

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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2005.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.565 is amended by alphabetically adding the commodity "Artichoke" to the table in paragraph (b) to read as follows:

**§ 180.565 Thiamethoxam; tolerances for residues.**

*	*	*	*	*
(b)	*	*	*	

Commodity	Parts per million	Expiration/revocation date
Artichoke, globe .....	0.40	6/30/08

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-7871-9]

**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. 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 adds one new site to the NPL Federal Facilities Section.

**EFFECTIVE DATE:** The effective date for this amendment to the NCP shall be March 14, 2005.

**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:** 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.

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## 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”), Public Law 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 (DoD). 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 a Hazard Ranking System (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 September 23, 2004 (69 FR 56949).

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. Does the NPL Define Boundaries of Sites?

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 is adding 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 HRS analysis is applicable to this listing.

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:

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

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

(iii) 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 January 10, 2005, the Agency has deleted 292 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 January 10, 2005, EPA has deleted 48 portions of 40 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 January 10, 2005, there are a total of 927 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. Availability of Information to the Public

### A. May I Review the Documents Relevant to This Final Rule?

Yes, documents that form the basis for evaluations by EPA 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 in New York City.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "Quick Search," then key in the appropriate docket identification number; SFUND-2004-0011. (Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified below in section II. C.)

### B. 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.

The Headquarters and Region 2 dockets also contain comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—February 2005". An electronic version is available at <http://www.epa.gov/edocket/> using the docket identification number SFUND-2004-0011.

### C. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

Following is the contact information for the EPA Headquarters: Docket

Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004; 202/566-0276.

The contact information for the Region 2 docket is as follows: Dennis Munhall, U.S. EPA Region 2, 290 Broadway, New York, NY 10007-1866; 212/637-4343; [munhall.dennis@epa.gov](mailto:munhall.dennis@epa.gov).

### D. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at <http://www.epa.gov/superfund/> (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

## III. Contents of This Final Rule

### A. Addition to the NPL

This final rule adds the Vieques portion of the Atlantic Fleet Weapons Training Area (AFWTA) to the Federal Facilities section of the NPL.

Pursuant to section 105(a)(8)(B) of CERCLA, Puerto Rico requested that EPA 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. On August 13, 2004, EPA proposed to add AFWTA to the NPL which initiated a 60 day public

comment period. During this time, EPA and the Government of Puerto Rico held four public information sessions in Puerto Rico, including sessions on the islands of Vieques and Culebra. In the Rule proposing AFWTA to the NPL, EPA sought 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 37070 (September 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 also solicited 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 on 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 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.

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 a May 26, 2004, letter to EPA, and that potentially contain CERCLA

hazardous substances, pollutants or contaminants left from past military activities. 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 facility may change as more information is gathered on the nature and extent of contamination.

This Rule adds the Vieques portions of AFWTA to the NPL. At this time, due to the pending negotiations between the Commonwealth of Puerto Rico and the Army, EPA has elected to take no action on the final listing decision for Culebra, including on whether Vieques and Culebra can be treated as one facility in light of court decisions such as *Mead*. On October 28, 2004, Raymond J. Fatz, Deputy Assistant Secretary of the Army, and Esteban Mujica-Cotto, President of the Environmental Quality Board of the Commonwealth of Puerto Rico, signed a Preliminary Points of Agreement document to facilitate current and future discussions regarding environmental activities on Culebra that were included in the AFWTA proposal. This preliminary agreement is anticipated to result in a Memorandum of Agreement (MOA) between the Commonwealth and the Department of the Army which will govern the process for further investigation and cleanup of the Culebra. The foregoing approach was described in the NPL proposed **Federal Register** document (69 FR 50115).

#### B. Status of NPL

With today's addition, the NPL now contains 1,237 sites; 1,079 in the General Superfund Section and 158 in the Federal Facilities Section. In addition, there are now 68 sites proposed and awaiting final agency action, 61 in the General Superfund Section and seven in the Federal Facilities Section. Final and proposed sites now total 1,305. (These numbers reflect the status of sites as of January 10, 2005. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

#### C. What Did EPA Do With the Public Comments It Received?

The Atlantic Fleet Weapons Training Area (AFWTA) was proposed to the NPL on August 13, 2004 (69 FR 50115). EPA received over 2,400 comments relating to the proposal of AFWTA to the NPL. Of these comments, approximately 99% were in favor of the NPL designation for AFWTA.

EPA responded to all relevant comments received on this site and

EPA's responses to the site-specific comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—February 2005." The comments and the support document are contained in the Headquarters and Region 2 Dockets and are also listed in EPA's electronic public docket and comment system at <http://www.epa.gov/edocket/> using the SFUND-2004-0011 identification number. This information is also available in repositories in San Juan, Vieques, and Culebra Puerto Rico.

#### 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 Office of Management and Budget (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 Final 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 Final 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 rule which adds a site to the NPL, does not impose any obligations on any group, including small entities. This rule also establishes no standards or requirements that any small entity must meet, and imposes 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 rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this final rule does 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), 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 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 Final 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*

##### What Is Executive Order 13132 and Is It Applicable to This Final 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 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 Final Rule?

This 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 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 Final Rule?

This final 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 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 final 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), 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.

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

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

## J. Possible Changes to the Effective Date of the Rule

### 1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 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 has submitted 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).

### 2. 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 relating to 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.

### 3. What Could Cause a Change in the Effective Date of This Rule?

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, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222

(D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

**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: February 7, 2005.

**Barry N. Breen**,

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

■ 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**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.

■ 2. Table 2 of Appendix B to part 300 is amended by adding the following facility to read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/County	Notes(a)
PR	Atlantic Fleet Weapons Training Area—Vieques	Island of Vieques <sup>1</sup>	S

<sup>1</sup> Only the Vieques portions of the AFWTA are included in Appendix B to Part 300, the National Priorities List. The Culebra portions of the AFWTA (that were included in the NPL proposal AFWTA on August 13, 2004) are not included at this time due to ongoing negotiations between the Commonwealth of Puerto Rico and the Department of the Army.

*Notes:*

A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be 28.50).

C = Sites on Construction Completion list.

S = State top priority (included among the 100 top priority sites regardless of score).

P = Sites with partial deletion(s).

\* \* \* \* \*  
[FR Doc. 05–2711 Filed 2–10–05; 8:45 am]  
BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 05–75; MB Docket No. 04–368, RM–11067; MB Docket No. 04–369, RM–11068]

**Radio Broadcasting Services; Alamogordo, New Mexico and Grayville, IL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Linda A. Davidson, allots Channel 229A at Grayville, Illinois, as the community’s first local service. See 69 FR 60344, published October 8, 2004. Channel 229A can be allotted to Grayville in compliance with the Commission’s minimum distance separation requirements, provided there is a site restriction of 13.0 kilometers (8.1 miles) northwest of the community. The reference coordinates for Channel 229A at Grayville are 38–21–56 North Latitude and 88–03–38 West Longitude. The Audio Division, at the request of Daniel R. Feely, allots Channel 240C2 at Alamogordo, New Mexico, as the

community’s fifth local service. See 69 FR 60344, published October 8, 2004. Channel 240C2 can be allotted to Alamogordo in compliance with the Commission’s minimum distance separation requirements, provided there is a site restriction of 10.4 kilometers (6.5 miles) southeast of the community. The reference coordinates for Channel 240C2 at Alamogordo are 32–49–04 North Latitude and 105–54–19 West Longitude. Because the reference coordinates at Alamogordo are located within 320 kilometers (200 miles) of the Mexican border, concurrence of the Mexican Government has been obtained. Filing windows for Channel 229A at Grayville, Illinois and Channel 240C2 at Alamogordo, New Mexico will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

**DATES:** Effective March 14, 2005.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Helen McLean, Media Bureau, (202) 418–2738.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s *Report and Order*, MB Docket Nos. 04–368 and 04–369, adopted January 26, 2005, and released January 28, 2005. The full text of this Commission decision is available

for inspection and copying during regular business hours at the FCC’s Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

**PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Grayville, Channel 229A.

■ 3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 240C2 at Alamogordo.