

TABLE 2 TO PARAGRAPH (c)—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
2.04 .....	Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements).	3/7/2024	[Insert citation of publication].	3/16/2022	Except for the ethanol production facilities exclusion in Sections 1.4.3.20 and 5.20. Additionally, EPA is retaining Sections 2.2.20 and 10 from Version 7 of Regulation 2.04, locally effective on March 17, 1993.
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-OLEM-2023-0041, 0384, 0385, 0386 and 0387; FRL-11725-02-OLEM]

### National Priorities List

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

**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 (“the EPA” or “the agency”) in determining which sites warrant further investigation. These further investigations will allow the 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 five sites to the NPL.

**DATES:** The rule is effective on April 8, 2024.

**ADDRESSES:** Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301

Constitution Avenue NW; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, (202) 566-0276.

### FOR FURTHER INFORMATION CONTACT:

Terry Jeng, Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail code 5204T), U.S. Environmental Protection Agency; 1301 Constitution Avenue NW, Washington, DC 20460, telephone number: (202) 566-1048, email address: [jeng.terry@epa.gov](mailto:jeng.terry@epa.gov).

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; (617) 918-1413.
- James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; (212) 637-4342.
- Lorie Baker, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, 4 Penn Center, 1600 John F. Kennedy Boulevard, Mail code 3SD12, Philadelphia, PA 19103 (215) 814-3355.
- Sandra Bramble, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mail code 9T25, Atlanta, GA 30303; (404) 562-8926.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 886-4465.
- Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mail code SED, Dallas, TX 75270; (214) 665-3154.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mail code SUPRSTAR, Lenexa, KS 66219; (913) 551-7956.
- David Fronczak, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail code 8SEM-EM-

P, Denver, CO 80202-1129; (303) 312-6096.

- Leslie Ramirez, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mail code SFD-6-1, San Francisco, CA 94105; (415) 972-3978.

- Brandon Perkins, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 Sixth Avenue, Mail code 13-J07, Seattle, WA 98101; (206) 553-6396.

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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 that 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.*

### B. What is the NCP?

To implement CERCLA, the 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 that may present an imminent or substantial danger to the public health or welfare. The 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 and threatened 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. 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 the 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 of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not 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 the 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 the EPA is responsible for preparing a Hazard Ranking System (“HRS”) score and determining whether the facility is placed on the NPL.

### 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 HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760),

a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any 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.
- The EPA determines that the release poses a significant threat to public health.
- The 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.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658), and generally has updated it at least annually.

### 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 a permanent remedy, taken instead of or in addition to removal actions” (40 CFR 300.5).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL “does not imply that monies will be expended.” The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

### F. Does the NPL define the 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. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

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.

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. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily 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 where that contamination has come to be located, or from where 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. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. 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 remedial investigation (“RI”) “is a process undertaken . . . to determine

the nature and extent of the problem presented by the release” as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study (“FS”) (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, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination “has come to be located” before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, 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, it can submit supporting information to the agency at any time after it 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?*

The 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 the 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.

#### *H. May the EPA delete portions of sites from the NPL as they are cleaned up?*

In November 1995, the EPA initiated a 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 made available for productive use.

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

The 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) the 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. For more information on the CCL, see the EPA’s internet site at <https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number>.

#### *J. What is the Sitewide Ready for Anticipated Use measure?*

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments, and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, Office of Solid Waste and Emergency Response (OSWER) 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to <https://www.epa.gov/superfund/about-superfund-cleanup-process#reuse>.

#### *K. What is state/tribal correspondence concerning NPL listing?*

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA’s policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: <https://www.epa.gov/>

*superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the web and where appropriate more structured state and tribal correspondence that: (1) Explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on

their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at <https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing>.

## II. Availability of Information to the Public

### A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in

this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through <https://www.regulations.gov> (see table below for docket identification numbers). 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 in section II.D.

## DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Lukachukai Mountains Mining District .....	Cove, Navajo Nation, AZ .....	EPA-HQ-OLEM-2023-0041.
Lot 46 Valley Gardens TCE .....	Des Moines, IA .....	EPA-HQ-OLEM-2023-0384.
Acme Steel Coke Plant .....	Chicago, IL .....	EPA-HQ-OLEM-2023-0385.
Exide Baton Rouge .....	Baton Rouge, LA .....	EPA-HQ-OLEM-2023-0386.
Former Exide Technologies Laureldale .....	Laureldale, PA .....	EPA-HQ-OLEM-2023-0387.

### B. What documents are available for review at the EPA Headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score, a list of documents referenced in the documentation record for each site and any other information used to support the NPL listing of the site. These documents are also available online at <https://www.regulations.gov>.

### C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference

documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

### D. How do I access the documents?

You may view the documents that support this rule online at <https://www.regulations.gov> or by contacting the EPA HQ docket or appropriate regional docket. 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. Please contact the individual regional dockets for hours. For addresses for the headquarters and regional dockets, see

**ADDRESSES** section in the beginning portion of this preamble.

### E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the internet at <https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name>.

## III. Contents of This Final Rule

### A. Additions to the NPL

This final rule adds the following five sites to the General Superfund section of the NPL. These sites are being added to the NPL based on HRS scores of 28.50 or above.

## GENERAL SUPERFUND SECTION

State	Site name	City/county
AZ .....	Lukachukai Mountains Mining District .....	Cove, Navajo Nation.
IA .....	Lot 46 Valley Gardens TCE .....	Des Moines.
IL .....	Acme Steel Coke Plant .....	Chicago.
LA .....	Exide Baton Rouge .....	Baton Rouge.
PA .....	Former Exide Technologies Laureldale .....	Laureldale.

### B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. The EPA is adding five sites to the NPL in this final rule. The Lukachukai Mountains Mining District site was proposed for addition to the NPL on March 29, 2023 (88 FR 18499). The four remaining sites were proposed for

addition to the NPL on September 7, 2023 (88 FR 61492).

Comments on the Lukachukai Mountains Mining District site are being addressed in a response to comment support document available in the public docket concurrently with this rule. To view public comments on the site, as well as EPA's response, please refer to the support document available at <https://www.regulations.gov>.

The EPA received no comments on the Exide Baton Rouge site.

Below is a summary of significant comments received on the Lot 46 Valley Gardens TCE, Acme Steel Coke Plant, and Former Exide Technologies Laureldale sites.

### Lot 46 Valley Gardens TCE

For the Lot 46 Valley Gardens TCE site, the EPA received 198 comments that either supported or did not oppose

the addition of the site to the NPL. Additionally, the EPA received one comment that opposed the proposed NPL designation, and received one comment in the Lot 46 Valley Gardens TCE docket that was intended for the Acme Steel Coke Plant site, as discussed below. In support of, or non-opposition to, placement of the site on the NPL, multiple private citizens expressed concern about the possible health impacts associated with the groundwater contamination and the possible impacts to drinking water in the Des Moines, Iowa area. Many additional private citizens, that did not oppose the proposal to place the site on the NPL, submitted comments urging the EPA to address contamination that may be associated with the public water supply. Additionally, several commenters provided suggestions for sources of funding for site remediation. The EPA received one comment from a private citizen that expressed general opposition to the listing of the Site on the NPL because it did not affect that individual anonymous commenter.

In response, the EPA has added the Lot 46 Valley Gardens TCE site to the NPL. Listing makes a site eligible for remedial action funding under CERCLA, and the EPA will examine the site to determine what response, if any, is appropriate to ensure the protection of human health and the environment. Sources of funding are determined at a separate stage of the Superfund process after listing.

#### *Acme Steel Coke Plant*

The EPA received four comments supporting the listing of the Acme Steel Coke Plant site on the NPL and two comments that did not oppose the addition of the site to the NPL. The EPA received one additional comment in support of the proposal to add the site to the NPL that was submitted to the Lot 46 Valley Gardens TCE docket. Multiple commenters discussed specific topics related to the proposed NPL designation including five commenters that discussed the future cleanup and/or further investigation of the site; three commenters requested that remediation be expedited; and two commenters that expressed concern about possible impacts and/or delays to development opportunities at the Acme Steel Coke Plant property and other nearby areas.

In response, the EPA has added the Acme Steel Coke Plant site to the NPL. Listing makes a site eligible for remedial action funding under CERCLA, and the EPA will examine the site to determine what response, if any, is appropriate. Decisions regarding whether remedial actions will occur and which approach

to remediation should be employed, if any, occur in the remedial stage of the Superfund process.

Regarding impacts to development opportunities and other economic opportunities, economic factors are generally not considered in the assessment of whether a site belongs on the NPL. However, the EPA notes that there are both costs and benefits that can be associated with including a site on the NPL. Among the benefits are increased environmental protection resulting from the cleanup. Therefore, it is possible that any perceived or actual negative fluctuations in property values that may result from contamination may also be countered by positive fluctuations when a CERCLA investigation and any necessary cleanup are completed.

#### *Former Exide Technologies Laureldale*

The EPA received 10 comments from seven commenters that either supported or did not oppose the proposed placement of the Former Exide Technologies Laureldale site on the NPL. Two commenters that supported listing, the City of Reading and the Environmental Advisory Council of the City of Reading, Pennsylvania (EAC), commented that the extent of the site should be expanded to include the Bernhart Stream watershed. The EAC also submitted comments discussing possible environmental justice concerns associated with the Site. In addition, three commenters, including the City of Reading, expressed concern about the level of contamination. One commenter requested that the EPA continue community engagement efforts with regular updates and community education and inquired about the creation of a Community Advisory Group (CAG). The commenter also requested additional information regarding: remediation and cleanup standards, the Pennsylvania Department of Environmental Protection's (PADEP) role in remediation, the role of the Agency of Toxic Substances and Disease Registry (ATSDR), coordination with the local government, the impact of the planned sale for the former Exide Technologies property, economic impacts resulting from listing, costs of remediation, funding for remediation, and approaches to prevent future contamination. This commenter also provided comments expressing concern regarding a cleanup obligation for a different program, the risk associated with the site, and the liability of the former Exide Technologies company.

In response, the EPA has added the Former Exide Technologies Laureldale site to the NPL. Listing makes a site

eligible for remedial action funding under CERCLA, and the EPA will examine the site to determine what response, if any, is appropriate. Site boundaries are not established at the listing stage of the Superfund process. The initial identification and listing of a release based on a review of contamination at a specific area does not necessarily mean that the site boundaries are limited to that initially identified location. Until the site investigation process has been completed and a remedial action (if any) selected, the EPA can neither estimate the extent of contamination at the NPL site, nor describe the ultimate dimensions of the site. Thus, the preliminary description of site boundaries at the time of HRS scoring may be refined as more information is developed as to where the contamination has come to be located.

Additionally, regarding concerns about liability, liability is not determined at the listing stage of the Superfund process and is not considered in evaluating a site under the HRS.

Regarding the requests for additional information regarding aspects of the Superfund process from a private citizen, the EPA has responded to the citizen's request for information directly and notes that these questions generally pertain to aspects of the Superfund process that occur following placement on the NPL. The EPA has provided additional responses to these questions which are available online on the site progress profile at the following address: <https://semspub.epa.gov/src/document/03/2360119>.

#### **IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish 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 of hazardous substances 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.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

### E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern

environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the 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 of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

### K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Provisions of the CRA or section 305 of CERCLA may alter the effective date of this regulation. 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, the 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, the 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.

**Barry N. Breen,**

*Principal Deputy Assistant Administrator,  
Office of Land and Emergency Management.*

For the reasons set out in the preamble, title 40, chapter I, part 300, of the Code of Federal Regulations is amended as follows:

### PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; 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. Amend table 1 of appendix B to part 300 by adding the entries for “AZ, Lukachukai Mountains Mining District”, “IA, Lot 46 Valley Gardens TCE”, “IL, Acme Steel Coke Plant”, “LA, Exide Baton Rouge”, and “PA, Former Exide Technologies Laureldale” in alphabetical order by State to read as follows:

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

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
AZ	Lukachukai Mountains Mining District	Cove, Navajo Nation.	
IA	Lot 46 Valley Gardens TCE	Des Moines.	
IL	Acme Steel Coke Plant	Chicago.	
LA	Exide Baton Rouge	Baton Rouge.	
PA	Former Exide Technologies Laureldale	Laureldale.	

<sup>a</sup> A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

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

P = Sites with partial deletion(s).

\* \* \* \* \*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Parts 170 and 171

RIN 0955-AA03

### Health Data, Technology, and Interoperability: Certification Program

#### Updates, Algorithm Transparency, and Information Sharing; Correction

**AGENCY:** Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical and typographical errors in the final rule entitled, “Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing” that was published in the **Federal Register** on January 9, 2024, and has a stated effective of February 8, 2024.

**DATES:** The corrections in this document are effective on March 11, 2024.

**FOR FURTHER INFORMATION CONTACT:** Kate Tipping, Office of Policy, National Coordinator for Health Information Technology, 202-690-7151.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In **Federal Register** document 2023-28857 (89 FR 1192) final rule entitled “Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing” (HTI-1) (hereinafter referred to as the HTI-1 Final Rule), we identified technical and typographical errors following publication in the **Federal Register** on January 9, 2024. We first published a notice correcting certain errors on February 8, 2024 (89 FR 8546). In this document, we summarize and correct additional errors in the “Summary of Errors” and “Corrections of Errors” sections below.

## II. Summary of Errors

### A. Regulation Text Errors—Part 170—Health Information Technology Standards, Implementation Specifications, and Certification Criteria and Certification Programs for Health Information Technology

#### 1. ONC Certification Criteria for Health IT

On page 1429, third column, top of page, within amendatory instruction 9 for § 170.315, sub-instruction h., paragraph “(g)(3) introductory text” should read paragraph “(g)(3)(i).”

On page 1432, third column, halfway down the page, we inadvertently added the language, “User-centered design processes must be applied to each capability technology includes that is specified in the following certification criteria: paragraphs (a)(1) through (5), (9) until the criterion’s expiration date, and (14), and (b)(2), (3), and (11) of this

section.” to paragraph (g)(3) when the language should have been added to paragraph (g)(3)(i). While we had erroneously proposed (88 FR 23746, 23911) and then finalized the revision to paragraph (g)(3), we had intended to revise paragraph (g)(3)(i). This fact is evident by our discussion of revising the provision actually found in paragraph (g)(3)(i) to include the “DSI” certification criterion (45 CFR 170.315(b)(11)) in the preambles of the proposed (88 FR 23787) and final (89 FR 1256) rules. Paragraph (g)(3) only contains the title of the certification criterion (safety-enhanced design) and not the language referenced in preamble and specifically included in paragraph (g)(3)(i). Therefore, when we discussed revising the substance of paragraph (g)(3) to “apply to the new certification criterion proposed in § 170.315(b)(11) as well,” (88 FR 23787), we believe it was evident we intended to refer to (g)(3)(i), since there were no substantive requirements in paragraph (g)(3) that could be revised. We received no substantive feedback on the proposal (89 FR 1256) and then erroneously finalized the revised provision in (g)(3) rather than (g)(3)(i).

#### 2. Insights Condition and Maintenance of Certification

On page 1434, third column, beginning at the bottom half of the page, in § 170.407, and ending in the first column of page 1435, we inadvertently included incorrect paragraph designators (i) within paragraphs (a)(3)(iv), (v), (vi) and (vii). The (i) in these paragraphs should be deleted. We also inadvertently included the word “of” after the word “distinct” and