Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a 100 foot safety zone around a fireworks barge during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. From 11 a.m. until 8 p.m. on October 6, 2012, the fireworks barge will be loading pyrotechnics off of Pier 50 in position 37°46′28″ N, 122°23′06″ W (NAD 83). From 8 p.m. to 8:30 p.m. on October 6, 2012, the loaded barge will transit from Pier 50 to the launch site near Pier 3 in approximate position 37°48′00″ N, 122°23′27″ W (NAD83). Upon the commencement of the fireworks display, scheduled to take place from 9:30 p.m. to 9:40 p.m. on October 6, 2012, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet at the launch site near Pier 3 in approximate position 37°48′00″ N, 122°23′27″ W (NAD83) for the Fleet Week Fireworks in 33 CFR 165.1191, Table 1, item number 25. This safety zone will be in effect from 11 a.m. to 9:50 p.m. on October 6, 2012. Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so. This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: August 24, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–22922 Filed 9–17–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0002, EPA–HQ–SFUND–2003–0010, EPA–HQ–SFUND–2011–0647, 0653, EPA–HQ–SFUND–2012–0146, 0147, 0062, 0063, 0065, 0066, 0067, 0068, 0070 and 0071; FRL–9722–6]

National Priorities List, Final Rule No. 55

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 12 sites to the General Superfund Section of the NPL.

DATES: The effective date for this amendment to the NCP is October 18, 2012.

ADDRESSES: Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW.; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the relevant Regional Dockets is as follows:

- Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100; Boston, MA 02109–3912; 617/918–1417.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR Part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund Section'') and one of sites that are owned or operated by other federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR Part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. 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) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

• The EPA determines that the release poses a significant threat to public health.

• The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

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

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions. * * *'' 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.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

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

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

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted 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, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

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

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

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

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

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the construction completion list (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the sitewide ready for anticipated use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the

measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/pdf/sitewide_a.pdf.*

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

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf.* The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA will be using the web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, will be added to the EPA's Web site at *http://www.epa.gov/superfund/sites/query/queryhtm/nplstcor.htm.*

II. Availability of Information to the Public

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

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Alabama Plating Company, Inc.	Vincent, AL	EPA–HQ–SFUND–2000–0002
Cedar Chemical Corporation	West Helena, AR	EPA–HQ–SFUND–2012–0062
Fairfax St. Wood Treaters	Jacksonville, FL	EPA–HQ–SFUND–2012–0063
Bautsch-Gray Mine	Galena, IL	EPA–HQ–SFUND–2012–0065
EVR-Wood Treating/Evangeline Refining Company	Jennings, LA	EPA–HQ–SFUND–2012–0066
Leeds Metal	Leeds, ME	EPA–HQ–SFUND–2011–0647
Holcomb Creosote Co	Yadkinville, NC	EPA–HQ–SFUND–2012–0067
Orange Valley Regional Ground Water Contamination	West Orange/Orange, NJ	EPA–HQ–SFUND–2012–0068
Peters Cartridge Factory	Kings Mills, OH	EPA–HQ–SFUND–2003–0010
West Troy Contaminated Aquifer	Troy, OH	EPA–HQ–SFUND–2012–0070
Circle Court Ground Water Plume	Willow Park, TX	EPA–HQ–SFUND–2012–0071
US Oil Recovery	Pasadena, TX	EPA–HQ–SFUND–2011–0653

B. What documents are available for review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or the EPA listing policies that affect the site and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes the EPA's responses to comments.

C. What documents are available for review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes the EPA's responses to comments.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the Regional Dockets for hours. For addresses for the Headquarters and Regional Dockets, see **ADDRESSES** section in the beginning portion of this preamble.

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

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/index.htm* or by contacting the Superfund Docket (see contact information in the beginning portion of this notice).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following 12 sites to the NPL, all to the General Superfund Section. All of the sites included in this final rulemaking are being added to the NPL based on HRS scores of 28.50 or above with the exception of Cedar Chemical Corporation, which has been designated as the state's one-time top priority site. The sites are presented in the table below:

State	Site name	City/county
AL	Alabama Plating Company, Inc.	Vincent
AR	Cedar Chemical Corporation	West Helena
FL	Fairfax St. Wood Treaters	Jacksonville
IL	Bautsch-Gray Mine	Galena
LA	EVR-Wood Treating/Evangeline Refining Company	Jennings
ME	Leeds Metal	Leeds
NC	Holcomb Creosote Co	Yadkinville
NJ	Orange Valley Regional Ground Water Contamination	West Orange/Orange
OH	Peters Cartridge Factory	Kings Mills
OH	West Troy Contaminated Aquifer	Troy
TX	Circle Court Ground Water Plume	Willow Park
TX	US Oil Recovery	Pasadena

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

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. This rule adds 12 sites to the NPL.

The EPA received two comments relating to all sites proposed for NPL addition in the March 2012 NPL proposed rule (77 FR 15344, March 15, 2012). One commenter approved of listing sites on the NPL but urged the EPA to develop a more reasoned and significant HRS score threshold for listing sites (see docket number EPA–HQ–SFUND–2012–0071–0005). The commenter questioned whether the EPA can protect human health and the environment without a ''reasoned threshold for remediation'' and whether 28.50 is the ''exact point where risk becomes too great for the government to allow the contamination to continue.'' The commenter expressed that she was unable to locate any resource indicating the rationale of the 28.50 threshold, then cited in part the EPA's rationale from the 1990 revisions to the HRS at 55 FR 51569. The commenter questioned whether the rationale is still valid given that 220 sites currently on the Superfund list (16.9% of the total listed sites) fall within 5 points of the 28.50 cutoff.

In response, the commenter is incorrect that the 28.50 cutoff score is intended as a ''reasoned threshold for remediation'' and is incorrect in stating that the 28.50 cutoff score is intended as ''the exact point where risk becomes too great to allow contamination to continue.'' It is neither. The EPA's rationale for retaining the 28.50 cutoff score is addressed in the preamble to the 1990 revisions to the HRS (55 FR 51569, December 14, 1990). There, after requesting public comments on the issue, the Agency stated:

> EPA believes that the cutoff score has been, and should continue to be, a mechanism that allows it to make objective decisions on national priorities. Because the HRS is intended to be a screening system, the Agency has never attached significance to the cutoff score as an indicator of a specific level of risk from a site, nor has the Agency intended the cutoff to reflect a point below which no risk was present. The score of 28.50 is not meant to imply that risky and non-risky sites can be precisely distinguished. Nevertheless, the cutoff score has been a useful screening tool that has allowed the Agency to set priorities and to move forward with studying and, where appropriate, cleaning up hazardous waste sites. The vast majority of sites scoring above 28.50 in the past have been shown to present risks. EPA believes that a cutoff score of 28.50 will continue to serve this crucial function.

An HRS evaluation is not a risk assessment and is not a decision to remediate a specific site. Remediation decisions are made later in the Superfund process after additional investigation. The HRS is intended to be a ''rough list'' of prioritized hazardous sites; a ''first step in a process—nothing more, nothing less'' *Eagle Picher Indus.* v. *EPA,* 759 F.2d 922, 932 (D.C. Cir. 1985) (Eagle Picher II). The EPA would like to investigate each possible site completely and thoroughly prior to evaluating them for proposal for NPL, but it must reconcile the need for certainty before action with the need for inexpensive, expeditious procedures to identify potentially hazardous sites. The courts have found the EPA's approach to solving this conundrum to be ''reasonable and fully in accord with Congressional intent'' *Eagle Picher Industries, Inc.* v. *EPA,* (759 F.2d 905 (D.C. Cir. 1985) Eagle Picher I). When scoring sites during an HRS evaluation, the EPA does not score multiple pathways when scoring an additional pathway will not affect the listing decision, even though it might add to a site score. Therefore, the HRS score represents a threshold score—sites that score within 5 points could actually score significantly higher if additional pathways were investigated; thus, the commenter's basis for claiming that the rationale is no longer valid is flawed.

This rulemaking adds specific sites to the NPL and does not propose to change the process for determining the eligibility of sites for the NPL. This comment, which supports the placement of the sites to the NPL, results in no change to the HRS scores of the sites at issue and no change in the decision to place them on the NPL.

The second commenter stated that the EPA should have provided additional information as to why these sites were being listed, and that this lack of information was inconsistent with the Administrative Procedure Act (''APA'') (see docket number EPA–HQ–SFUND–2012–0071–0006). In particular, the commenter questions the adequacy of the Narrative Summary for each proposed site. The commenter states that the Narrative Summaries should provide more discussion of the rationale and purpose of listing a site; more discussion of alternatives to listing; and more opportunity for notice and comment as required by the APA. The commenter requests re-proposal of the sites in accordance with their request for additional information.

In response, the Agency notes that the commenter submitted similar comments to a NPL rulemaking in 2008 (see document number EPA–HQ–SFUND–2008–0081–0005). The Agency reaffirms its response to those comments in 2008 and continues to hold that its process for adding sites to the NPL complies with the APA and CERCLA. As stated in 2008, for prospective sites under consideration for listing on the NPL, the EPA follows NCP procedures by conducting a preliminary assessment (PA) report of the site. Depending on the results, that may be followed up by a site inspection report (SI), which involves gathering more information about the site by contacting the state and interested parties on and around the site. When a site is proposed to the NPL, the EPA provides its detailed rationale

in documents (*i.e.,* the HRS documentation record and supporting materials) publicly available at the EPA Headquarters in Washington, DC, in the Regional offices, and by electronic access at *htpp://www.regulations.gov.* If the site is affected by any particular statutory requirements or the EPA listing policies, such requirements or policies are discussed and included in the docket materials for each site, which are made available for public review and comment. Commenters have the opportunity to raise any comments they may have on the proposed listing, supporting documentation, and rationale (typically over a 60-day comment period). In kind, the EPA responds to such comments in writing before making a final decision to place a site on the NPL.

Section 553 of the APA authorizes ''informal'' rulemaking, which encourages and relies on the participation of the public, including potentially responsible parties. The process outlined in the paragraph above clearly complies with informal rulemaking under the APA. The commenter mistakenly argues that the EPA should put the basis or rationale for its listing decision in the Narrative Summary in the **Federal Register**. The detailed rationale and additional information the commenter seeks, however, is in the HRS documentation record itself. The EPA believes that the **Federal Register** notice and the documentation record give the notice required by the APA. The commenter does not explain why the APA requires the Narrative Summary to be published in the **Federal Register**. The HRS codifies or implements the criteria the EPA considers pursuant to CERCLA § 105(a)(8)(A) when placing a site on the NPL. As discussed above, courts have found the EPA's approach reasonable and consistent with congressional intent.

Finally, while the commenter has made general assertions that the information presented at proposal for the sites was inadequate, the commenter has not explained why the information provided was not adequate to list the sites or any specific site. The commenter requests re-proposal of the sites but fails to specify or explain the inadequacies of the HRS documentation record of each site, and fails to provide any information the Agency should consider. As the commenter itself states: ''Notice-and-Comment Rulemaking Must Be a Dialogue.'' Courts, however, have held that the ''dialogue between administrative agencies and the public is a two-way street.'' *Northside Sanitary Landfill, Inc.* v. *Thomas,* 849 F.2d 1516, 1520 (D.C. Cir. 1988) (citing *Home Box Office, Inc.* v. *FCC,* 567 F.2d 9 (D.C. Cir. 1977)). The commenter ''cannot merely state that a particular mistake was made,'' rather it must show ''why the mistake was of possible significance in the result the agency reaches.'' See *id.* at 1519. In this case, the commenter has not explained what other information the Agency needs to consider or why the information the Agency has considered is not sufficient to place the sites on the NPL.

This rulemaking adds specific sites to the NPL and does not propose to change the process for determining the eligibility of sites for the NPL. This comment results in no change to the HRS scores of the sites presented and no change in the decision to place them on the NPL.

Other than these two general comments, the EPA received no additional comments on seven sites included in the March 2012 proposal and so the EPA is including them in this final rule. Those sites are Fairfax St. Wood Treaters (Jacksonville, FL), Holcomb Creosote Co (Yadkinville, NC), Bautsch-Gray Mine (Galena, IL), West Troy Contaminated Aquifer (Troy, OH), Cedar Chemical Corporation (West Helena, AR), EVR-Wood Treating/Evangeline Refining Company (Jennings, LA) and Circle Court Ground Water Plume (Willow Park, TX).

For the Orange Valley Regional Ground Water Contamination site (West Orange/Orange, NJ), the EPA also received a comment supporting listing of the site, and providing additional sampling data which the commenter stated demonstrated an even greater risk at the site than indicated by the proposed score. In response, the EPA is adding the site to the NPL, as the commenter advocates, and will consider the data provided as it performs the RI/FS to more fully assess the contamination and develop cleanup options, if deemed necessary.

Four sites in this rule received site-specific comments that are addressed in response to comments support documents placed in the docket and accompanying the release of this rule. These four sites are Leeds Metal (Leeds, ME), Alabama Plating Company, Inc. (Vincent, AL), Peters Cartridge Factory (Kings Mills, OH) and US Oil Recovery (Pasadena, TX).

C. Removal of Construction Completion List Column Note and Footnote Description

The EPA received no comments on its March 15, 2012 proposal to remove the Construction Completion List column note and footnote description (77 FR 15344, Docket # EPA–HQ–SFUND–2012–0146). This final rule amends the notes column and footnote description of Appendix B to 40 CFR Part 300 to remove the note that references ''sites on the construction completion list.'' The EPA developed the Construction Completion List (CCL) (58 FR 12142, March 2, 1993) ''to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities.'' Notes were added to Table 1 (General Superfund Section) and Table 2 (Federal Facilities Section) of the NPL to identify those sites on the CCL. With today's easy public accessibility to the Internet and the availability of the most current data on the EPA's Web site, the EPA is removing the construction completion list note. For information on the construction completion list, please visit the EPA's Web site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

D. Correction of Partial Deletion Notation in Table 1

The EPA received no comments on its March 15, 2012 proposal to correct the partial deletion notation in Table 1 (77 FR 15344, Docket # EPA–HQ–SFUND–2012–0147). Therefore, this final rule corrects an error in the column note symbol used to designate sites with partial deletions in Appendix B to CFR Part 300. The correct column note symbol for a site with a partial deletion is ''P''. The Mouat Industries site in Montana has its partial deletion incorrectly designated by a column note symbol of ''* * *P''. In addition, this incorrect symbol was erroneously added to the footnote descriptions at the end of Table 1 as ''* * *P = Sites with deletion(s)''. The EPA is correcting the column note for the Mouat Industries site by changing it to ''P'' and is removing the erroneous footnote description.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of

the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this Final Rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR Part 9.

2. Does the Paperwork Reduction Act apply to this Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* the 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.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the 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 the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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 the EPA regulatory proposals with significant federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this Final Rule?

This final 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 the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party 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 placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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'' are 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.''

2. Does Executive Order 13132 apply to this Final Rule?

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to states or other levels of government. Thus, the requirements of the Executive Order do not apply to this final rule.

The EPA believes, however, that this final rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the governor or a state official who was delegated the authority by the governor to speak on their behalf regarding NPL listing decisions.

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

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this Final Rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

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

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this Final Rule?

This 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 section present a disproportionate risk to children.

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

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355, May 22, 2001), requires federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this Final Rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution or usage. Thus, Executive Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the 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 the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this Final Rule?

No. This rulemaking does not involve technical standards. Therefore, the EPA

did not consider the use of any voluntary consensus standards.

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

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this Final Rule?

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has the EPA submitted this rule to Congress and the Government Accountability Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the effective date of this Final Rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

The EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. NPL listing is not a major rule because, by itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that the EPA necessarily will undertake remedial action, nor does it require any action by any party or determine liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this Rule?

Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (DC Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 10, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Amend Appendix B of Part 300:

■ a. In Table 1 of Appendix B to Part 300 by:

■ 1. Adding entries for Alabama Plating Company, Inc., Cedar Chemical Corporation, Fairfax St. Wood Treaters, Bautsch-Gray Mine, EVR-Wood Treating/Evangeline Refining Company, Leeds Metal, Holcomb Creosote Co, Orange Valley Regional Ground Water Contamination, Peters Cartridge Factory, West Troy Contaminated Aquifer, Circle Court Ground Water Plume and US Oil Recovery in alphabetical order by state;

■ 2. Removing the column note symbol ''***P'' in the Notes [(a)] column for the entry for the Mouat Industries site (MT) and adding a ''P'' symbol in its place;

■ 3. Removing the footnote ''***P = Sites with deletions(s)''; and

■ 4. Removing ''C'' from the Notes[(a)] column wherever it appears (174 times).

■ b. In Tables 1 and 2 by removing the footnote ''C=Sites on construction completion list.''

The revisions and additions read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [(a)]
*	*	*	*
AL	Alabama Plating Company, Inc.	Vincent.	
*	*	*	*
AR	Cedar Chemical Corporation	West Helena	S

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes [a]
*	*	*	*
FL	Fairfax St. Wood Treaters	Jacksonville.	
*	*	*	*
IL	Bautsch-Gray Mine	Galena.	
*	*	*	*
LA	EVR-Wood Treating/Evangeline Refining Company	Jennings.	
*	*	*	*
ME	Leeds Metal	Leeds.	
*	*	*	*
NC	Holcomb Creosote Co	Yadkinville.	
*	*	*	*
NJ	Orange Valley Regional Ground Water Contamination	West Orange/Orange.	
*	*	*	*
OH	Peters Cartridge Factory	Kings Mills.	
*	*	*	*
OH	West Troy Contaminated Aquifer	Troy.	
*	*	*	*
TX	Circle Court Ground Water Plume	Willow Park.	
*	*	*	*
TX	US Oil Recovery	Pasadena.	

(a) A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be ≤ 28.50).
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2012–22851 Filed 9–17–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 05–25; RM–10593; FCC 12–92]

Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order, the Commission suspends, on an interim basis, the Commission's rules allowing for automatic pricing flexibility grants for special access services, pending adoption of new rules. The Commission suspends its pricing flexibility rules in light of evidence that the proxies for measuring actual and potential special access market competition, which are based on collocation by competitive carriers within a Metropolitan Statistical Area (MSA), do not accurately predict whether competition is sufficient to constrain special access prices and deter anticompetitive practices by price cap local exchange carriers. In the Report and Order, the Commission also initiates a process to obtain data needed to conduct a special access market analysis. Based on this forthcoming data collection, the Commission will undertake a robust special access market analysis to determine the extent to which the special access market is competitive and develop special access pricing flexibility rules to replace the collocation-based competitive showings.

DATES: Effective October 18, 2012,

FOR FURTHER INFORMATION CONTACT: Jamie Susskind, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or (202) 418–0484 (TTY), or via email at *Jamie.Susskind@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 05–25, RM–10593, FCC 12–92, adopted on August 15, 2012 and released on August 22, 2012. The summary is based on the public redacted version of the document, the full text of which is available electronically via the Electronic Comment Filing System at *http://fjallfoss.fcc.gov/ecfs/* or may be downloaded at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0823/FCC-12-92A1.pdf.* The full text of this document is also available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request alternate formats for persons with disabilities (*e.g.* Braille, large print, electronic files, audio format, etc.) or reasonable accommodations for filing comments (*e.g.* accessible format documents, sign language interpreters, CARTS, etc.), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

I. Introduction

1. In this Report and Order, we suspend, on an interim basis, our rules