Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–3545 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM95–3]

Appeals of Postal Service Determinations to Close or Consolidate Post Offices

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules of practice governing the filing of postal patrons' appeals of determinations by the United States Postal Service to close or consolidate the post office which serves them. The Commission's current rule requires that petitions to initiate such appeals be received by the Commission within 30 days of the date on which the Postal Service made its determination publicly available. The proposed rule would allow affected postal patrons to initiate a timely appeal by filing a petition which either is received by the Commission within 30 days of the date on which the Postal Service made its determination publicly available, or bears a postmark or other indicia that it was mailed no later than 30 days after that date.

DATES: Comments responding to this notice of proposed rulemaking must be submitted no later than March 30, 1995.

ADDRESSES: Comments and correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: The Postal Reorganization Act Amendments of 1976, Pub. L. No. 94–421, 90 Stat. 1303, provide postal patrons an opportunity to appeal determinations by the United States Postal Service to close or consolidate the post office which serves them. In pertinent part, the statute provides: ''A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Rate Commission within 30 days after such determination is made available to such person * * *.'' 39 U.S.C. 404(b)(5).

In adopting rules to implement the provisions of Pub. L. 94–421, the Postal Rate Commission incorporated the 30-day provision in section 404(b)(5) as follows:

> Petition for review. Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. 404(b)(3) through (4).

39 CFR 3001.111(a). Thus, under the Commission's current rule, the timeliness of affected postal patrons' appeals depends upon the Commission's actual receipt of their petition within the 30-day statutory period.

The Commission is concerned that the current rule may operate to the detriment of postal patrons served by post offices that are geographically remote from the Commission's offices in Washington, D.C. Because of uncertainties associated with postal processing, transportation, and delivery, a petition's transit time from mailing by the appellants to receipt at the Commission's offices cannot be known in advance, but may constitute a significant portion of the 30-day interval established in the current rule. An internal review of the Commission's records of section 404(b) appeals filed in Fiscal Years 1993 and 1994 discloses that the interval between the mailing of a petition and its receipt by the Commission has frequently approached, and has sometimes exceeded, one week.

In order to assure that members of the public affected by Postal Service determinations to close or consolidate post offices are afforded the full 30 days to pursue an appeal provided by 39 U.S.C. 404(b)(5), the Commission proposes to amend its current rule to incorporate two alternative measures of the timeliness of petitions. Under the proposed revision of 39 CFR 3001.111(a), a petition would be deemed timely if: (1) The Commission actually received it no later than 30 days following publication of the Postal Service's determination, or (2) the petition bears a postmark or other indicia demonstrating that it was mailed no later than 30 days after publication by the Postal Service.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal Service.

Accordingly, 39 CFR part 3001 is proposed to be amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Section 3001.111(a) would be revised to read as follows:

§ 3001.111 Initiation of review proceedings.

(a) *Petition for review*. (1) Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must either:

(i) Be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. 404(b) (3) through (4), or

(ii) Bear a postmark or other indicia demonstrating that the petition was mailed no later than the 30th day following the date on which the Postal Service made its written determination available.

(2) The petition shall specify the parties seeking review, all of whom must be persons served by the post office proposed to be closed or consolidated and shall identify the Postal Service as respondent. The Commission encourages parties seeking review to attach a copy of the Postal Service written determination, as the appeal process is thereby expedited. If two or more persons are entitled to petition for review of the same determination and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

* * * * *

Issued by the Commission on February 7, 1995.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–3457 Filed 2–10–95; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5154–6]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 18

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list.

The Environmental Protection Agency (''EPA'') proposes to add new sites to the NPL. This 18th proposed revision to the NPL includes 7 sites in the General Superfund Section and 2 in the Federal Facilities Section. 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 the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL is not intended to define the boundaries of a site or to determine the extent of contamination (see Section II, subsection, ''Facility Boundaries''). This action does not affect the 1,241 sites currently listed on the NPL (1,087 in the General Superfund Section and 154 in the Federal Facilities Section). However, it does increase the number of proposed sites to 55 (47 in the General Superfund Section and 8 in the Federal Facilities Section). Final and proposed sites now total 1,296.

DATES: Comments must be submitted on or before April 14, 1995.

ADDRESSES: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–8917. Please note this is the mailing address only. If you wish to visit the HQ Docket to view documents, and for additional Docket addresses and further details on their contents, see Section I of the ''Supplementary Information'' portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Proposed Rule
IV. Executive Order 12866
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

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 hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law No. 99–499, 100 stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency (''EPA'' or ''the Agency'') 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 forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include ''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. 42 USC 9601(23). ''Remedial'' actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 USC 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities List (''NPL'').

CERCLA section 105(a)(8)(B) defines the NPL as a list of ''releases'' and as a list of the highest priority ''facilities.'' The discussion below may refer to the ''releases or threatened releases'' that are included on the NPL interchangeably as ''releases,'' ''facilities,'' or ''sites.''

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. 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). 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 remedy the releases, including enforcement action under CERCLA and other laws.

Three mechanisms for determining priorities for possible remedial actions are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which is Appendix A of 40 CFR Part 300. 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. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants, and contaminants to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, 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.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be

listed whether or not they score above 28.50, 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 December 16, 1994 (59 FR 65206).

The NPL includes two sections, one of sites being evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites being addressed by other Federal agencies (the ''Federal Facilities Section''). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining if the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

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) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 68 sites from the General Superfund Section of the NPL, most recently Suffolk City Landfill, Suffolk, Virginia (60 FR 4568, January 24, 1995).

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). 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. Inclusion of a site on the CCL has no legal significance.

In addition to the 67 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 215 sites are also in the NPL CCL, all but two from the General Superfund Section. Thus, as of January 25, 1995, the CCL consists of 282 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of December 1994, EPA had conducted 649 removal actions at NPL sites, and 2,357 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 9 sites to the NPL. The General Superfund Section currently includes 1,087 sites, and the Federal Facilities Section includes 154 sites, for a total of 1,241 sites on the NPL. An additional 55 sites are proposed, 47 in the General Superfund Section and 8 in the Federal Facilities Section. Final and proposed sites now total 1,296.

Public Comment Period

The documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this rule. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–8917. (Please note this is visiting address only. Mail comments to address listed in **ADDRESSES** section above.)

Ellen Culhane, Region 1, U.S. EPA Waste Management Records Center, HES–CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–5729

Walter Schoepf, Region 2, U.S. EPA, 26 Federal Plaza, New York, NY 10278 212/264–0221

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597–7904

Kathy Piselli, Region 4 U.S. EPA, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–4216

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7241

Greg Oberley, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/294–7598

Rachel Loftin, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103

The Headquarters docket for this rule contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. Interested parties may view documents, by appointment only, in the Headquarters or the appropriate Regional docket or copies may be requested from the Headquarters or appropriate Regional docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an ''as received'' basis. Comments that include complex or voluminous reports, or

materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). EPA will make final listing decisions after considering the relevant comments received during the comment period.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 57 FR 4824 (February 7, 1992)). Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

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

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site serves as notice to potentially responsible parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment (''PA''), is a low-cost review of existing information to determine if the site poses a threat to public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA will generally perform a more extensive study called the Site Inspection (''SI''). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites which warrant placement on the NPL and further study. EPA may perform removal actions at any time during the process. As of December 1994, EPA had completed 36,831 PAs and 17,790 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990). EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although the ranking of sites by HRS scores is considered, it does not, by itself, determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(b)(2), 55 FR 8845, March 8, 1990). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those that present significant risk or are sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study (''RI/FS'') that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990)). It takes into account the amount of hazardous substances, pollutants or contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990). After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after

further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the **Federal Register** for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known ''releases or threatened releases.'' Thus, the purpose of the NPL is merely to identify releases that are priorities for further evaluation. Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, described at 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). 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 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 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 will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted above and at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected, 40 CFR 300.430(f)) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process * * * [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. (49 FR 37081 (September 21, 1984).

See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * ''the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway.'' Eagle-Picher [Industries v. EPA] II, 759 F. 2d [921] at 932 [(D.C. Cir. 1985)].

It is the Agency's policy that, in the exercise of its enforcement discretion, EPA will not take enforcement actions against an owner of residential property to require such owner to undertake response actions or pay response costs, unless the residential homeowner's activities lead to a release or threat of release of hazardous substances, resulting in the taking of a response action at the site (OSWER Directive #9834.6, July 3, 1991). This policy includes residential property owners whose property is located above a ground water plume that is proposed to or on the NPL, where the residential property owner did not contribute to the contamination of the site. EPA may, however, require access to that property during the course of implementing a clean up.

III. Contents of This Proposed Rule

Table 1 identifies the 7 sites in the General Superfund Section and Table 2 identifies the 2 sites in the Federal Facilities Section being proposed to the NPL in this rule. Both tables follow this preamble. All sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 and Table 2 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites ''among'' the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and ''other appropriate'' factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of

releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover Federal facility sites. This policy and requirements are explained below and have been explained in greater detail previously (56 FR 5598, February 11, 1991).

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

This rule proposes to add three sites to the Federal Facilities Section of the NPL.

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's proposal to the NPL. EPA believes that the kinds of economic effects associated with this proposal generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to proposing and adding sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private 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. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this rulemaking.

The major events that typically follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities is controlled by Section 104(c) of CERCLA and the NCP. For privately-operated sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

—For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.

—For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site[1]
RI/FS	1,350,000
Remedial Design	1,260,000
Remedial Action	[3] 22,500,000
Present Discounted Value O&M[2]	5,630,000

[1] 1994 U.S. Dollars.
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 5.8% discount rate.
[3] Includes State cost-share.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to the States associated with today's proposed rule are incurred when the sites are finalized and arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites; and (3) States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to the States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $26 million. State O&M costs cannot be accurately determined because EPA, as noted above, will pay O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $35 million.

Placing a site on the proposed or final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of an amendment to the NPL are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IV. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

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

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

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

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

NATIONAL PRIORITIES LIST PROPOSED RULE #18 GENERAL SUPERFUND SECTION

State	Site name	City/county	NPL Gr [1]
FL	Normandy Park Apartments	Temple Terrace	6
KS	Ace Services	Colby	5/6
LA	Gulf State Utilities-North Ryan Street	Lake Charles	5
LA	Old Citgo Refinery	Bossier City	5/6
LA	Southern Shipbuilding	Slidell	5/6
ME	West Site/Hows Corners	Plymouth	5/6
MI	Bay City Middlegrounds	Bay City	5/6

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Note: Number of Sites Proposed to General Superfund Section: 7.

NATIONAL PRIORITIES LIST PROPOSED RULE #18 FEDERAL FACILITIES SECTION

State	Site name	City/county	NPL Gr [1]
KS	Sunflower Army Ammunition Plant	DeSoto	5/6
MD	Indian Head Naval Surface Warfare Center	Indian Head	5/6

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Note: Number of Sites Proposed to Federal Facilities Section: 2.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p. 193.

Dated: February 8, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–3601 Filed 2–10–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–158; FCC 94–352]

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