



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 7, 2000

NOTE TO COMMISSIONER ASSISTANTS

OCM/RM

Dennis Rathbun
 Mike Tschiltz
 Alan Levin
 Keith McConnell
 Ron Zelac
 Bob McOsker
 Marian Zabler
 Karen Henderson
 Eugene Cobey
 Barbara Gabriel
 Frances Marek
 Linda Herr
 Terry Agneu

OCM/GJD

Brad Jones
 Cynthia Jones
 Tom Hiltz
 Joe Olencz
 David Solorio
 Donna Smith
 Noble Green

OCM/ND

Maria Lopez-Otin
 Roger Davis
 Tony Hsia
 Diane Flack
 Vicki Bolling
 Tina Higginbotham

OCM/EM

Janet Schlueter
 Kathryn Winsberg
 James Beall
 Jeffry Sharkey
 Linda Lewis
 Judy Ledbetter

OCM/JM

Lynne Stauss
 Margie Doane
 Brian McCabe
 John Thoma
 Lorna Pini
 Tojuana Fortune

FROM:


John W. Craig

Assistant for Operations, OEDO

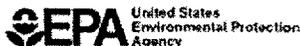
SUBJECT: EPA PROPOSED LISTING OF NUCLEAR METALS INC. ON THE NATIONAL PRIORITIES LIST

Nuclear Metal Industries (NMI, currently doing business as Starmet Corporation) in Concord, Massachusetts, was previously licensed by NRC to manufacture products from depleted uranium for military, industrial, and medical applications. NMI's license was transferred to the Commonwealth of Massachusetts upon its becoming an Agreement State on March 31, 1997. Staff from the Division of Waste Management (DWM) was recently informed by OMB and EPA that NMI may be proposed for the National Priorities List (NPL). The NPL, required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), is a listing of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. DWM staff participated in two informational teleconferences with staff from EPA Headquarters, EPA Region I, Massachusetts Department of Environmental Protection, Office of Management and Budget, and Department of the Army. [EPA staff reported that NMI is being considered for the NPL based principally on chemical, rather than radiological contamination at the site.] In a July 27, 2000, rulemaking notice in the Federal Register (attached), EPA Superfund program proposed adding the NMI site to the NPL.

Attachment: As stated

cc: W. Travers, EDO (w/attachment)
C. Paperiello, DEDMRS (w/attachment)
F. Miraglia, DEDR (w/attachment)
P. Norry, DEDM (w/attachment)
J. Craig, AO (w/attachment)
N. Mamish, OEDO (w/attachment)

SECY (w/attachment)
OGC (w/attachment)
OCA (w/o attachment)
OPA (w/o attachment)
EDO R/F (w/attachment)
P. Santiago, NMSS (w/o attachment)



Superfund

Federal Register Notice

46131 - 46137 Federal Register / Vol. 65, No. 145 / Thursday, July 27, 2000 / Proposed Rules

- [Summary](#)
- [Addresses](#)
- [Background](#)
- [Public Review/Public Comment](#)
- [Contents of This Proposed Rule](#)
- [Executive Order 12866](#)
- [Unfunded Mandates](#)
- [Effect on Small Businesses](#)
- [National Technology Transfer and Advancement Act](#)
- [Executive Order 12898](#)
- [Executive Order 13045](#)
- [Paperwork Reduction Act](#)
- [Executive Orders on Federalism](#)
- [Executive Order 13084](#)

[[EPA Home](#) | [OSWER Home](#) | [Superfund Home](#)]

[[Search EPA](#) | [Search Superfund](#) | [About Superfund](#) | [Site Information](#) | [Contact Us](#)]

U.S. Environmental Protection Agency, Office of Emergency and Remedial Response

URL: <http://www.epa.gov/superfund/sites/npl/p000727.htm>

superfund.info@epa.gov

46131 - 46137 Federal Register / Vol. 65, No. 145 / Thursday, July 27, 2000 / Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-6841-2]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 33

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY:

The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan

("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 7 new sites to the NPL. All of the sites are being proposed to the General Superfund Section of the NPL.

DATES:

Comments regarding any of these proposed listings must be submitted (postmarked) on or before September 25, 2000.

[\[Return to Table of Contents\]](#)

ADDRESSES:

By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to:

Docket Coordinator, Headquarters
U.S. Environmental Protection Agency
CERCLA Docket Office
(Mail Code 5201G)
1200 Pennsylvania Avenue NW
Washington, DC 20460

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to:

Docket Coordinator, Headquarters
U.S. Environmental Protection Agency
CERCLA Docket Office
1235 Jefferson Davis Highway
Crystal Gateway #1, First Floor
Arlington, VA 22202

By E-Mail: Comments in ASCII format only may be mailed directly to:

superfund.docket@epa.gov.

E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see [section II](#), "Public Review/Public Comment," of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT:

Yolanda Singer

phone (703) 603-8835
State, Tribal and Site Identification Center
Office of Emergency and Remedial Response (Mail Code 5204G)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
or the Superfund Hotline, Phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

- A. What are CERCLA and SARA?
- B. What is the NCP?
- C. What is the National Priorities List (NPL)?
- D. How are Sites Listed on the NPL?
- E. What Happens to Sites on the NPL?
- F. How Are Site Boundaries Defined?
- G. How Are Sites Removed From the NPL?
- H. Can Portions of Sites Be Deleted from the NPL as They Are Cleaned Up?
- I. What is the Construction Completion List (CCL)?

II. Public Review/Public Comment

- A. Can I Review the Documents Relevant to This Proposed Rule?
- B. How do I Access the Documents?
- C. What Documents Are Available for Public Review at the Headquarters Docket?
- D. What Documents Are Available for Public Review at the Regional Dockets?
- E. How Do I Submit My Comments?
- F. What Happens to My Comments?
- G. What Should I Consider When Preparing My Comments?
- H. Can I Submit Comments After the Public Comment Period Is Over?
- I. Can I View Public Comments Submitted by Others?
- J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

III. Contents of This Proposed Rule

- A. Proposed Additions to the NPL
- B. Status of NPL

IV. Executive Order 12866

- A. What is Executive Order 12866?
- B. Is This Proposed Rule Subject to Executive Order 12866 Review?

V. Unfunded Mandates

- A. What is the Unfunded Mandates Reform Act (UMRA)?
- B. Does UMRA Apply to This Proposed Rule?

VI. Effect on Small Businesses

- A. What is the Regulatory Flexibility Act?

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

VII. National Technology Transfer and Advancement Act

A. What is the National Technology Transfer and Advancement Act?

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

VIII. Executive Order 12898

A. What is Executive Order 12898?

B. Does Executive Order 12898 Apply to this Proposed Rule?

IX. Executive Order 13045

A. What is Executive Order 13045?

B. Does Executive Order 13045 Apply to this Proposed Rule?

X. Paperwork Reduction Act

A. What is the Paperwork Reduction Act?

B. Does the Paperwork Reduction Act Apply to this Proposed Rule?

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

[\[Return to Table of Contents\]](#)

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. 99-499, 100 Stat. 1613 *et seq.*

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, pollutants, or contaminants under CERCLA. 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 (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. 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. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96-848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP):

1. A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as an 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;
2. Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B));

3. The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:
- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
 - EPA determines that the release poses a significant threat to public health.
 - EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on May 11, 2000 (65 FR 30482).

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 remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

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

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration),

and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the 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:

1. Responsible parties or other persons have implemented all appropriate response actions required;
2. All appropriate Superfund-financed response has been implemented and no further response action is required; or
3. 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 July 10, 2000, the Agency has deleted 213 sites from the NPL.

H. Can Portions of Sites Be Deleted 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 July 10, 2000, EPA has deleted portions of 19 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.

Of the 213 sites that have been deleted from the NPL, 203 sites were deleted because they have been cleaned up (the other 10 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of July 10, 2000, there are a total of 689 sites on the CCL. This total includes the 213 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at <http://www.epa.gov/superfund>.

[\[Return to Table of Contents\]](#)

II. Public Review/Public Comment

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

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

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

Following is the contact information for the EPA Headquarters docket:

Docket Coordinator
Headquarters, U.S. EPA CERCLA Docket Office
Crystal Gateway #1, 1st Floor
1235 Jefferson Davis Highway

Arlington, VA 22202
703/603-9232

(Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Barbara Callahan
Region 1 (CT, ME, MA, NH, RI, VT)
U.S. EPA, Records Center, Mailcode HSC
One Congress Street, Suite 1100
Boston, MA 02114-2023
617/918-1356

Ben Conetta
Region 2 (NJ, NY, PR, VI)
U.S. EPA
290 Broadway
New York, NY 10007-1866
212/637-4435

Dawn Shellenberger (GCI)
Region 3 (DE, DC, MD, PA, VA, WV)
U.S. EPA, Library
1650 Arch Street, Mailcode 3PM52
Philadelphia, PA 19103
215/814-5364

Joellen O'Neill
Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)
U.S. EPA
61 Forsyth Street, SW, 9th floor
Atlanta, GA 30303
404/562-8127

Region 5 (IL, IN, MI, MN, OH, WI)
U.S. EPA, Records Center, Waste Management Division 7-J
Metcalf Federal Building
77 West Jackson Boulevard
Chicago, IL 60604
312/886-7570

Brenda Cook
Region 6 (AR, LA, NM, OK, TX)
U.S. EPA
1445 Ross Avenue, Mailcode 6SF-RA
Dallas, TX 75202-2733
214/655-7436

Carole Long
Region 7 (IA, KS, MO, NE)
U.S. EPA
901 North 5th Street
Kansas City, KS 66101
913/551-7224

David Williams
Region 8 (CO, MT, ND, SD, UT, WY)
U.S. EPA
999 18th Street, Suite 500, Mailcode 8EPR-SA
Denver, CO 80202-2466
303/312-6757

Carolyn Douglas
Region 9 (AZ, CA, HI, NV, AS, GU)
U.S. EPA
75 Hawthorne Street
San Francisco, CA 94105
415/744-2343

Robert Phillips
Region 10 (AK, ID, OR, WA)
U.S. EPA, 11th Floor
1200 6th Avenue, Mail Stop ECL-110
Seattle, WA 98101
206/553-6699

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

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the 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.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the ADDRESSES section. Please note that the addresses differ according to method of delivery.

There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

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

G. What Should I Consider When Preparing My Comments?

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 or other listing criteria (*Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

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

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

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

[\[Return to Table of Contents\]](#)

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 7 new sites to the NPL; all to the General Superfund Section of the NPL. The sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 which follows this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 12 sites to the NPL; resulting in an NPL of 1,238 final sites; 1,078 in the General Superfund Section and 160 in the Federal Facilities Section. With this proposal of 7 new sites, there are now 57 sites proposed and awaiting final agency action, 51 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,295. (These numbers reflect the status of sites as of July 10, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

[\[Return to Table of Contents\]](#)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments 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.

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

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

[\[Return to Table of Contents\]](#)

V. Unfunded Mandates

A. 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.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily 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.

[\[Return to Table of Contents\]](#)

VI. Effect on Small Businesses

A. 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.

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

No. 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, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

[\[Return to Table of Contents\]](#)

VII. National Technology Transfer and Advancement Act

A. 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.

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

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

[\[Return to Table of Contents\]](#)

VIII. Executive Order 12898

A. *What is Executive Order 12898?*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. *Does Executive Order 12898 Apply to This Proposed Rule?*

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

[\[Return to Table of Contents\]](#)

IX. Executive Order 13045

A. *What Is Executive Order 13045?*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that:

1. is determined to be "economically significant" as defined under 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.

B. *Does Executive Order 13045 Apply to This Proposed Rule?*

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

[\[Return to Table of Contents\]](#)

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

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

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

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

[\[Return to Table of Contents\]](#)

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, 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.

[\[Return to Table of Contents\]](#)

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to This Proposed Rule?

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

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

Table 1
National Priorities List Proposed Rule No. 33, General Superfund Section

State	Site name	City/county
CA	Alark Hard Chrome	Riverside
KS	Tri-County Pulic Airport	Delavan
MA	Nuclear Metals, Inc.	Concord
MA	Sutton Brook Disposal Area	Tewksbury
MO	Riverfront	New Haven
NJ	Diamond Head Oil Refinery Div.	Kearny
OR	Portland Harbor	Portland

Number of Sites Proposed to General Superfund Section: 7.

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.

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.

Dated: July 20, 2000.

Timothy Fields, Jr.,
Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00-18903 Filed 7-26-00; 8:45 am]

BILLING CODE 6560-50-P