Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under this Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary section, 165.T01–023 is added to read as follows:

§ 165.T01–023 Troy Fourth of July Fireworks, New York.

(a) *Location.* The safety zone will include all waters shore to shore from the Congress Street Bridge to the southern most end of Adams Island in the Upper Hudson River.

(b) *Effective period.* This regulation will be effective from 8:30 p.m. until 10 p.m. on July 3, 1993.

(c) *Regulations.*

(1) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless authorized by the U.S. Coast Guard Captain of the Port, New York or the sponsor.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed.

Dated: April 12, 1993.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 93–10961 Filed 5–7–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4653–2]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 14

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 14th proposed revision to the NPL includes 19 sites in the General Superfund Section and 7 in the Federal Facilities Section. The identification of a site for 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. This action does not affect the 1,202 sites currently listed on the NPL (1,079 in the General Superfund Section and 123 in the Federal Facilities Section). However, it does increase the number of proposed sites to 54 (44 in the General Superfund Section and 10 in the Federal Facilities Section). Final and proposed sites now total 1,256. This number reflects five deletions identified in section I and EPA's decision to voluntarily remove Lehigh Portland Cement Co., Mason City, Iowa from the NPL.

DATES: Comments must be submitted on or before June 9, 1993 for Hanscom AFB (Bedford, Massachusetts) and Natick Laboratory Army Research, Development and Engineering Center (Natick, Massachusetts). EPA is under a court-ordered deadline for these two sites. For the remaining sites in this proposal, comments must be submitted on or before July 9, 1993.

ADDRESSES: Mail original and three copies of comments (no facsimiles) to Docket Coordinator, Headquarters; U.S. EPA CERCLA Docket Office; OS–245; Waterside Mall; 401 M Street, SW.; Washington, DC 20460; 202/260–3046. 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: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS–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

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, most recently 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." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions

that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") and financed by other persons 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.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA promulgates 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 CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

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 October 14, 1992 (57 FR 47180).

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 49 sites from the General Superfund Section of the NPL, including five since October 14, 1992: Pioneer Sand Co., Warrington, Florida (58 FR 7492, February 8, 1993); Arrcom (Drexler Enterprises), Rathdrum, Idaho (57 FR 61005, December 23, 1992); Metal Working Shop, Lake Ann, Michigan (57 FR 61004, December 23, 1992); Adrian Municipal Well Field, Adrian, Minnesota (57 FR 62231, December 30, 1992); Waste Research & Reclamation Co., Eau Claire, Wisconsin (58 FR 7189, February 5, 1993).

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 48 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 113 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of April 1, 1993, the CCL consists of 161 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of March 1, 1993, EPA had conducted 822 removal actions at NPL sites, and 2067 removals 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 26 sites to the NPL. The General Superfund Section includes 1,079 sites, and the Federal Facilities Section includes 123 sites, for a total of 1,202 sites on the NPL. Final and proposed sites now total 1,256.

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 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours. Note that the Headquarters docket, although it will be moving during the comment period, will remain open for viewing of sites included in this rule.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/260-3046.

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.

Ben Conetta, Region 2, 26 Federal Plaza, 7th Floor, room 740, New York, NY 10278, 212/264-6696.

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

Beverly Fulwood, Region 4, U.S. EPA Library, room G–6, 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.

Lisa Nelson, 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; pertinent 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). After considering the relevant comments received during the comment period, EPA will add sites to the NPL if they meet requirements set out in CERCLA, the NCP, and any applicable listing policies.

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 cannot delay a final listing decision solely to accommodate consideration of late comments.

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 primarily 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 may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such 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. To date EPA has completed approximately 34,000 PAs and approximately 17,000 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 presenting significant risk or 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 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 purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge of the geographic extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability or define the geographic extent of a release, a listing need not be amended if further research into the contamination at a site reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

Limitations on Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at 58 FR 5460 (January 21, 1993), 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "preauthorization," from EPA.

III. Contents of This Proposed Rule

Table 1 identifies the 19 NPL sites in the General Superfund Section and Table 2 identifies the 7 NPL sites in the Federal Facilities Section being proposed in this rule. Both tables follow this preamble. All these sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 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 General Superfund Section of the NPL. Sites in the Federal Facilities Section are also presented by group number based on groups of 50 sites in the General Superfund Section.

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 sites subject to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings (56 FR 5598, February 11, 1991).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that non-Federal sites subject to RCRA Subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will list certain categories of RCRA sites subject to Subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so best furthers the

aims of the NPL/RCRA policy and the CERCLA program. EPA has explained these policies in detail in the past (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add two sites to the General Superfund Section of the NPL that may be subject to RCRA Subtitle C corrective action authorities. One is the Onondaga Lake site in Lake Onondaga, NY. Material has been placed in the public docket confirming that the owner at the site who is subject to RCRA authorities is bankrupt. The other owner has no RCRA involvement.

The second is the National Zinc Corp. site in Bartlesville, OK. The Agency believes that offsite contamination and air deposition of contamination at and from this site will be better addressed under CERCLA authorities. Material has been placed in the docket indicating that not all site-related contamination may be addressable under RCRA corrective action authorities.

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 seven sites to the Federal Facilities Section of the NPL. One site not listed in the Federal Facilities Section, the Blackbird Mine site in Lemhi, ID, is located in part on federally owned land. There is no separate category for mixed-ownership sites, and the facts at this site are such that EPA considers it more appropriate to propose the site in the General Superfund section of the NPL. In particular, the sources of contamination on the Federal portion of the site are few compared to the sources on private land, and contamination is not the result of activities of the U.S. Forest Service, which currently manages the Federal portion of the site. EPA emphasizes that the designation of a site as Federal or non-Federal for listing purposes has no legal significance and is purely informational in nature. In particular, such designation does not determine, or limit, the extent of any Federal agency's obligations under section 120 of CERCLA. EPA solicits comment on the most appropriate designation of the site.

Name Changes

EPA proposes to change the name of the Del Amo Facility, a proposed site in Los Angeles, California, to the Del Amo Pits. EPA proposes to change the name of the American Shizuki Corp./Ogallala Electronics and Manufacturing, Inc., a proposed site in Ogallala, Nebraska to the Ogallala Groundwater Contamination. EPA believes these names more accurately reflect the sites, and solicits comment on these proposed name changes.

Clarification of Prior NPL Listing

The Indian Bend Wash Superfund Site, located in Scottsdale-Tempe-Phoenix, Arizona, was placed on the NPL on September 8, 1983 (48 FR 40667). The purpose of this clarification of the original listing is to provide additional information about the releases of hazardous substances that are currently being investigated.

The 1982 HRS analysis in the original listing docket for Indian Bend Wash (cross-referenced as NPL–2–630) provides the following general description of the facility: "Groundwater contamination has been detected in an area approximately two miles by five miles along the Indian Bend Wash in Scottsdale and Tempe. Municipal drinking water supply wells serving the cities of Scottsdale, Phoenix and Tempe have been tainted by trichloroethylene. Chromium contamination has also been found to be present in the aquifer of concern." The HRS analysis also includes "approximate boundaries" of "Scottsdale Road (west), Salt River channel (south), Pima Road (east), and Chapparal Road (north)." However, documented releases at that time also included contaminated wells south of the Salt River.

During the investigation of groundwater at Indian Bend Wash,EPA has identified several apparently noncontiguous areas of groundwater contamination, both north and south of the Salt River. While it cannot be stated with certainty because of the hydrological impacts of the river flow, it appears that the releases of hazardous substances south of the river may originate in sources other than those north of the river. This notice is to clarify that the Indian Bend Wash Superfund Site has always included all releases discovered during the course of the RI/FS, both north and south of the Salt River, and that the RI/FS has, from the beginning, investigated releases documented in the original HRS analysis both north and south of the Salt River. The approximate boundaries of the study area where EPA is currently responding to releases of hazardous substances are as follows: Rural Road (Tempe)/ Scottsdale Road (Scottsdale) (west), Chaparral Road (north), Price Road (Tempe)/Pima Road (Scottsdale)(east), and Apache Boulevard (south).

Two Records of Decision were issued, on September 21, 1988 and September 12, 1991, for the portion of the site located north of the Salt River, which EPA has informally designated as "North Indian Bend Wash" or "Indian Bend Wash (North)". The portion of the site located south of the Salt River has been informally designated as "South Indian Bend Wash", or "Indian Bend Wash (South)", and is now in the RI/FS study phase.

The above definition of the site is consistent with EPA's policy for listing noncontiguous facilities. Section 104(d)(4) of CERCLA authorizes EPA to "treat two or more noncontiguous facilities as one for the purposes of response, if such facilities are reasonably related on the basis of geography or their potential threat to public health, welfare, or the environment." EPA published a policy (49 FR 37076, September 21, 1984) identifying the factors which it would consider in determining whether non-contiguous facilities should be aggregated.

The results of the RI (available in the Region IX docket for this site) indicate that the Indian Bend Wash Superfund Site meets the aggregation criteria. Indian Bend Wash North and Indian Bend Wash South each contain many potentially noncontiguous facilities. It is appropriate to address all facilities within both North Indian Bend Wash and South Indian Bend Wash in aggregation. Several factors support this. First, there are similar constituents of concern so that a single strategy for cleanup is appropriate. Second, the contamination from the releases is threatening the same aquifer and there is no evidence of any geologic discontinuity between the sources. Lastly, the target populations affected by the noncontiguous releases are substantially overlapping with a number of drinking water wells located within both the northern and southern portions of the site. Based on the above considerations, the multiple noncontiguous sources in both the north and south areas are most logically considered as a single site for NPL purposes. EPA has consistently addressed the areas north and south of the river as a single site since the original listing of the Indian Bend Wash site.

This clarification of the extent of releases being evaluated by EPA at the Indian Bend Wash site is intended to provide notice of same to all persons. Although EPA properly has regarded contamination south of the Salt River, referred to as Indian Bend Wash (South), as part of the site since it was listed on the NPL in 1983, EPA will consider comments addressed to the inclusion of that area as part of the site. EPA will not consider comments addressed to other aspects of the original listing decision.

IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites to the NPL. EPA believes that the kinds of economic effects associated with this proposed revision to the NPL are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

This proposed rulemaking is not a "major" regulation because it does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine any party's liability for site response costs. Costs that arise out of responses at sites in the General Superfund Section 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 that may be associated with responding to all sites in this rule. The proposed listing of a site on the NPL may be followed by 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. Selection of a remedial alternative, and design and construction of that alternative, may 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 enter into consent orders or agreements to conduct or pay the costs of the RI/FS, remedial design and remedial action, and O&M, or EPA and the States may share costs up front and subsequently bring an action for cost recovery.

The State's share of site cleanup costs for Trust Fund-financed actions is governed by CERCLA section 104(c). For privately-owned sites, as well as publicly-owned but not publicly-operated sites, EPA will pay from the Trust Fund for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs of the remedial action, leaving 10% to the State. For sites operated by a State or political subdivision, the State's share is at least 50% of all response costs at the site, including the cost associated with the RI/FS, remedial design, and construction and implementation of the remedial action selected. After construction of the remedy is complete, costs fall into two categories:

For restoration of ground water and surface water, EPA will pay from the Trust Fund a share of the start-up costs according to the cost-allocation criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years. 40 CFR 300.435(f)(3). After that, the State assumes all O&M costs. 40 CFR 300.435 (f)(1).

For other cleanups, EPA will pay from the Trust Fund a share of the costs of a remedy according to the cost-allocation criteria in the previous paragraph until it is operational and functional, which generally occurs after one year. 40 CFR 300.435(f)(2), 300.510(c)(2). After that, the State assumes all O&M costs. 40 CFR 300.510(c)(1).

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 (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, 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	1,300,000
Remedial Design	1,500,000
Remedial Action	[3]25,000,000
Net present value of O&M[2]	3,770,000

[1] 1988 U.S. Dollars
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate
[3] Includes State cost-share

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Possible costs to States associated with today's proposed rule for Trust Fund-financed response action arise from the required State cost-share of: (1) For privately owned sites at which remedial action involving treatment to restore ground and surface water quality are undertaken, 10% of the cost of constructing the remedy, and 10% of the cost of operating the remedy for a period up to 10 years after the remedy becomes operational and functional; (2) for privately-owned sites at which other remedial actions are undertaken, 10% of the cost of all remedial action, and 10% of costs incurred within one year after remedial action is complete to ensure that the remedy is operational and functional; and (3) for sites publicly-operated by a State or political subdivision at which response actions are undertaken, at least 50% of the cost of all response actions. States must assume the cost for O&M after EPA's participation ends. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the non-Federal sites proposed for the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all non-Federal sites in today's proposed rule, but excluding O&M costs, would be approximately $36 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share start-up costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately $32 million. As with the EPA share of costs, portions of the State share will be borne by responsible parties.

Placing a site on the 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, these effects cannot be precisely estimated. 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 this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal 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 proposal to place additional sites on the NPL 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. Proposing 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 before the RI/FS is completed at these sites.

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 NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, proposing 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 proposed 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 the 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 #14

GENERAL SUPERFUND SECTION

State	Site Name	City/County	NPLGr[1]
AL	Monarch Tile Manufacturing, Inc.	Florence	17
CO	ASARCO, Inc. Globe (Globe Plant)	Denver	1
CO	Summitville Mine	Rio Grande County	4/5
FL	Plymouth Avenue Landfill	DeLand	4/5
HI	Del Monte Corp. (Oahu Plantation)	Honolulu County	4/5
ID	Blackbird Mine	Lemhi	4/5
ID	Triumph Mine Tailings Piles	Triumph	1
MD	Ordnance Products, Inc.	Cecil County	13
MS	Potter Co.	Wesson	4/5
NJ	Horseshoe Road	Sayreville	4
NY	Onondaga Lake	Syracuse	4
NY	Pfohl Brothers Landfill	Cheektowaga	4
OH	Diamond Shamrock Corp. (Painesville Works)	Painesville	4/5
OH	Dover Chemical Corp.	Dover	4/5
OK	National Zinc Corp.	Bartlesville	4/5
OR	East Multnomah County Ground Water Contamination	Multnomah County	4/5
TN	ICG Iselin Railroad Yard	Jackson	4/5
TX	RSR Corp.	Dallas	4/5
WA	Pacific Sound Resources	Seattle	1

Number of Sites Proposed to General Superfund Section: 19

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

NATIONAL PRIORITIES LIST PROPOSED RULE #14
FEDERAL FACILITIES SECTION

State	Site Name	City/County	NPLGr[1]
KY	Paducah Gaseous Diffusion Plant (DOE)	Paducah	2
MA	Hanscom AFB	Bedford	4/5
MA	Natick Laboratory Army Research, Development and Engineering Center.	Natick	4/5
MD	Beltsville Agriculture Research Center (USDA)	Beltsville	4/5
VA	Langley Air Force Base/NASA Langley Research Center	Hampton	4/5
VA	Marine Corps Combat Development Command	Quantico	4/5
WA	Puget Sound Naval Shipyard Complex	Bremerton	4/5

Number of Sites Being Proposed to the Federal Facilities Section: 7

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

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: May 4, 1993.

Richard J. Guimond,

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

[FR Doc. 93–10867 Filed 5–7–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–31; Notice 01]

RIN 2127–AE78

Federal Motor Vehicle Safety Standards; Warning Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend Federal Motor Vehicle Safety Standard No. 125, *Warning Devices.* That standard specifies requirements for non-powered warning devices designed to be carried in all types of motor vehicles and set out on the roadway to warn oncoming traffic of a stopped vehicle in or near the roadway. As amended, the standard would apply only to warning devices that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds (4,536 kilograms).

The agency is proposing to exclude from the standard warning devices for vehicles with a GVWR of 10,000 pounds or less because it has determined tentatively that no longer applying Standard No. 125 to non-powered warning devices carried on such vehicles would provide warning device manufacturers with greater design freedom and would relieve an unnecessary regulatory burden on industry. The standard would continue to apply to trucks and buses with higher GVWRs because the agency has long-term plans to amend Standard No. 125 to make it more performance oriented for warning devices designed to be carried on those vehicles.

DATES: *Comments.* Comments must be received on or before June 24, 1993.

PROPOSED EFFECTIVE DATE: The proposed amendment would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth O. Hardie, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–6987).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicles Safety Standard (FMVSS) No. 125, *Warning Devices*, establishes requirements for devices, without self-contained energy sources, that are designed to be carried in motor vehicles and used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle. The purpose of the standard is to reduce deaths and injuries due to rear-end collisions between moving traffic and disabled or stopped vehicles. The warning devices are required to be triangular with an open center, covered with orange fluorescent and red reflex reflective material, and capable of being erected on the roadway. These performance characteristics are intended to assure that the warning devices can be readily observed during daytime and nighttime lighting conditions, have a standardized shape for quick message recognition, and perform properly while deployed.

Standard No. 125 has been the subject of several rulemaking actions because it contains extensive detail specifying the warning device's performance and physical characteristics as well as the related test procedures. As a result of the Standard, manufacturers are prohibited from marketing other non-powered warning devices, which may vary significantly in performance and configuration from the Standard's specifications. Some have contended that the Standard is too design restrictive since its specifications prohibit other warning devices, which may be capable of adequately warning approaching drivers of a disable vehicle, even though they differ from a Standard No. 125 warning triangle.

A. Regulatory History

On October 14, 1967, the National Highway Safety Bureau, the predecessor to NHTSA, published an advance notice of proposed rulemaking (ANPRM) concerning a possible safety standard requiring warning devices for stopped vehicles. (32 FR 14278) That notice discussed such devices as flares, fusees, cloth flags, electric lanterns, and emergency reflectors.

On November 11, 1970, NHTSA proposed issuing a new Federal Motor Vehicle Safety Standard (FMVSS) that would specify performance

requirements and test procedures applicable to fluorescent and retroreflective, triangular, non-powered warning devices similar to those now specified in Standard No. 125. (35 FR 17350). These devices were intended to supplement the vehicular warning signal lamps required by Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to minimize the likelihood of rear-end collisions between moving vehicles and disabled vehicles. The notice proposed that passenger cars and multipurpose passenger vehicles be equipped with one such device and trucks and buses with three such devices as standard equipment upon the first consumer sale.

On March 1, 1972, NHTSA issued Standard No. 125, a safety standard that specifies shape, size, and performance requirements for warning devices that do not have self-contained energy sources. (37 FR 5038). The agency decided to issue an equipment standard instead of a vehicle standard because the available information did not justify the additional cost of mandating the warning device in all new vehicles. Accordingly, these devices were not required as standard vehicle equipment. The notice also stated that it would be necessary to collect further data regarding the effectiveness of warning triangles and frequency of use by consumers so that a more accurate cost-benefit analysis could be made of a vehicle standard.

On June 22, 1972, NHTSA responded to petitions for reconsideration that resulted in minor modifications to Standard No. 125. (37 FR 12323). The notice also clarified the Standard's applicability to emphasize that it applied to all non-powered warning devices, including those placed on the vehicle's roof.

On January 30, 1973, in response to additional petitions for reconsideration, NHTSA decided to allow the use of dual purpose material (simultaneously fluorescent and retroreflective). (38 FR 3760) In response to petitions, the agency also decided to amend the Standard to include a provision expressly prohibiting any attachments to the warning device. The agency believed that such attachments would detract from the device's standardized triangular shape and thus decrease its effectiveness as a nationally and internationally recognizable warning signal. Further changes were made in performance and test requirements were at the request of manufacturers

NHTSA issued several additional notices related to Standard No. 125. On August 9, 1974, NHTSA amended the test procedure to use a xenon arc lamp instead of the original illuminant and prescribed the color specification for the orange and red materials used in the warning triangles. (39 FR 28636) On January 2, 1975, the agency amended the Standard to allow the distributor's name to be used on the device in addition to the manufacturer's name. (40 FR 4). On September 22, 1988, NHTSA denied a petition for rulemaking submitted by Burke Communications requesting that Standard No. 125 be amended to allow the petitioner's alternative warning device, an inflatable safety cone. (53 FR 36871).

B. Federal Motor Carrier Safety Regulations

The Federal Highway Administration, through the Federal Motor Carrier Safety Standards, requires commercial motor vehicles engaged in interstate commerce to carry three emergency warning triangles that comply with Standard No. 125 (49 CFR 393.95(f)). The FHWA requires that the triangles be used under the conditions specified in § 392.22.

Section 1041(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914, 1993, December 18, 1991) requires that "Section 393.95 of title 49 of the Code of Federal Regulations shall applied so that fusees and flares are given equal priority with regard to use as reflecting signs." As a result, the FHWA is considering a rulemaking to implement the Congressional mandate. Such a rulemaking would allow the use of flares or fusees in lieu of warning triangles and could impact the market for warning triangles.

C. Effectiveness of Warning Devices

The benefits derived from emergency warning devices are difficult to assess. The agency is unaware of any studies that conclusively show that a Standard No. 125 or any other type of emergency warning device, even when properly used, is effective in reducing the likelihood of accidents involving disabled vehicles. The agency notes that it is difficult to evaluate the effectiveness of emergency warning devices given the difficulty in determining a motorist's thoughts when he or she sees a deployed warning device. Studies about warning devices have evaluated the response of passing motorists to such devices based on the assumption that measurable changes in passing vehicle speed and lateral separation between the moving and disabled vehicle signify a decrease in accident potential. While studies based on this assumption may not fully evaluate warning device effectiveness, they do evaluate the response of some drivers when confronted with a warning device.

Two of those studies support the conclusion that warning triangles may not be effective in changing motorist behavior. (Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles, prepared in response to section 219, Public Law 98–554, Motor Carrier Safety Act of 1984, National Highway Traffic Safety Administration, U.S. Department of Transportation (August 19, 1986) under Ulmer, Richard; Leaf, William; and Blomberg, Richard, Analysis of the Dismounted Motorist and Road-Worker Model Pedestrian Safety Regulation, DOT HS–806–445, National Highway Traffic Safety Administration, U.S. Department of Transportation (August 1982). The August 1986 study said that

> (a)lthough accident rate and severity are the ultimate dependent variables of interest, effectiveness in reducing accident rates must be inferred from effectiveness in producing cautionary responses in passing motorists.

The study concluded that—

> (e)mergency warning devices had only limited effects in reducing vehicle speeds and increasing lateral separation between moving and disabled vehicles. Thus, the actual number of lives saved and injuries avoided would most likely be significantly lower than the target population * * *

of vehicle operators and occupants in struck disabled vehicles. (Page 52)

Both these studies discussed field experiments conducted by M.J. Allen, S.D. Miller, and J.L. Short of Indiana University that evaluated mock disabled vehicle situations along a roadway shoulder. The experiment was designed to evaluate the effects of triangles and flares on passing motorists. The study determined that during nighttime conditions, triangles reduce the speed of passing vehicles an average of only 1.5 mph compared to the disabled-vehicle-only condition. In contrast, flares reduced passing vehicle speed by an average of 12.2 mph at night. During daytime, none of the emergency warning devices had a significant effect in reducing passing vehicle speed or increasing lateral separation compared to the disabled-vehicle-only condition. Even the most effective daytime measure, i.e., placing three triangles at distances 2, 48, and 100 paces behind the vehicle, only reduced speed by 3–4 mph compared to the disabled-vehicle-only condition, when the speed limit was 65 mph. In a follow-up study, Miller concluded that warning triangles had no effect on reducing passing motorist speed either at night or during the day. That study also indicated that,

at night, four-way flashers are more effective than triangles.

II. Petitions

NHTSA has received petitions to amend Standard No. 125 from P.C.S. Safety Corporation, a manufacturer of a warning device, and the Transportation Safety Equipment Institute (TSEI), a trade association representing manufacturers of vehicle safety equipment.

On April 3, 1992, P.C.S. Safety Corporation petitioned the agency to allow its warning device, which it calls a "Collapsible Safety Marker." This product, which does not comply in significant respects with Standard No. 125's requirements, is constructed of tempered spring steel in coil form, with a thick fluorescent mylar coating and with reflective strips woven through the coils. The coils are attached to a plastic base. The petitioner claimed that its device is better than or equal to the current Standard No. 125 warning triangle because it is more visible, is more stable, and is easier to store.

On September 21, 1992, TSEI petitioned the agency to commence a comprehensive rulemaking proceeding to amend Standard No. 125. Among the issues that the petitioner requested the agency to consider were (1) clarification of the testing procedures in Standard No. 125, (2) modification of the container requirement so that it would better protect the warning device's fluorescent material, (3) specification of the laboratory testing procedures used to determine the color of retroflective material, (4) correction of the Standard's provisions for testing and measuring the orange fluorescent material, (5) clarification of the retroreflectivity test provisions so that they are keyed to relevant ASTM test procedures, (6) revision of the luminance factor testing provision to achieve more accurate test results with closer correlation between testing laboratories, (7) amendment of the stability test to make it repeatable and consistent with the current wind test's intent, and (8) incorporation of additional figures to depict with specificity the recommended positioning of the devices.

III. Agency's Proposal

NHTSA has decided to propose narrowing the application of Standard No. 125 so that the only non-powered warning devices it would apply to are those designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) or 10,001 pounds (4,536 kilograms) or more. Standard No. 125, section S5.1.4(c) requires that the symbol DOT, or the statement that the warning device complies with all applicable Federal motor vehicle safety standards be permanently and legibly marked on the warning device. This required marking will identify Standard No. 125 complying triangles.

The agency tentatively concludes that Standard No. 125 should continue to apply to warning devices for use in vehicles subject to the Federal Motor Carrier Safety Regulations (FMCSRs) and comparable State regulations because the FMVSSs and FMCSRs complement each other. While the FMVSSs apply to the manufacture of warning devices, the FMCSRs and comparable State motor carrier regulations apply to the use of these devices in highway situations.

With respect to vehicles with a GVWR of 10,000 pounds or less (which are not subject to FHWA's regulations), the agency has tentatively concluded that no longer applying Standard No. 125 to warning devices which may be carried on such vehicles would provide greater freedom for manufacturers in designing warning devices for the general public and would relieve an unnecessary regulatory burden on industry.

NHTSA notes that by proposing to amend Standard No. 125's applicability, the NPRM supplements the grants of the petitions from P.C.S. Safety Corporation and TSEI. As explained above, the petition from P.C.S. Safety Corporation requested that its collapsible safety marker be allowed for the purpose of warning traffic of a stopped vehicle. The proposal to modify Standard No. 125 would allow manufacturers to market and sell this and other types of warning devices for use with vehicles having a GVWR of less than 10,000 pounds.

The petition from TSEI requested that Standard No. 125's test procedures be clarified and improved. NHTSA has granted the TSEI petition because further review of the issues raised in the petition appears to have merit.

NHTSA emphasizes that granting TSEI's position does not necessarily mean that Standard No. 125 will be revised as requested by the petitioner. During the course of the separate rulemaking proceeding regarding that petition, the agency will determine the extent to which the Standard needs to be amended, consistent with the statutory criteria. The agency anticipates that after it reviews and evaluates the public comments on this NPRM, the agency will issue a separate NPRM to make Standard No. 125 more performance oriented. The agency welcomes comments in response to this notice about ways to minimize design restrictive language and to make the standard more performance oriented.

NHTSA is aware that there may be concern about potential problems if Standard No. 125 is amended so that warning devices to be used in passenger cars are no longer subject to Standard No. 125. For instance, it would become permissible to manufacture and sell warning devices that would not comply with the Standard were it otherwise applicable. The agency invites comments and supporting technical information about any potential problems which interested parties may believe would exist.

In reviewing the petitions to amend Standard No. 125, NHTSA also considered whether to require motor vehicles to be equipped with warning devices. The agency notes that each Standard No. 125 warning triangle has a retail unit cost of about $10.00 (with the unit cost to a vehicle manufacturer about $2.50). Accordingly, the cost to consumers for each new vehicle to be equipped with a warning triangle would be $120 million to $150 million per year and to vehicle manufacturers $30 million to $37.5 million per year depending on model year production level.

NHTSA has not required that vehicles be equipped with Standard No. 125 warning triangles because it has never conclusively determined whether such devices are effective. NHTSA might be able to obtain data related to the use and effectiveness of warning triangles, but only after significant expenditures of agency resources. Such a data collection effort would likely need to be done using survey and observational techniques, instead of through the normal crash information data collection typically conducted by NHTSA. Such an effort would be expensive and may not yield results sufficient to conclusively demonstrate a significant benefit. Therefore, the agency has not proposed such a requirement.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 (U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

IV. Rulemaking Analyses and Notices

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. With respect to warning devices for vehicles with a GVWR greater than 10,000 pounds, the proposal would not result in any cost changes. With respect to warning devices for passenger cars and multipurpose passenger vehicles and for trucks and buses with a GVWR of 10,000 pounds or less, the proposal would permit the manufacture of warning devices of different designs and potentially lower costs.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. While some warning device manufacturers would be small entities, the agency believes that the proposal would not result in any cost changes for those entities that presently manufacturer warning triangles that comply with Standard No. 125, or to those entities that would continue to manufacture Standard No. 125 triangles, because this proposal requires no change to the specifications of Standard No. 125. The agency further believes that since the proposal would permit manufacturers the option of manufacturing warning devices that differ in design from Standard No. 125 devices, that the design differences could result in a lower manufacturing cost. Small organizations and governmental jurisdictions which purchase motor vehicle equipment could realize a small cost savings in the purchase of warning devices for vehicles of 10,000 pounds or less. Accordingly, a regulatory flexibility analysis has not been prepared.

C. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

D. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality shoud be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend, in title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 571.125 [Amended]

2. In § 571.125, S3 would be revised to read as follows:

S3 *Application.* This standard applies to devices, without self-contained energy sources, that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds (4,536 kilograms. These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.

Issued on: May 4, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

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49 CFR Part 571

[Docket No. 74–14; Notice 81]

RIN 2127–AE79

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to allow manufacturers of replacement seat belt assemblies a choice of two means of providing information regarding the seating positions and vehicle models for which the assemblies are appropriate: Either on the assembly or in the installation instruction sheet currently required to accompany the assembly. This notice also proposes to remove the labeling requirement for two types of seat belt assemblies when they are installed as original equipment in a new motor vehicle. NHTSA believes that these proposals would provide manufacturers more flexibility in the manner of providing this information without decreasing the likelihood that belts will be correctly installed.

DATES: Comments must be received by June 24, 1993. If adopted, the proposed amendments would become effective 30 days following publication of the final rule.