 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. Because Puerto Rico has proposed to add certain areas on and around Vieques and Culebra as the Commonwealth's ''single highest priority facility'' pursuant to 42 U.S.C. 9605(a)(8)(B), no specific HRS analysis is applicable to this listing proposal.

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 name ''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 problem presented by the 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 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 explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with States on proposed deletions and shall consider whether any of the following criteria have been met:

(vii) Responsible parties or other persons have implemented all appropriate response actions required;

(viii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(ix) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of August 9, 2004, the Agency has deleted 285 sites from the NPL.

*H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of August 9, 2004, EPA has deleted 45 portions of 37 sites.

*I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL.

As of August 9, 2004, there are a total of 899 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

**II. Public Review/Public Comment**

*A. May I Review the Documents Relevant to This Proposed Rule?*

Yes, documents that form the basis for evaluations by Puerto Rico, EPA, and other agencies concerning the site in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC and in the Region 2 office.

*B. How Do I Access the Documents?*

You may view the documents, by appointment only, in the Headquarters or the Regional docket after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 2 docket for hours.

The following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, (202) 566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Region 2 docket is as follows: Dennis Munhall, Region 2, U.S. EPA, 290 Broadway, New York, NY 10007–1866; (212) 637–4343.

You may also request copies from either the EPA Headquarters or the Region 2 docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

You may also access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* You may use EPA Dockets at *http://www.epa.gov/edocket* to access the index listing of the contents of the Headquarters docket, and to access those documents in the Headquarters docket. Once in the system, select ''search'', then key in the Docket ID No. SFUND–2004–0011. The documents contained in the Headquarters and Region 2 Dockets are outlined below.

*C. What Documents Are Available for Public Review at the Headquarters and Region 2 Dockets?*

The Headquarters and Region 2 dockets for this rule contain: The June 13, 2003 letter from Governor Sila M. Calderon of Puerto Rico designating certain areas on and around Vieques and Culebra, identified by the Governor as AFWTA, as her highest priority facility and requesting listing of AFWTA on the NPL; additional letters from Puerto Rico clarifying the June 13, 2003 letter; maps; ecological information for Vieques and Culebra; Corps of Engineers Archive search for Culebra; and Navy supporting material.

*D. How Do I Submit My Comments?*

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

*E. What Happens to My Comments?*

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

*F. What Should I Consider When Preparing My Comments?*

EPA is soliciting comments on the listing of certain areas on and around Vieques and Culebra, identified by the Governor collectively as the AFWTA, and requested by the Governor of Puerto Rico pursuant to 42 U.S.C. 9605(a)(8)(b). EPA is also soliciting comments on an approach for final listing that would separate the final listing decision for the Culebra from Vieques (see a more detailed description of this approach below under Section III.A. ''Contents of this Proposed Rule''). In addition EPA is seeking comment on treating the noncontiguous islands of Vieques and Culebra as one facility, considering court decisions such as *Mead Corp.* v. *Browner*, 100 F 3d 152 (D.C. Cir. 1996).

*G. May I Submit Comments After the Public Comment Period Is Over?*

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

*H. May I View Public Comments Submitted by Others?*

During the comment period, comments are placed in the Headquarters docket and are available to

the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. For additional information about EPA's electronic public docket, visit EPA Dockets online at *http://www.epa.gov/edocket* or see the May 31, 2002 **Federal Register** (67 FR 38102).

*I. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?*

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

**III. Contents of This Proposed Rule**

*A. Proposed Addition to the NPL*

Pursuant to section 105 (a)(8)(B) of CERCLA, Puerto Rico has requested that EPA propose to list certain areas on and around Vieques and Culebra, identified by the Governor as the AFWTA, on the NPL. The AFWTA includes certain land areas, waters and keys in and around the islands of Vieques and Culebra where military exercises carried out primarily by the Department of Defense have potentially left CERCLA hazardous substances, pollutants or contaminants.

Section 105(a)(8)(B) of CERCLA provides that the NPL ''to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once.'' In a letter from Governor Sila M. Calderon to former EPA Administrator Christine Todd Whitman dated June 13, 2003, Puerto Rico designated the AFWTA, comprising certain areas of concern in and around Vieques and Culebra as the Commonwealth's single highest priority facility (''State pick'') and requested that EPA list the AFWTA on the NPL. Puerto Rico clarified its designation in letters dated October 21, 2003 , and July 28, 2004 with respect to both Vieques and Culebra, and May 26, 2004 with respect to Vieques. Support for Puerto Rico's designation of the AFWTA as their highest priority facility and a detailed description of areas preliminarily identified as part of the facility or as requiring investigation can be found in the docket for this rulemaking. EPA seeks comment on treating the noncontiguous islands of Vieques and Culebra as one facility considering court decisions such as *Mead Corp.* v. *Browner*, 100 F.3d. 152 (D.C. Cir. 1996). The *Mead* court rejected EPA's attempt to treat non-contiguous sites as one NPL site in a case in which one of the sites qualified for listing on the basis of an ATSDR advisory. The only rationale presented for combining the two sites for the purposes of the listing was that there were joint operations carried out at the two sites. In the *Mead* case, EPA had relied on a 1984 aggregation policy (49 FR 37,070 (Sept. 21, 1984)) that was premised on language in section 104(d)(4) of CERCLA which authorizes EPA to treat non-contiguous facilities as one for purposes of section 104. EPA no longer relies on the 1984 aggregation policy in the listing context.

EPA would also like to solicit comment on an approach that would separate the final listing decision for Culebra from the final listing decision for Vieques. Under such an approach, EPA would go forward with a final rule listing Vieques and postpone the final listing decision of Culebra to allow the completion of a Memorandum of Agreement between Puerto Rico and Army. The Memorandum of Agreement would govern the response actions necessary to protect Culebra's human health and environment. The EPA, Puerto Rico and the Army have agreed to pursue this alternate arrangement. The terms or progress under such agreement may determine the point at which it may be appropriate to withdraw the proposal to list the Culebra areas. EPA's intent would be to allow the Culebra areas to be addressed by the two parties under their agreement.

The Culebra portions of the proposal consist of land and water areas identified by Puerto Rico that were owned by, leased to, or otherwise utilized by the United States and under the jurisdiction of the Secretary of Defense that potentially contain CERCLA hazardous substances, pollutants or contaminants left from past military activities. These land areas and associated water areas include, but are not limited to, the following: the Flamenco Peninsula (Northwest Peninsula), Alcarraza Cay (Fungy Bowl), Los Gemelos (Twin Rocks), Cayo del Agua, Culebrita, Cayos Geniqui (Palada Cays), Cayo Tiburon (Shark Cay), Cayo Botella (Ladrone Cay), and a former mortar range Area in Culebra's Cerro Balcon region. Vieques includes all areas agreed to by Puerto Rico and the Navy in May 26, 2004 letter to EPA. For more detailed information on the Vieques portions, please refer to the May 26, 2004 letter with attached maps in the Docket (Docket ID No. SFUND–2004–0011). The description of the site may change as more information is gathered on the nature and extent of contamination.

*B. Status of NPL*

With this proposal, there are now 57 sites proposed and awaiting final agency action, 50 in the General Superfund Section and 7 in the Federal Facilities Section. There are currently 1,242 final sites, 1,084 in the General Superfund Section and 158 in the Federal Facilities Section. Final and proposed sites now total 1,299. (These numbers reflect the status of sites as of August 9, 2004. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

**IV. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

1. 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 or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) 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.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Paperwork Reduction Act*

1. 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).

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

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

*C. Regulatory Flexibility Act*

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release or threatened release of hazardous substances and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 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.

2. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA or other Federal agencies or private parties will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

*E. Executive Order 13132: Federalism*

1. What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States (including the Commonwealth of Puerto Rico), on the relationship between the Federal government and the States and the Commonwealth, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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

1. 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 Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

*H. Executive Order 13211*

1. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

2. Is This Rule Subject to Executive Order 13211?

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

*I. National Technology Transfer and Advancement Act*

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 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.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**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.

Dated: August 10, 2004.

**Thomas P. Dunne,**

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

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

[FR Doc. 04–18655 Filed 8–12–04; 8:45 am]

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## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### 45 CFR Parts 2510, 2520, 2521, 2522, 2540 and 2550

**RIN 3045–AA41**

### AmeriCorps National Service Program

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the ''Corporation'') proposes to amend several provisions relating to the AmeriCorps national service program, and to add rules to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements.

**DATES:** To be sure your comments are considered, they must reach the Corporation on or before October 12, 2004.

**ADDRESSES:** You may mail or deliver your comments to Kim Mansaray, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 565–2767, or send them electronically to *proposedrule@cns.gov* or through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov.* Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington DC headquarters.

**FOR FURTHER INFORMATION CONTACT:** Kim Mansaray, Docket Manager, Corporation for National and Community Service, (202) 606–5000, ext. 236. TDD (202) 565–2799. Persons with visual impairments may request this proposed rule in an alternative format.

**SUPPLEMENTARY INFORMATION:**

#### I. Invitation To Comment

We invite you to submit comments about these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect all public comments about these proposed regulations in room 8417, 1201 New York Avenue, NW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

In addition, the Corporation is planning five public meetings and three conference calls during August and September for purposes of soliciting input on this proposed rule. Please visit our Web site at *http://www.americorps.org/rulemaking* for information on the dates, places, and times of these meetings and calls.

#### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### II. Background

Under the National and Community Service Act of 1990, as amended (hereinafter ''NCSA, or the Act,'' 42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support community service through the AmeriCorps program. In addition, the Corporation, through the National Service Trust, provides education awards to and certain interest payments on behalf of AmeriCorps participants who successfully complete a term of service in an approved national service position.

On February 27, 2004, President Bush issued Executive Order (E.O.) 13331 aimed at making national and community service programs better able to engage Americans in volunteering, more responsive to State and local needs, more accountable and effective, and more accessible to faith-based and grassroots organizations. The E.O. directed the Corporation to review and modify its policies as necessary to accomplish the goals of the E.O.

In the Consolidated Appropriations Act for 2004, Congress required the Corporation to reduce the Federal cost per participant in the AmeriCorps program and to increase the level of matching funds and in-kind contributions provided by the private sector. The Conference Report accompanying the 2004 Consolidated Appropriations Act directed the Corporation to engage in notice and comment rulemaking around the issue of ''sustainability.''

On September 23, 2003, the Corporation's Board of Directors (the Board) directed the Corporation to ''undertake rulemaking to establish regulations on significant issues, such as sustainability and the limitation on the Federal share of program costs, consistent with any applicable directives from Congress.'' On June 21, 2004, the Board approved draft specifications for the proposed rule, and directed the Corporation to develop and submit a proposed rule based on those specifications.

The Corporation is initiating two separate rulemaking processes in 2004. This first one will address significant and time-sensitive issues with the goal of incorporating them, to the extent practicable, into the AmeriCorps 2005 program year. The second process grows out of a recommendation by the Board's Taskforce on Grant-making and is largely an effort to streamline and improve our current grant making processes. That streamlining effort is already underway, and we plan to issue a Notice of Proposed Rulemaking for that purpose later in the year. These two rulemakings address distinct and separate issues.

#### III. Preliminary Public Input

On March 4, 2004, the Corporation published a notice in the **Federal Register** inviting informal preliminary public input in advance of rulemaking. The notice outlined the general topics the Corporation was interested in addressing through rulemaking and posed questions for the public to consider in providing input. Following the notice, the Corporation held four conference calls and five public meetings across the country in Columbus, Ohio, Seattle, Washington, Boston, Massachusetts, Washington, DC, and Fort Worth, Texas, to frame the issues and hear public input. Through the hearings, conference calls, and e-mail and paper submissions, the Corporation received responses from nearly 600 individuals, and has used