panel review of a final determination made in Canada, the decision shall be served by registered mail.

59. The responsible Secretary shall cause notice of a final decision of a committee issued pursuant to rule 63, and any order that the committee directs the Secretary to publish, to be published in the official publications of the involved Parties.

60. Where the time period fixed, pursuant to rule 41, for filing an *ex parte* motion referred to in subrule 41(1)(c) has expired, the responsible Secretary shall serve on all participants

(a) where no motion is filed pursuant to that subrule, the documents referred to in rules 39 and 41;

(b) where the committee issues an order referred to in subrule 45(1)(a), the documents referred to in rules 39 and 41 in accordance with any order of the committee; and

(c) where the committee issues an order referred to in subrule 45(1)(b), the documents referred to in rules 39 and 41, in accordance with subrule 45(1)(b)(ii) and any order made by the committee.

Part V—Orders and Decisions

61. All orders and decisions of a committee shall be made by a majority of the votes of all members of the committee.

62. (1) Where a Notice of Motion requesting dismissal of an extraordinary challenge proceeding is filed by a participant, the committee may issue an order dismissing the proceeding.

(2) Where the motion referred to in subrule (1) is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting dismissal, the extraordinary challenge proceeding is terminated.

63. (1) A final decision of a committee shall

(a) affirm the decision of the panel;

(b) vacate the decision of the panel; or

(c) remand the decision of the panel to the panel for action not inconsistent with the final decision of the committee.

(2) Every final decision of a committee shall be issued in writing with reasons, together with any dissenting or concurring opinions of the members of the committee.

(3) Subrule (2) shall not be construed as prohibiting the oral delivery of the decision of a committee.

Part VI—Completion of Extraordinary Challenges

64. Where all participants consent to the termination of the proceeding pursuant to rule 62, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which the requirements of rule 62 have been met.

65. Where a committee issues its final decision, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which

(a) the committee affirms the decision of the panel;

(b) the committee vacates the decision of the panel; or

(c) where the committee remands the decision of the panel, the day the responsible Secretary gives notice to the committee that the panel has given notice that it has taken action not inconsistent with the committee's decision.

66. The members of the committee are discharged from their duties on the day on which a Notice of Completion of Extraordinary Challenge is effective.

67. (1) A Party may make a request, pursuant to Article 1905.11(a)(ii) of the Agreement, that an ongoing extraordinary challenge proceeding be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall

(a) immediately give written notice of the stay of the extraordinary challenge proceedings to all participants in the extraordinary challenge proceedings; and

(b) publish a notice of the stay of the extraordinary challenge proceedings in the official publications of the involved Parties.

68. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 1905.1 of the Agreement, the responsible Secretary for extraordinary challenge proceedings referred to in Article 1905.11(a)(i) of the Agreement shall

(a) immediately give notice in writing to all participants in those proceedings; and

(b) publish a notice of the affirmative finding in the official publications of the involved Parties.

69. (1) A Party who intends to suspend the operation of Article 1904 of the Agreement pursuant to Article 1905.8 or 1905.9 of the Agreement shall endeavour to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94–3929 Filed 2–22–94; 8:45 am]

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Wednesday
February 23, 1994

Part IV

Department of Commerce

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1905 Special Committees; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1905 Special Committees

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Rules of Procedure for NAFTA Article 1905 Special Committees.

SUMMARY: Canada, Mexico, and the United States have negotiated the rules of procedure for Article 1905 Special Committees. These rules apply to special committee proceedings conducted pursuant to Article 1905 of the Agreement, unless the involved Parties otherwise agree.

EFFECTIVE DATE: January 1, 1994, the date of the entry into force of the North American Free Trade Agreement ("Agreement"). These Rules of Procedure shall apply to all special committee proceedings commenced on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue; NW., Washington, DC 20230; telephone: (202) 482–0836, (202) 482–4618, or (202) 482–5031, respectively. For procedural matters involving cases under panel review, contact James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5438; fax: (202) 482–0148.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the North American Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico, or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

In instances in which one of the Parties to the Agreement alleges, pursuant to Article 1905.1 of the Agreement, that the application of another Party's domestic law (a) has prevented the establishment of a panel; (b) has prevented a panel from rendering a final decision; (c) has prevented the implementation of a panel's decision or denied it binding force and effect; or (d) has resulted in a failure to provide opportunity for proper review of a final determination by a panel or a court of competent jurisdiction, that Party may request the establishment of a special committee.

Title IV of the North American Free Trade Agreement Implementation Act of 1993, Public Law No. 103–182, 107 Stat. 2057, amends United States law to implement Chapter Nineteen of the Agreement.

The *Article 1905 Special Committee Rules* are intended to give effect to the special committee provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting, and completing special committee proceedings. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the Agreement.

North American Free Trade Agreement Rules of Procedure for Article 1905 Special Committees

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The Parties,

Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to Article 1905.6 of the Agreement;

Adopt the following Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all special committee proceedings conducted pursuant to Article 1905 of the Agreement.

Short Title

1. These rules may be cited as the *Article 1905 Special Committee Rules.*

Statement of General Intent

2. These rules shall apply to special committee proceedings conducted pursuant to Article 1905 of the Agreement, unless the involved Parties otherwise agree. Where a procedural question arises that is not covered by these rules, a special committee may adopt an appropriate procedure that is not inconsistent with the Agreement. In the event of any inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

Interpretation

3. In these rules,

"Agreement" means the North American Free Trade Agreement;

"Complaining Party" means a Party who requests, pursuant to Article 1905.2 of the Agreement, that a special committee be established;

"involved Secretariat" means the responsible Secretariat or the section of the Secretariat located in the country of the other involved Party;

"legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) with respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day (November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every

Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part;

"Mexico" means the United Mexican States;

"official publication" means

(a) in the case of the Government of Canada, the *Canada Gazette*,

(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and

(c) in the case of the Government of the United States, the **Federal Register**;

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States;

"Responding Party" means the Party against whom an allegation is made under Article 1905.1 of the Agreement;

"responsible Secretariat" means the section of the Secretariat of the Responding Party;

"responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" means the Secretariat established pursuant to Article 2002 of the Agreement;

"Secretary" means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

"special committee" means a special committee established pursuant to Article 1905 of the Agreement;

"United States" means the United States of America.

Operation of the Special Committee

4. (1) Subject to subrule (2), unless the involved Parties otherwise agree, special committee meetings shall take place at the offices of the responsible Secretariat or at such alternative location as the committee members may agree.

(2) A special committee may conduct meetings or exchange information by any means, including by means of a telephone conference call or facsimile or computer transmission.

5. The members of a special committee shall select from among themselves a chairperson, who shall preside over all meetings and hearings of the special committee.

6. The chairperson of the special committee shall fix the date and time of its meetings in consultation with other special committee members and the responsible Secretary.

7. All reports, findings, determinations and decisions of a special committee shall be made or issued by a majority vote of all members of the special committee.

8. A special committee proceeding commences on the day on which a request for a special committee is filed with the responsible Secretariat and terminates on the day on which a notice of completion of the special committee proceeding is issued pursuant to rule 36.

9. (1) A special committee may adopt internal procedures of its own, not inconsistent with these rules, for routine administrative matters.

(2) A special committee may delegate to its chairperson the authority to make decisions regarding internal procedures or routine administrative matters.

10. The terms of reference of a special committee shall be limited to

(a) making a finding as to whether any allegations set out in Article 1905.1 of the Agreement made by the Complaining Party regarding the application of the Responding Party's domestic law are substantiated;

(b) determining whether a suspension of benefits by the Complaining Party pursuant to Article 1905.8(b) of the Agreement is manifestly excessive; and

(c) determining whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding.

Service of Documents

11. A document to be filed by an involved Party with the responsible Secretariat shall

(a) be served on the other involved Party by express courier, overnight mail or by any other means agreed upon by the involved Parties; and

(b) when filed, be accompanied by a proof of service certifying that the document has been served on the other involved Party, indicating the manner, date and time of service.

Written Submissions

12. All written submissions and responses filed with a responsible Secretariat shall be accompanied by four copies thereof.

13. (1) A request for the establishment of a special committee under Article 1905.2 of the Agreement shall be made by filing the request with the responsible Secretariat.

(2) On the filing of a request under subrule (1), the responsible Secretary and the other involved Secretary shall cause a notice of the filing of the request to be published in the official publications of the countries in which their sections of the Secretariat are located.

14. The written initial submission of a Complaining Party shall be filed with the responsible Secretariat no later than 10 days after the date on which the last member of the special committee is appointed.

15. A written response by the Responding Party shall be filed with the responsible Secretariat no later than 20 days after the filing of the initial submission of the Complaining Party.

16. A special committee may allow each involved Party the opportunity to make an equal number of further written submissions, within such time as may be fixed by the special committee, having regard to the time limits fixed by Annex 1905.6 to Chapter Nineteen of the Agreement.

17. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed with the responsible Secretariat and of all reports, findings, determinations and decisions issued by the special committee.

Hearings

18. (1) At least one hearing shall be held before the special committee presents its initial report.

(2) The date and time of hearings shall be fixed by the special committee in consultation with the involved Parties and the responsible Secretary.

(3) A verbatim transcript shall be taken of all hearings.

19. Unless the involved Parties otherwise agree, special committee hearings shall take place at the offices of the responsible Secretariat.

20. (1) All special committee members must be present during hearings.

(2) No later than five days before the date of a hearing, each involved Party shall deliver to the responsible Secretariat and to the other involved Party a list of the names of the persons who will present oral arguments at the hearing on behalf of that Party and of other representatives or advisers of the Party who will be attending the hearing.

21. Oral proceedings shall be conducted in the following order, ensuring that each involved Party is given equal time:

(a) the argument of the Complaining Party;

(b) the argument of the Responding Party;

(c) a reply of the Complaining Party; and

(d) a counter-reply of the Responding Party.

22. At the request of an involved Party or at the initiative of the special committee, with the agreement of both involved Parties and subject to such terms and conditions as both involved Parties may agree upon, the special committee may call upon any person to provide information concerning the matter in dispute.

Language of Proceedings

23. Written and oral proceedings may be in either English, French or Spanish, or in any combination thereof.

24. Unless the involved Parties otherwise agree, the reports, findings, determinations and decisions of a special committee shall be issued in an official language of the Responding Party and, if necessary, shall be promptly translated into an official language of the other involved Party.

Special Committee Deliberations

25. (1) The deliberations of a special committee shall take place in private and remain confidential.

(2) Only special committee members may take part in the deliberations of a special committee.

(3) Staff of the involved Secretariats, assistants to the special committee members and any necessary support staff may be present during deliberations of a special committee by permission of the special committee.

Reports

26. In accordance with paragraph (b) of Annex 1905.6 to Chapter Nineteen of the Agreement, a special committee shall prepare and present to the involved Parties an initial report, wherever practicable, within 60 days after the appointment of the last member of the special committee.

27. The involved Parties may comment in writing or, at the request of the special committee, orally, on an initial report of a special committee within 14 days after the initial report is presented.

28. An initial report of a special committee shall be kept confidential.

29. (1) A special committee shall issue a final report, together with any separate opinions rendered by individual committee members, within 30 days after the presentation of its initial report.

(2) Any separate opinions rendered by individual special committee members shall be anonymous.

(3) On the issuance of a final report under subrule (1), the responsible Secretary shall immediately forward copies of the report to the involved Parties.

(4) Unless the involved Parties otherwise agree,

(a) within 10 days after the final report is forwarded to the involved Parties, the involved Secretaries shall cause a notice that a final report has been issued by a special committee to be published in the official publications of the involved Parties, indicating that copies of the report and of any separate opinions by individual members or written views of either involved Party are available to the public at the offices of the responsible Secretariat; and

(b) the responsible Secretariat shall make available to the public copies of the final report of a special committee, together with any separate opinions by individual members and any written views that either involved Party may wish to be published.

Reconvening of Special Committee

30. Where a special committee has made an affirmative finding with respect to grounds specified in Article 1905.1 of the Agreement, a Responding Party may request that the special committee be reconvened by filing a request with the responsible Secretariat

(a) where the Responding Party is requesting that the special committee determine whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding, at any time after the affirmative finding was made; or

(b) where the Responding Party is requesting that the special committee determine whether a suspension of benefits by the Complaining Party under Article 1905.8 of the Agreement is manifestly excessive, at any time after the suspension was made.

31. (1) Where a request referred to in subrule 30(a) is filed before the fortieth day of the 60-day consultation period referred to in Article 1905.8 of the Agreement, the special committee shall endeavour to present a report containing its determination to the involved Parties before the sixtieth day of that period, and may for that purpose make such orders as to filing of written submissions and responses and the holding of a hearing as the special committee considers necessary under the circumstances.

(2) Rules 32 to 34 apply with respect to requests referred to in subrule 30(a) that are filed on or after the fortieth day of the 60-day consultation period referred to in Article 1905.8 and to requests referred to in subrule 30(b).

32. (1) At the time of filing a request pursuant to rule 30, the Responding Party shall file a written submission in support of the request.

(2) A Complaining Party shall file a written response to a submission referred to in subrule (1) within 20 days after that submission is filed.

33. (1) At the time of filing a request pursuant to rule 30 or a written response pursuant to subrule 32(2), an involved Party may request an opportunity to present oral argument in support of its request or response.

(2) Where an involved Party requests an opportunity to present oral argument pursuant to subrule (1), the special committee may hold a hearing, at which both involved Parties shall be granted an equal opportunity to present oral argument.

34. The special committee shall, within 45 days of the filing of a request pursuant to rule 30, present to the involved Parties a written report containing its determination pursuant to Article 1905.10 of the Agreement.

35. Subrules 29 (2) to (4) apply, with such modifications as are necessary, to reports referred to in subrule 31(1) and rule 34.

Completion of Special Committee Proceedings

36. (1) On completion of a special committee proceeding, as determined by the special committee in consultation with the involved Parties, the special committee shall request the responsible Secretary to issue a notice of completion of the proceeding.

(2) A notice referred to in subrule (1) is effective the day after it is issued.

(3) The responsible Secretary shall cause a notice issued under subrule (1) to be published in the official publications of the involved Parties.

37. The members of a special committee are discharged from their duties on the day on which a notice of completion of the special committee proceeding is effective.

Confidentiality

38. All written submissions to, and communications with, a special committee and all documents filed with the involved Secretariats shall be kept confidential.

39. (1) All hearings of a special committee, and all transcripts thereof, shall be kept confidential.

(2) It is the responsibility of each involved Party to ensure that the persons attending oral proceedings of a special committee on its behalf maintain the confidentiality of the proceedings.

Ex Parte Contacts

40. (1) No special committee or member of a special committee shall meet or contact one involved Party in the absence of the other involved Party.

(2) No special committee member shall discuss a matter before the special committee with the involved Parties in the absence of other special committee members.

Extension and Computation of Time

41. A time period fixed by these rules may be extended with the consent of both involved Parties or by a decision of a special committee.

42. (1) In computing any time period fixed in or under these rules, the day or date from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these rules or by a decision of a special committee, any legal holiday that falls within the time period shall be excluded from the computation.

Responsibilities of the Responsible Secretary

43. The responsible Secretary shall provide administrative support for each special committee proceeding and shall make the arrangements necessary for the hearings and meetings of the special committee, including the provision of court reporters and, if required, interpreters to provide simultaneous translation.

44. The responsible Secretary shall maintain a file for each special committee proceeding, comprised of the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the special committee proceeding.

Death or Incapacity

45. Where a special committee member is disqualified, dies or otherwise becomes unable to fulfil special committee duties,

(a) special committee proceedings and computations of time shall be suspended, pending the appointment of a substitute member; and

(b) where the disability, disqualification or death occurs after oral argument has begun, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute member.

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94–3931 Filed 2–22–94; 8:45 am]

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Wednesday
February 23, 1994

Part V

Department of Commerce

International Trade Administration

North American Free Trade Agreement: Code of Conduct for Proceedings Under Chapters Nineteen and Twenty; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Code of Conduct for Proceedings Under Chapters Nineteen and Twenty

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Code of Conduct for Proceedings Under NAFTA Chapters Nineteen and Twenty.

SUMMARY: Canada, Mexico, and the United States have negotiated a Code of Conduct for proceedings under Chapters Nineteen and Twenty of the North American Free Trade Agreement ("Agreement"). The Code applies to members of panels established pursuant to Article 1903, 1904 or 2008, including Article 2008 panels established pursuant to Article 1414, and to members of committees established pursuant to Article 1905 or Annex 1904.13 of the Agreement. In addition, the Code establishes disclosure obligations for members of rosters established pursuant to Article 1414 or 2009 or Annex 1901.2 or 1904.13 of the Agreement and for individuals not on a roster who are under consideration for appointment to a panel or committee.

EFFECTIVE DATE: January 1, 1994, the date of entry into force of the North American Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5438; fax: (202) 482–0148.

SUPPLEMENTARY INFORMATION: To ensure the integrity and impartiality of proceedings conducted pursuant to Articles 1903, 1904, 1905, and 2008 of the North American Free Trade Agreement ("Agreement"), which entered into force on January 1, 1994, Canada, Mexico, and the United States have negotiated a Code of Conduct pursuant to Articles 1909 and 2009 of the Agreement. The Code of Conduct governs the conduct of members of panels established pursuant to Article 1903, 1904 or 2008, including Article 2008 panels established pursuant to Article 1414, and to members of committees established pursuant to Article 1905 or Annex 1904.13 of the Agreement. In addition, the Code of Conduct establishes disclosure obligations for members of rosters established pursuant to Article 1414 or 2009 or Annex 1901.2 or 1904.13 of the Agreement and for individuals not on a roster who are under consideration for appointment to a panel or committee. It is based on the Code of Conduct existing under the United States-Canada Free Trade Agreement, with certain changes made to better ensure the integrity and impartiality of the proceedings under the Agreement.

Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20 of the North American Free Trade Agreement

Preamble

Whereas the Parties place prime importance on the integrity and impartiality of proceedings conducted pursuant to Chapters 19 and 20 of the North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, this Code of Conduct is hereby established to ensure that these principles are respected.

Interpretation

A. In this Code of Conduct,

"Agreement" means the North American Free Trade Agreement;

"assistant" means a person who, under the terms of appointment of a member, conducts research or provides support for the member;

"candidate" means

(a) an individual whose name appears on a roster or list established under Article 1414, Annex 1901.2 or 1904.13 or Article 2009,

(b) an individual who is under consideration for appointment as a member of a panel pursuant to Annex 1901.2 or Article 1903, 1904 or 2011, or

(c) an individual who is under consideration for appointment as a member of a committee pursuant to Annex 1904.13 or Article 1905;

"member" means

(a) a member of a panel constituted pursuant to Annex 1901.2 or Article 1414, 1903, 1904, 2008 or 2011,

(b) a member of an extraordinary challenge committee constituted pursuant to Annex 1904.13, or

(c) a member of a special committee constituted pursuant to Article 1905;

"participant" has the meaning assigned in the Rules of Procedure for Article 1904 Binational Panel Reviews;

"Party" means a Party to the Agreement;

"proceeding", unless otherwise specified, means

(a) a panel review under Article 1903 or 1904,

(b) an extraordinary challenge proceeding under Annex 1904.13,

(c) a special committee proceeding under Article 1905,

(d) a panel proceeding under Chapter 20, or

(e) a proceeding in a dispute arising under Chapter 11 or 14 to which Chapter 20 applies;

"Secretariat" means the Secretariat established pursuant to Article 2002; and

"staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

B. Any reference made in this Code of Conduct to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of the Agreement.

I. Responsibilities to the Process

Every candidate, member and former member shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

II. Disclosure Obligations

[*Introductory Note:*

The governing principle of this Code of Conduct is that a candidate or member must disclose the existence of any interest, relationship or matter that is likely to affect the candidate's or member's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality and competence is impaired.

These disclosure obligations, however, should not be interpreted so that the burden of detailed disclosure makes it impractical for persons in the legal or business community to serve as members, thereby depriving the Parties and participants of the services of those who might be best qualified to serve as members. Thus, candidates and members should not be called upon to disclose interests, relationships or matters whose bearing on their role in the proceeding would be trivial.

Throughout the proceeding, candidates and members have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.

This Code of Conduct does not determine whether or under what

circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as a member of, a panel or committee on the basis of disclosures made.]

A. A candidate shall disclose any interest, relationship or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

The candidate shall disclose such interests, relationships and matters by completing an Initial Disclosure Statement provided by the Secretariat and sending it to the Secretariat.

Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:

(1) any financial interest of the candidate

(a) in the proceeding or in its outcome, and

(b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(2) any financial interest of the candidate's employer, partner, business associate or family member

(a) in the proceeding or in its outcome, and

(b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(3) any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and

(4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.

B. A member in an Article 1904 proceeding shall, after receiving the complaint, disclose any interests, advocacy or representation referred to in paragraph A (1)(b) or (2)(b) or subsection (4) by completing a Supplementary Disclosure Statement provided by the Secretariat and sending it to the Secretariat for consideration by the appropriate Parties.

C. Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in section A and shall disclose them. The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

The member shall disclose such interests, relationships and matters by communicating them in writing to the Secretariat for consideration by the appropriate Parties.

III. The Performance of Duties By Candidates and Members

A. A candidate who accepts an appointment as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.

B. A member shall ensure that the Secretariat can, at all reasonable times, contact the member in order to conduct panel or committee business.

C. A member shall carry out all duties fairly and diligently.

D. A member shall comply with the provisions of Chapter 19 or 20 and the applicable rules.

E. A member shall not deny other members the opportunity to participate in all aspects of the proceeding.

F. A member shall consider only those issues raised in the proceeding and necessary to a decision and shall not delegate the duty to decide to any other person, except as provided in the applicable rules.

G. A member shall take all reasonable steps to ensure that the member's assistant and staff comply with Parts I, II and VI of this Code of Conduct.

H. A member shall not engage in *ex parte* contacts concerning the proceeding.

I. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Secretariat or is necessary to ascertain whether that candidate or member has violated or may violate the Code.

IV. Independence and Impartiality of Members

A. A member shall be independent and impartial. A member shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.

B. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

C. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.

D. A member shall not use the member's position on the panel or committee to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.

E. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.

F. A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.

V. Duties in Certain Situations

A. For a period of one year after the completion of an Article 1904 proceeding, a former member shall not personally advise or represent any participant in the proceeding with regard to antidumping or countervailing duty matters.

B. In the case of an Article 1904 proceeding, a member or a former member shall not represent a participant in an administrative proceeding, a domestic court proceeding or another Article 1904 proceeding involving the same goods.

C. A former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision of the panel or committee.

VI. Maintenance of Confidentiality

A. A member or former member shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.

B. A member shall not disclose a declaratory opinion under Article 1903 or a panel or extraordinary challenge committee order or decision under Article 1904 prior to its issuance by the panel or committee.

C. A member shall not disclose a special committee report or decision under Article 1905 prior to its public release by the Secretariat. A member or

former member shall not at any time disclose which members are associated with majority or minority opinions in an Article 1905 proceeding.

D. A member shall not disclose a panel report issued under Chapter 20 prior to its publication by the Commission. A member or former member shall not at any time disclose which members are associated with majority or minority opinions in a proceeding under Chapter 20.

E. A member or former member shall not at any time disclose the deliberations of a panel or committee, or any member's view, except as required by law.

VII. Responsibilities of Assistants and Staff

Parts I (Responsibilities to the Process), II (Disclosure Obligations) and VI (Maintenance of Confidentiality) of this Code of Conduct apply also to assistants and staff.

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94–3930 Filed 2–22–94; 8:45 am]

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February 23 1994

Part VI

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4839-6]

National Priorities List for Uncontrolled Hazardous Waste Sites

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.

This rule adds 1 new site, ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, to the General Superfund Section. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action results in an NPL of 1,191 sites, 1,068 of them in the General Superfund Section and 123 of them in the Federal Facilities Section. An additional 96 sites are proposed, 66 in the General Superfund Section and 30 in the Federal Facilities Section. Final and proposed sites now total 1,288.

EFFECTIVE DATE: The effective date for this amendment is March 25, 1994. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question. EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see "Information Available to the Public" in Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

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

SUPPLEMENTARY INFORMATION:

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

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets 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 * * * and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)).

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

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

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

Three mechanisms for placing sites on the NPL for possible remedial action 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 EPA promulgated as 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 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 (available only at NPL sites) than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 14, 1992 (57 FR 47180).

The NPL includes two sections, one of sites that are 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 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA 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 58 sites from the General Superfund Section of the NPL, most recently Charlevoix Municipal Well, Charlevoix, Michigan (58 FR 63531, December 2, 1993) and Mowbray Engineering Company, Greenville, Alabama (58 FR 69238, December 30, 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 57 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 167 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of January 1994, the CCL consists of 224 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of January 1994, EPA had conducted 603 removal actions at NPL sites, and 1,755 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Correction

EPA inadvertently left one site off of the appendix B list in the previous final rule (57 FR 47180, October 14, 1992). This site is Foote Mineral Co., East Whiteland Township, PA, which belongs in the General Superfund Section of the NPL. Alternately, one site was included in the previous appendix B list which did not belong. This site is Broward County—21st Manor Dump in Fort Lauderdale, FL, which has been proposed to the NPL but a final decision has not yet been made.

Action In This Rule

This final rule adds 1 site, ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, to the General Superfund Section, for a total of 1,068 sites in that section. The Federal Facility Section includes 123 sites. Therefore, there are now 1,191 sites on the NPL. An additional 96 sites have been proposed, 66 in the General Superfund Section and 30 in the Federal Facilities Section, and are awaiting final Agency action. Final and proposed sites now total 1,288. These numbers reflect that two sites have been voluntarily withdrawn from the NPL by EPA:

Hevi-Duty Electric Co., Goldsboro, NC
Hexcel Corporation, Livermore, CA

These numbers also reflect the removal of one site from the NPL by the District of Columbia Court of Appeals:

Tex-Tin Corp., Texas City, TX

Information Available to the Public

The Headquarters and Region 6 public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 6 Docket for hours.

Addresses for the Headquarters and Region 6 dockets follow:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, 5201 Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/260–3046

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

The Headquarters docket for this rule contains HRS score sheets for the final site; a Documentation Record for the site describing the information used to compute the score; pertinent information regarding statutory requirements or EPA listing policies that affect the site; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—February 1994." The Region 6 docket for this rule contains all information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 6 docket.

Interested parties may view documents, by appointment only, in the Headquarters or Region 6 Docket or copies may be requested from the Headquarters or Region 6 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.

II. Purpose and Implementation of the NPL

Purpose

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

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign

liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed 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 the 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 generally will 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 that warrant placement on the NPL and further study. To date EPA has completed approximately 35,000 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, to 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 it is a factor that is considered, the ranking of sites by HRS scores 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(a)(2), 55 FR 8845). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant environmental risk and 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 already was underway. In addition, certain sites are based on other criteria.

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). The RI/FS 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 already is 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 response 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 Agency's position is that the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

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

that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, see 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally known, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be defined, and in any event are independent of the NPL listing. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

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

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

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

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

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

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

III. Contents of This Final Rule

This final rule adds 1 site to the General Superfund Section of the NPL. This site is ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, which was proposed to the NPL in Proposal #15 (58 FR 34018, June 23, 1993) based on an HRS score of 28.50 or greater. The group number identified for this site based on its score is 4/5. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Public Comments

EPA reviewed all comments received on this site. The formal comment period ended on August 23, 1993.

EPA has carefully considered public comments submitted and has made certain modifications in response to those comments. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—February 1994."

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.

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NPL. EPA believes that the kinds of economic effects associated with this revision generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding 1 site to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the site included in this rulemaking.

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

EPA initially bears costs associated with responsible party searches.

Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

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

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

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

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1993) cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,350,000
Remedial design	1,260,000
Remedial action	[3] 21,960,000
Net present value of O&M [2]	3,770,000

[1] 1993 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.

Costs to the State of Texas associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to Texas of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $2.78 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the ALCOA (Point Comfort/Lavaca Bay) site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $2.3 million.

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

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

Benefits

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

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

IV. Executive Order 12866

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 12316 (46 FR 42237, August 20, 1981). No changes were made in response to OMB.

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

The Agency does expect that the listing of the sites in this NPL rule 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 rule does not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

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.

Dated: February 15, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

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

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); 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. Appendix B to part 300 is revised to read as follows:

Appendix B—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994

State	Site name	City/county	Notes
AK	Alaska Battery Enterprises	Fairbanks N Star Borough	C
AK	Arctic Surplus	Fairbanks	
AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh	
AL	Interstate Lead Co. (ILCO)	Leeds	
AL	Olin Corp. (McIntosh Plant)	McIntosh	
AL	Perdido Ground Water Contamination	Perdido	C
AL	Redwing Carriers, Inc. (Saraland)	Saraland	
AL	Stauffer Chemical Co. (Cold Creek Plant)	Bucks	
AL	Stauffer Chemical Co. (LeMoyne Plant)	Axis	
AL	T.H. Agriculture & Nutrition (Montgomery)	Montgomery	
AL	Triana/Tennessee River	Limestone/Morgan	C
AR	Arkwood, Inc	Omaha	
AR	Frit Industries	Walnut Ridge	
AR	Gurley Pit	Edmondson	
AR	Industrial Waste Control	Fort Smith	C
AR	Jacksonville Municipal Landfill	Jacksonville	
AR	Mid-South Wood Products	Mena	C
AR	Midland Products	Ola/Birta	C
AR	Monroe Auto Equipment (Paragould Pit)	Paragould	
AR	Popile, Inc	El Dorado	
AR	Rogers Road Municipal Landfill	Jacksonville	
AR	South 8th Street Landfill	West Memphis	
AR	Vertac, Inc	Jacksonville	
AZ	Apache Powder Co	St. David	
AZ	Hassayampa Landfill	Hassayampa	
AZ	Indian Bend Wash Area	Scottsdale/Tempe/Phoenix	
AZ	Litchfield Airport Area	Goodyear/Avondale	
AZ	Motorola, Inc. (52nd Street Plant)	Phoenix	
AZ	Nineteenth Avenue Landfill	Phoenix	
AZ	Tucson International Airport Area	Tucson	
CA	Advanced Micro Devices, Inc	Sunnyvale	C
CA	Advanced Micro Devices, Inc. (Bldg. 915)	Sunnyvale	C
CA	Aerojet General Corp	Rancho Cordova	
CA	Applied Materials	Santa Clara	C
CA	Atlas Asbestos Mine	Fresno County	
CA	Beckman Instruments (Porterville Plant)	Porterville	C
CA	Brown & Bryant, Inc. (Arvin Plant)	Arvin	
CA	CTS Printex, Inc	Mountain View	C
CA	Celtor Chemical Works	Hoopa	C
CA	Coalinga Asbestos Mine	Coalinga	
CA	Coast Wood Preserving	Ukiah	
CA	Crazy Horse Sanitary Landfill	Salinas	
CA	Del Norte Pesticide Storage	Crescent City	C
CA	Fairchild Semiconductor Corp (Mt View)	Mountain View	
CA	Fairchild Semiconductor Corp (S San Jose	South San Jose	C
CA	Firestone Tire&Rubber Co. (Salinas Plant)	Salinas	C
CA	Fresno Municipal Sanitary Landfill	Fresno	
CA	Hewlett-Packard (620–640 Page Mill Road)	Palo Alto	
CA	Industrial Waste Processing	Fresno	
CA	Intel Corp. (Mountain View Plant)	Mountain View	
CA	Intel Corp. (Santa Clara III)	Santa Clara	C
CA	Intel Magnetics	Santa Clara	C
CA	Intersil Inc./Siemens Components	Cupertino	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
CA	Iron Mountain Mine	Redding	
CA	J.H. Baxter & Co	Weed	
CA	Jasco Chemical Corp	Mountain View	
CA	Koppers Co., Inc. (Oroville Plant)	Oroville	
CA	Liquid Gold Oil Corp	Richmond	
CA	Lorentz Barrel & Drum Co	San Jose	
CA	Louisiana-Pacific Corp	Oroville	
CA	MGM Brakes	Cloverdale	
CA	McColl	Fullerton	
CA	McCormick & Baxter Creosoting Co	Stockton	
CA	Modesto Ground Water Contamination	Modesto	
CA	Monolithic Memories	Sunnyvale	
CA	Montrose Chemical Corp	Torrance	
CA	National Semiconductor Corp	Santa Clara	
CA	Newmark Ground Water Contamination	San Bernardino	
CA	Operating Industries, Inc., Landfill	Monterey Park	
CA	Pacific Coast Pipe Lines	Fillmore	
CA	Purity Oil Sales, Inc	Malaga	
CA	Ralph Gray Trucking Co	Westminster	
CA	Raytheon Corp	Mountain View	
CA	San Fernando Valley (Area 1)	Los Angeles	
CA	San Fernando Valley (Area 2)	Los Angeles/Glendale	
CA	San Fernando Valley (Area 3)	Glendale	
CA	San Fernando Valley (Area 4)	Los Angeles	
CA	San Gabriel Valley (Area 1)	El Monte	
CA	San Gabriel Valley (Area 2)	Baldwin Park Area	
CA	San Gabriel Valley (Area 3)	Alhambra	
CA	San Gabriel Valley (Area 4)	La Puente	
CA	Selma Treating Co	Selma	
CA	Sola Optical USA, Inc	Petaluma	C
CA	South Bay Asbestos Area	Alviso	
CA	Southern California Edison Co (Visalia)	Visalia	
CA	Spectra-Physics, Inc	Mountain View	C
CA	Stringfellow	Glen Avon Heights	S
CA	Sulphur Bank Mercury Mine	Clear Lake	
CA	Synertek, Inc. (Building 1)	Santa Clara	C
CA	T.H. Agriculture & Nutrition Co	Fresno	
CA	TRW Microwave, Inc (Building 825)	Sunnyvale	C
CA	Teledyne Semiconductor	Mountain View	C
CA	United Heckathorn Co	Richmond	
CA	Valley Wood Preserving, Inc	Turlock	
CA	Waste Disposal, Inc	Santa Fe Springs	
CA	Watkins-Johnson Co. (Stewart Division)	Scotts Valley	
CA	Western Pacific Railroad Co	Oroville	
CA	Westinghouse Elecetric Corp. (Sunnyvale)	Sunnyvale	
CO	Broderick Wood Products	Denver	
CO	California Gulch	Leadville	
CO	Central City-Clear Creek	Idaho Springs	
CO	Chemical Sales Co	Denver	
CO	Denver Radium Site	Denver	
CO	Eagle Mine	Minturn/Redcliff	
CO	Lincoln Park	Canon City	
CO	Lowry Landfill	Arapahoe County	
CO	Marshall Landfill	Boulder County	C,S
CO	Sand Creek Industrial	Commerce City	
CO	Smuggler Mountain	Pitkin County	
CO	Uravan Uranium Project (Union Carbide)	Uravan	
CT	Barkhamsted-New Hartford Landfill	Barkhamsted	
CT	Beacon Heights Landfill	Beacon Falls	
CT	Cheshire Ground Water Contamination	Cheshire	
CT	Durham Meadows	Durham	
CT	Gallup's Quarry	Plainfield	
CT	Kellogg-Deering Well Field	Norwalk	
CT	Laurel Park, Inc	Naugatuck Borough	S
CT	Linemaster Switch Corp	Woodstock	
CT	Nutmeg Valley Road	Wolcott	
CT	Old Southington Landfill	Southington	
CT	Precision Plating Corp	Vernon	
CT	Revere Textile Prints Corp	Sterling	C
CT	Solvents Recovery Service New England	Southington	
CT	Yaworski Waste Lagoon	Canterbury	
DE	Army Creek Landfill	New Castle County	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
DE	Chem-Solv, Inc	Cheswold	
DE	Coker's Sanitation Service Landfills	Kent County	C
DE	Delaware City PVC Plant	Delaware City	
DE	Delaware Sand & Gravel Landfill	New Castle County	
DE	Dover Gas Light Co	Dover	
DE	E.I. Du Pont de Nemours (Newport Landfill)	Newport	
DE	Halby Chemical Co	New Castle	
DE	Harvey & Knott Drum, Inc	Kirkwood	
DE	Koppers Co., Inc. (Newport Plant)	Newport	
DE	NCR Corp. (Millsboro Plant)	Millsboro	
DE	New Castle Spill	New Castle County	C
DE	Sealand Limited	Mount Pleasant	C
DE	Standard Chlorine of Delaware, Inc	Delaware City	
DE	Sussex County Landfill No. 5	Laurel	
DE	Tybouts Corner Landfill	New Castle County	S
DE	Tyler Refrigeration Pit	Smyrna	
DE	Wildcat Landfill	Dover	C
FL	Agrico Chemical Co	Pensacola	
FL	Airco Plating Co	Miami	
FL	Alpha Chemical Corp	Galloway	C
FL	American Creosote Works (Pensacola Plt)	Pensacola	
FL	Anaconda Aluminum Co./Milgo Electronics	Miami	
FL	Anodyne, Inc	North Miami Beach	
FL	B&B Chemical Co., Inc	Hialeah	
FL	BMI-Textron	Lake Park	
FL	Beulah Landfill	Pensacola	C
FL	Brown Wood Preserving	Live Oak	C
FL	Cabot/Koppers	Gainesville	
FL	Chemform, Inc	Pompano Beach	C
FL	City Industries, Inc	Orlando	
FL	Coleman-Evans Wood Preserving Co	Whitehouse	
FL	Davie Landfill	Davie	
FL	Dubose Oil Products Co	Cantonment	
FL	Florida Steel Corp	Indiantown	
FL	Gold Coast Oil Corp	Miami	C
FL	Harris Corp. (Palm Bay Plant)	Palm Bay	
FL	Helena Chemical Co. (Tampa Plant)	Tampa	
FL	Hipps Road Landfill	Duval County	
FL	Hollingsworth Solderless Terminal	Fort Lauderdale	C
FL	Kassauf-Kimerling Battery Disposal	Tampa	
FL	Madison County Sanitary Landfill	Madison	
FL	Miami Drum Services	Miami	C
FL	Munisport Landfill	North Miami	
FL	Northwest 58th Street Landfill	Hialeah	
FL	Peak Oil Co./Bay Drum Co	Tampa	
FL	Pepper Steel & Alloys, Inc	Medley	C
FL	Petroleum Products Corp	Pembroke Park	
FL	Pickettville Road Landfill	Jacksonville	
FL	Piper Aircraft/Vero Beach Water & Sewer	Vero Beach	
FL	Reeves Southeast Galvanizing Corp	Tampa	
FL	Sapp Battery Salvage	Cottondale	
FL	Schuylkill Metals Corp	Plant City	
FL	Sherwood Medical Industries	Deland	
FL	Sixty-Second Street Dump	Tampa	
FL	Standard Auto Bumper Corp	Hialeah	
FL	Sydney Mine Sludge Ponds	Brandon	
FL	Taylor Road Landfill	Seffner	
FL	Tower Chemical Co	Clermont	
FL	Whitehouse Oil Pits	Whitehouse	
FL	Wilson Concepts of Florida, Inc	Pompano Beach	C
FL	Wingate Road Municipal Incinerator Dump	Fort Lauderdale	
FL	Woodbury Chemical Co. (Princeton Plant)	Princeton	C
FL	Yellow Water Road Dump	Baldwin	
FL	Zellwood Ground Water Contamination	Zellwood	
GA	Cedartown Industries, Inc	Cedartown	
GA	Cedartown Municipal Landfill	Cedartown	
GA	Diamond Shamrock Corp. Landfill	Cedartown	
GA	Firestone Tire & Rubber Co (Albany Plant)	Albany	
GA	Hercules 009 Landfill	Brunswick	
GA	Marzone Inc./Chevron Chemical Co	Tifton	
GA	Mathis Brothers Landfill	Kensington	
GA	Monsanto Corp. (Augusta Plant)	Augusta	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
GA	Powersville Site	Peach County	C
GA	T.H. Agriculture & Nutrition (Albany)	Albany	
GA	Woolfolk Chemical Works, Inc	Fort Valley	
GU	Ordot Landfill	Guam	C,S
IA	Des Moines TCE	Des Moines	
IA	E.I. Du Pont de Nemours (County Rd X23)	West Point	C
IA	Electro-Coatings, Inc	Cedar Rapids	
IA	Fairfield Coal Gasification Plant	Fairfield	
IA	Farmers' Mutual Cooperative	Hospers	
IA	John Deere (Ottumwa Works Landfills)	Ottumwa	C
IA	Lawrence Todtz Farm	Camanche	C
IA	Mid-America Tanning Co	Sergeant Bluff	
IA	Midwest Manufacturing/North Farm	Kellogg	
IA	Northwestern States Portland Cement Co	Mason City	C
IA	Peoples Natural Gas Co	Dubuque	
IA	Red Oak City Landfill	Red Oak	
IA	Shaw Avenue Dump	Charles City	
IA	Sheller-Globe Corp. Disposal	Keokuk	
IA	Vogel Paint & Wax Co	Orange City	
IA	White Farm Equipment Co. Dump	Charles City	
ID	Bunker Hill Mining & Metallurgical	Smelterville	
ID	Eastern Michaud Flats Contamination	Pocatello	
ID	Kerr-McGee Chemical Corp. (Soda Springs)	Soda Springs	
ID	Monsanto Chemical Co. (Soda Springs)	Soda Springs	
ID	Pacific Hide & Fur Recycling Co	Pocatello	
ID	Union Pacific Railroad Co	Pocatello	
IL	A & F Material Reclaiming, Inc	Greenup	C
IL	Acme Solvent Reclaiming (Morristown Plant)	Morristown	
IL	Adams County Quincy Landfills 2&3	Quincy	
IL	Amoco Chemicals (Joliet Landfill)	Joliet	
IL	Beloit Corp	Rockton	
IL	Belvidere Municipal Landfill	Belvidere	C
IL	Byron Salvage Yard	Byron	
IL	Central Illinois Public Service Co	Taylorville	
IL	Cross Brothers Pail Recycling (Pembroke)	Pembroke Township	
IL	DuPage County Landfill/Blackwell Forest	Warrenville	
IL	Galesburg/Koppers Co	Galesburg	
IL	H.O.D. Landfill	Antioch	
IL	Ilada Energy Co	East Cape Girardeau	
IL	Interstate Pollution Control, Inc	Rockford	
IL	Johns-Manville Corp	Waukegan	C
IL	Kerr-McGee (Kress Creek/W Branch DuPage)	DuPage County	
IL	Kerr-McGee (Reed-Keppler Park)	West Chicago	
IL	Kerr-McGee (Residential Areas)	West Chicago/DuPage County	
IL	Kerr-McGee (Sewage Treatment Plant)	West Chicago	
IL	LaSalle Electric Utilities	LaSalle	
IL	Lenz Oil Service, Inc	Lemont	
IL	MIG/Dewane Landfill	Belvidere	
IL	NL Industries/Taracorp Lead Smelter	Granite City	
IL	Ottawa Radiation Areas	Ottawa	
IL	Outboard Marine Corp	Waukegan	S
IL	Pagel's Pit	Rockford	
IL	Parsons Casket Hardware Co	Belvidere	
IL	Southeast Rockford Gd Wtr Contamination	Rockford	
IL	Tri-County Landfill/Waste Mgmt Illinois	South Elgin	
IL	Velsicol Chemical Corp. (Illinois)	Marshall	
IL	Wauconda Sand & Gravel	Wauconda	
IL	Woodstock Municipal Landfill	Woodstock	
IL	Yeoman Creek Landfill	Waukegan	
IN	American Chemical Service, Inc	Griffith	
IN	Bennett Stone Quarry	Bloomington	
IN	Carter Lee Lumber Co	Indianapolis	
IN	Columbus Old Municipal Landfill #1	Columbus	
IN	Conrail Rail Yard (Elkhart)	Elkhart	
IN	Continental Steel Corp	Kokomo	
IN	Douglass Road/Uniroyal, Inc., Landfill	Mishawaka	
IN	Envirochem Corp	Zionsville	
IN	Fisher-Calo	LaPorte	
IN	Fort Wayne Reduction Dump	Fort Wayne	
IN	Galen Myers Dump/Drum Salvage	Osceola	
IN	Himco Dump	Elkhart	
IN	Lake Sandy Jo (M&M Landfill)	Gary	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
IN	Lakeland Disposal Service, Inc	Claypool	
IN	Lemon Lane Landfill	Bloomington	
IN	MIDCO I	Gary	
IN	MIDCO II	Gary	
IN	Main Street Well Field	Elkhart	
IN	Marion (Bragg) Dump	Marion	
IN	Neal's Dump (Spencer)	Spencer	
IN	Neal's Landfill (Bloomington)	Bloomington	
IN	Ninth Avenue Dump	Gary	
IN	Northside Sanitary Landfill, Inc	Zionsville	
IN	Prestolite Battery Division	Vincennes	
IN	Reilly Tar & Chemical (Indianapolis Plant)	Indianapolis	
IN	Seymour Recycling Corp	Seymour	C,S
IN	Southside Sanitary Landfill	Indianapolis	
IN	Tippecanoe Sanitary Landfill, Inc	Lafayette	
IN	Tri-State Plating	Columbus	C
IN	Waste, Inc., Landfill	Michigan City	
IN	Wayne Waste Oil	Columbia City	
IN	Whiteford Sales & Service/Nationalease	South Bend	
KS	29th & Mead Ground Water Contamination	Wichita	
KS	57th and North Broadway Streets Site	Wichita Heights	
KS	Arkansas City Dump	Arkansas City	C,S
KS	Cherokee County	Cherokee County	
KS	Doepke Disposal (Holliday)	Johnson County	
KS	Obee Road	Hutchinson	
KS	Pester Refinery Co	El Dorado	
KS	Strother Field Industrial Park	Cowley County	
KY	A.L. Taylor (Valley of Drums)	Brooks	C
KY	Airco	Calvert City	
KY	B.F. Goodrich	Calvert City	
KY	Brantley Landfill	Island	
KY	Caldwell Lace Leather Co., Inc	Auburn	
KY	Distler Brickyard	West Point	
KY	Distler Farm	Jefferson County	C
KY	Fort Hartford Coal Co. Stone Quarry	Olaton	
KY	General Tire & Rubber (Mayfield Landfill)	Mayfield	C
KY	Green River Disposal, Inc	Maceo	
KY	Howe Valley Landfill	Howe Valley	
KY	Lee's Lane Landfill	Louisville	C
KY	Maxey Flats Nuclear Disposal	Hillsboro	
KY	National Electric Coil/Cooper Industries	Dayhoit	
KY	Newport Dump	Newport	C
KY	Red Penn Sanitation Co. Landfill	PeeWee Valley	
KY	Smith's Farm	Brooks	
KY	Tri-City Disposal Co	Shepherdsville	
LA	American Creosote Works, Inc (Winnfield)	Winnfield	
LA	Bayou Bonfouca	Slidell	
LA	Bayou Sorrel Site	Bayou Sorrel	C
LA	Cleve Reber	Sorrento	
LA	Combustion, Inc	Denham Springs	
LA	D.L. Mud, Inc	Abbeville	
LA	Dutchtown Treatment Plant	Ascension Parish	
LA	Gulf Coast Vacuum Services	Abbeville	
LA	Old Inger Oil Refinery	Darrow	S
LA	PAB Oil & Chemical Service, Inc	Abbeville	
LA	Petro-Processors of Louisiana Inc	Scotlandville	
MA	Atlas Tack Corp	Fairhaven	
MA	Baird & McGuire	Holbrook	
MA	Cannon Engineering Corp. (CEC)	Bridgewater	C
MA	Charles-George Reclamation Landfill	Tyngsborough	
MA	Groveland Wells	Groveland	
MA	Haverhill Municipal Landfill	Haverhill	
MA	Hocomonco Pond	Westborough	
MA	Industri-Plex	Woburn	
MA	Iron Horse Park	Billerica	
MA	New Bedford Site	New Bedford	S
MA	Norwood PCBs	Norwood	
MA	Nyanza Chemical Waste Dump	Ashland	
MA	PSC Resources	Palmer	
MA	Re-Solve, Inc	Dartmouth	
MA	Rose Disposal Pit	Lanesboro	
MA	Salem Acres	Salem	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MA	Shpack Landfill	Norton/Attleboro	
MA	Silresim Chemical Corp	Lowell	
MA	Sullivan's Ledge	New Bedford	
MA	W.R. Grace & Co Inc (Acton Plant)	Acton	
MA	Wells G&H	Woburn	
MD	Bush Valley Landfill	Abingdon	
MD	Kane & Lombard Street Drums	Baltimore	
MD	Limestone Road	Cumberland	
MD	Mid-Atlantic Wood Preservers, Inc	Harmans	C
MD	Sand, Gravel & Stone	Elkton	
MD	Southern Maryland Wood Treating	Hollywood	
MD	Woodlawn County Landfill	Woodlawn	
ME	McKin Co	Gray	C
ME	O'Connor Co	Augusta	
ME	Pinette's Salvage Yard	Washburn	
ME	Saco Municipal Landfill	Saco	
ME	Saco Tannery Waste Pits	Saco	C
ME	Union Chemical Co., Inc	South Hope	
ME	Winthrop Landfill	Winthrop	
MI	Adam's Plating	Lansing	
MI	Albion-Sheridan Township Landfill	Albion	
MI	Allied Paper/Portage Ck/Kalamazoo River	Kalamazoo	
MI	American Anodco, Inc	Ionia	C
MI	Anderson Development Co	Adrian	C
MI	Auto Ion Chemicals, Inc	Kalamazoo	
MI	Avenue "E" Ground Water Contamination	Traverse City	
MI	Barrels, Inc	Lansing	
MI	Bendix Corp./Allied Automotive	St. Joseph	
MI	Berlin & Farro	Swartz Creek	
MI	Bofors Nobel, Inc	Muskegon	
MI	Burrows Sanitation	Hartford	C
MI	Butterworth #2 Landfill	Grand Rapids	
MI	Cannelton Industries, Inc	Saulte Saint Marie	
MI	Carter Industrials, Inc	Detroit	
MI	Cemetery Dump	Rose Center	C
MI	Chem Central	Wyoming Township	
MI	Clare Water Supply	Clare	
MI	Cliff/Dow Dump	Marquette	
MI	Duell & Gardner Landfill	Dalton Township	
MI	Electrovoice	Buchanan	
MI	Folkertsma Refuse	Grand Rapids	
MI	Forest Waste Products	Otisville	
MI	G&H Landfill	Utica	
MI	Grand Traverse Overall Supply Co	Greilickville	C
MI	Gratiot County Landfill	St. Louis	S
MI	H. Brown Co., Inc	Grand Rapids	
MI	Hedblum Industries	Oscoda	C
MI	Hi-Mill Manufacturing Co	Highland	
MI	Ionia City Landfill	Ionia	
MI	J&L Landfill	Rochester Hills	
MI	K&L Avenue Landfill	Oshtemo Township	
MI	Kaydon Corp	Muskegon	
MI	Kent City Mobile Home Park	Kent City	
MI	Kentwood Landfill	Kentwood	
MI	Kysor Industrial Corp	Cadillac	
MI	Liquid Disposal, Inc	Utica	
MI	Mason County Landfill	Pere Marquette Twp	C
MI	McGraw Edison Corp	Albion	
MI	Metamora Landfill	Metamora	
MI	Michigan Disposal (Cork Street Landfill)	Kalamazoo	
MI	Motor Wheel, Inc	Lansing	
MI	Muskegon Chemical Co	Whitehall	
MI	North Bronson Industrial Area	Bronson	
MI	Northernaire Plating	Cadillac	
MI	Novaco Industries	Temperance	C
MI	Organic Chemicals, Inc	Grandville	
MI	Ossineke Ground Water Contamination	Ossineke	
MI	Ott/Story/Cordova Chemical Co	Dalton Township	
MI	Packaging Corp. of America	Filer City	
MI	Parsons Chemical Works, Inc	Grand Ledge	
MI	Peerless Plating Co	Muskegon	
MI	Petoskey Municipal Well Field	Petoskey	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MI	Rasmussen's Dump	Green Oak Township	
MI	Rockwell International Corp. (Allegan)	Allegan	
MI	Rose Township Dump	Rose Township	
MI	Roto-Finish Co., Inc	Kalamazoo	
MI	SCA Independent Landfill	Muskegon Heights	
MI	Shiawassee River	Howell	
MI	South Macomb Disposal (Landfills 9 & 9A)	Macomb Township	
MI	Southwest Ottawa County Landfill	Park Township	
MI	Sparta Landfill	Sparta Township	
MI	Spartan Chemical Co	Wyoming	
MI	Spiegelberg Landfill	Green Oak Township	
MI	Springfield Township Dump	Davisburg	
MI	State Disposal Landfill, Inc	Grand Rapids	
MI	Sturgis Municipal Wells	Sturgis	
MI	Tar Lake	Mancelona Township	
MI	Thermo-Chem, Inc	Muskegon	
MI	Torch Lake	Houghton County	
MI	U.S. Aviex	Howard Township	C
MI	Velsicol Chemical Corp. (Michigan)	St. Louis	C
MI	Verona Well Field	Battle Creek	
MI	Wash King Laundry	Pleasant Plains Twp	
MI	Waste Management of Michigan (Holland)	Holland	
MN	Agate Lake Scrapyard	Fairview Township	
MN	Arrowhead Refinery Co	Hermantown	
MN	Boise Cascade/Onan Corp./Medtronics, Inc	Fridley	C
MN	Burlington Northern (Brainerd/Baxter)	Brainerd/Baxter	
MN	Dakhue Sanitary Landfill	Cannon Falls	
MN	East Bethel Demolition Landfill	East Bethel Township	
MN	FMC Corp. (Fridley Plant)	Fridley	C
MN	Freeway Sanitary Landfill	Burnsville	
MN	General Mills/Henkel Corp	Minneapolis	C
MN	Joslyn Manufacturing & Supply Co	Brooklyn Center	
MN	Koch Refining Co./N-Ren Corp	Pine Bend	
MN	Koppers Coke	St. Paul	
MN	Kummer Sanitary Landfill	Bemidji	
MN	Kurt Manufacturing Co	Fridley	
MN	LaGrand Sanitary Landfill	LaGrand Township	
MN	Lehillier/Mankato Site	Lehillier/Mankato	C
MN	Long Prairie Ground Water Contamination	Long Prairie	
MN	MacGillis & Gibbs/Bell Lumber & Pole Co	New Brighton	
MN	NL Industries/Taracorp/Golden Auto	St. Louis Park	
MN	New Brighton/Arden Hills	New Brighton	
MN	Nutting Truck & Caster Co	Faribault	C
MN	Oak Grove Sanitary Landfill	Oak Grove Township	C
MN	Oakdale Dump	Oakdale	
MN	Olmsted County Sanitary Landfill	Oronoco	
MN	Perham Arsenic Site	Perham	
MN	Pine Bend Sanitary Landfill	Dakota County	
MN	Reilly Tar&Chem (St. Louis Park Plant)	St. Louis Park	S
MN	Ritari Post & Pole	Sebeka	
MN	South Andover Site	Andover	
MN	St. Augusta Sanitary Landfill/Engen Dump	St. Augusta Township	
MN	St. Louis River Site	St. Louis County	
MN	St. Regis Paper Co	Cass Lake	
MN	University Minnesota (Rosemount Res Cen)	Rosemount	
MN	Waite Park Wells	Waite Park	
MN	Washington County Landfill	Lake Elmo	C
MN	Waste Disposal Engineering	Andover	
MN	Whittaker Corp	Minneapolis	C
MN	Windom Dump	Windom	C
MO	Bee Cee Manufacturing Co	Malden	
MO	Big River Mine Tailings/St. Joe Minerals	Desloge	
MO	Conservation Chemical Co	Kansas City	C
MO	Ellisville Site	Ellisville	S
MO	Fulbright Landfill	Springfield	C
MO	Kem-Pest Laboratories	Cape Girardeau	
MO	Lee Chemical	Liberty	
MO	Minker/Stout/Romaine Creek	Imperial	
MO	Missouri Electric Works	Cape Girardeau	
MO	North-U Drive Well Contamination	Springfield	C
MO	Oronogo-Duenweg Mining Belt	Jasper County	
MO	Quality Plating	Sikeston	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MO	Shenandoah Stables	Moscow Mills	
MO	Solid State Circuits, Inc	Republic	C
MO	St Louis Airport/HIS/Futura Coatings Co	St. Louis County	
MO	Syntex Facility	Verona	
MO	Times Beach Site	Times Beach	
MO	Valley Park TCE	Valley Park	
MO	Westlake Landfill	Bridgeton	
MO	Wheeling Disposal Service Co. Landfill	Amazonia	
MS	Flowood Site	Flowood	C,S
MS	Newsom Brothers/Old Reichhold Chemicals	Columbia	
MT	Anaconda Co. Smelter	Anaconda	
MT	East Helena Site	East Helena	
MT	Idaho Pole Co	Bozeman	
MT	Libby Ground Water Contamination	Libby	C
MT	Milltown Reservoir Sediments	Milltown	
MT	Montana Pole and Treating	Butte	
MT	Mouat Industries	Columbus	
MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge	
NC	ABC One Hour Cleaners	Jacksonville	
NC	Aberdeen Pesticide Dumps	Aberdeen	
NC	Benfield Industries, Inc	Hazelwood	
NC	Bypass 601 Ground Water Contamination	Concord	
NC	Cape Fear Wood Preserving	Fayetteville	
NC	Carolina Transformer Co	Fayetteville	
NC	Celanese Corp. (Shelby Fiber Operations)	Shelby	C
NC	Charles Macon Lagoon & Drum Storage	Cordova	
NC	Chemtronics, Inc	Swannanoa	C
NC	FCX, Inc. (Statesville Plant)	Statesville	
NC	FCX, Inc. (Washington Plant)	Washington	
NC	Geigy Chemical Corp. (Aberdeen Plant)	Aberdeen	
NC	JFD Electronics/Channel Master	Oxford	
NC	Jadco-Hughes Facility	Belmont	
NC	Koppers Co. Inc. (Morrisville Plant)	Morrisville	
NC	Martin-Marietta, Sodyeco, Inc	Charlotte	
NC	NC State University (Lot 86, Farm Unit #1)	Raleigh	
NC	National Starch & Chemical Corp	Salisbury	
NC	New Hanover Cnty Airport Burn Pit	Wilmington	
NC	Potter's Septic Tank Service Pits	Maco	
ND	Arsenic Trioxide Site	Southeastern ND	C,S
ND	Minot Landfill	Minot	
NE	10th Street Site	Columbus	
NE	Cleburn Street Well	Grand Island	
NE	Hastings Ground Water Contamination	Hastings	
NE	Lindsay Manufacturing Co	Lindsay	
NE	Nebraska Ordnance Plant (Former)	Mead	
NE	Sherwood Medical Co	Norfolk	
NE	Waverly Ground Water Contamination	Waverly	
NH	Auburn Road Landfill	Londonderry	
NH	Coakley Landfill	North Hampton	
NH	Dover Municipal Landfill	Dover	
NH	Fletcher's Paint Works & Storage	Milford	
NH	Kearsarge Metallurgical Corp	Conway	C
NH	Keefe Environmental Services	Epping	C
NH	Mottolo Pig Farm	Raymond	C
NH	New Hampshire Plating Co	Merrimack	
NH	Ottati & Goss/Kingston Steel Drum	Kingston	
NH	Savage Municipal Water Supply	Milford	
NH	Somersworth Sanitary Landfill	Somersworth	
NH	South Municipal Water Supply Well	Peterborough	
NH	Sylvester	Nashua	C,S
NH	Tibbets Road	Barrington	
NH	Tinkham Garage	Londonderry	
NH	Town Garage/Radio Beacon	Londonderry	C
NJ	A.O. Polymer	Sparta Township	
NJ	American Cyanamid Co	Bound Brook	
NJ	Asbestos Dump	Millington	
NJ	Bog Creek Farm	Howell Township	
NJ	Brick Township Landfill	Brick Township	
NJ	Bridgeport Rental & Oil Services	Bridgeport	
NJ	Brook Industrial Park	Bound Brook	
NJ	Burnt Fly Bog	Marlboro Township	
NJ	CPS/Madison Industries	Old Bridge Township	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NJ	Caldwell Trucking Co	Fairfield	
NJ	Chemical Control	Elizabeth	
NJ	Chemical Insecticide Corp	Edison Township	
NJ	Chemical Leaman Tank Lines, Inc	Bridgeport	
NJ	Chemsol, Inc	Piscataway	
NJ	Ciba-Geigy Corp	Toms River	
NJ	Cinnaminson Ground Water Contamination	Cinnaminson Township	
NJ	Combe Fill North Landfill	Mount Olive Township	C
NJ	Combe Fill South Landfill	Chester Township	
NJ	Cosden Chemical Coatings Corp	Beverly	
NJ	Curcio Scrap Metal, Inc	Saddle Brook Township	
NJ	D'Imperio Property	Hamilton Township	
NJ	Dayco Corp./L.E Carpenter Co	Wharton Borough	
NJ	De Rewal Chemical Co	Kingwood Township	
NJ	Delilah Road	Egg Harbor Township	
NJ	Denzer & Schafer X-Ray Co	Bayville	
NJ	Diamond Alkali Co	Newark	
NJ	Dover Municipal Well 4	Dover Township	
NJ	Ellis Property	Evesham Township	
NJ	Evor Phillips Leasing	Old Bridge Township	
NJ	Ewan Property	Shamong Township	
NJ	Fair Lawn Well Field	Fair Lawn	
NJ	Florence Land Recontouring Landfill	Florence Township	
NJ	Fried Industries	East Brunswick Township	
NJ	GEMS Landfill	Gloucester Township	
NJ	Garden State Cleaners Co	Minotola	
NJ	Glen Ridge Radium Site	Glen Ridge	
NJ	Global Sanitary Landfill	Old Bridge Township	
NJ	Goose Farm	Plumstead Township	C
NJ	Helen Kramer Landfill	Mantua Township	C
NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown	
NJ	Higgins Disposal	Kingston	
NJ	Higgins Farm	Franklin Township	
NJ	Hopkins Farm	Plumstead Township	
NJ	Imperial Oil Co., Inc./Champion Chemicals	Morganville	
NJ	Industrial Latex Corp	Wallington Borough	
NJ	JIS Landfill	Jamesburg/S. Brnswck	
NJ	Jackson Township Landfill	Jackson Township	
NJ	Kauffman & Minteer, Inc	Jobstown	
NJ	Kin-Buc Landfill	Edison Township	
NJ	King of Prussia	Winslow Township	
NJ	Landfill & Development Co	Mount Holly	
NJ	Lang Property	Pemberton Township	
NJ	Lipari Landfill	Pitman	
NJ	Lodi Municipal Well	Lodi	C
NJ	Lone Pine Landfill	Freehold Township	
NJ	Mannheim Avenue Dump	Galloway Township	
NJ	Maywood Chemical Co	Maywood/Rochelle Park	
NJ	Metaltec/Aerosystems	Franklin Borough	
NJ	Monitor Devices/Intercircuits Inc	Wall Township	
NJ	Monroe Township Landfill	Monroe Township	C
NJ	Montclair/West Orange Radium Site	Montclair/W Orange	
NJ	Montgomery Township Housing Development	Montgomery Township	
NJ	Myers Property	Franklin Township	
NJ	NL Industries	Pedricktown	
NJ	Nascolite Corp	Millville	
NJ	PJP Landfill	Jersey City	
NJ	Pepe Field	Boonton	
NJ	Pijak Farm	Plumstead Township	
NJ	Pohatcong Valley Ground Water Contaminat	Warren County	
NJ	Pomona Oaks Residential Wells	Galloway Township	C
NJ	Price Landfill	Pleasantville	S
NJ	Radiation Technology, Inc	Rockaway Township	
NJ	Reich Farms	Pleasant Plains	
NJ	Renora, Inc	Edison Township	
NJ	Ringwood Mines/Landfill	Ringwood Borough	C
NJ	Rockaway Borough Well Field	Rockaway Township	
NJ	Rockaway Township Wells	Rockaway	
NJ	Rocky Hill Municipal Well	Rocky Hill Borough	
NJ	Roebling Steel Co	Florence	
NJ	Sayreville Landfill	Sayreville	
NJ	Scientific Chemical Processing	Carlstadt	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NJ	Sharkey Landfill	Parsippany/Troy Hls	
NJ	Shieldalloy Corp	Newfield Borough	
NJ	South Brunswick Landfill	South Brunswick	C
NJ	South Jersey Clothing Co	Minotola	
NJ	Spence Farm	Plumstead Township	
NJ	Swope Oil & Chemical Co	Pennsauken	
NJ	Syncon Resins	South Kearny	
NJ	Tabernacle Drum Dump	Tabernacle Township	C
NJ	U.S. Radium Corp	Orange	
NJ	Universal Oil Products (Chemical Division)	East Rutherford	
NJ	Upper Deerfield Township Sanit. Landfill	Upper Deerfield Township	C
NJ	Ventron/Velsicol	Wood Ridge Borough	
NJ	Vineland Chemical Co., Inc	Vineland	
NJ	Vineland State School	Vineland	C
NJ	Waldick Aerospace Devices, Inc	Wall Township	
NJ	White Chemical Corp	Newark	A
NJ	Williams Property	Swainton	
NJ	Wilson Farm	Plumstead Township	C
NJ	Witco Chemical Corp. (Oakland Plt)	Oakland	C
NJ	Woodland Route 532 Dump	Woodland Township	
NJ	Woodland Route 72 Dump	Woodland Township	
NM	AT & SF (Clovis)	Clovis	
NM	Cimarron Mining Corp	Carrizozo	C
NM	Cleveland Mill	Silver City	
NM	Homestake Mining Co	Milan	
NM	Prewitt Abandoned Refinery	Prewitt	
NM	South Valley	Albuquerque	S
NM	United Nuclear Corp	Church Rock	
NV	Carson River Mercury Site	Lyon/Churchill Cnty	
NY	Action Anodizing, Plating, & Polishing	Copiague	C
NY	American Thermostat Co	South Cairo	
NY	Anchor Chemicals	Hicksville	
NY	Applied Environmental Services	Glenwood Landing	
NY	Batavia Landfill	Batavia	
NY	BioClinical Laboratories, Inc	Bohemia	C
NY	Brewster Well Field	Putnam County	
NY	Byron Barrel & Drum	Byron	
NY	C & J Disposal Leasing Co. Dump	Hamilton	C
NY	Carroll & Dubies Sewage Disposal	Port Jervis	
NY	Circuitron Corp	East Farmingdale	
NY	Claremont Polychemical	Old Bethpage	
NY	Clothier Disposal	Town of Granby	C
NY	Colesville Municipal Landfill	Town of Colesville	
NY	Conklin Dumps	Conklin	
NY	Cortese Landfill	Village of Narrowsburg	
NY	Endicott Village Well Field	Village of Endicott	
NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby	
NY	Facet Enterprises, Inc	Elmira	
NY	Forest Glen Mobile Home Subdivision	Niagara Falls	A
NY	Fulton Terminals	Fulton	
NY	GE Moreau	South Glen Falls	
NY	General Motors (Central Foundry Division)	Massena	
NY	Genzale Plating Co	Franklin Square	
NY	Goldisc Recordings, Inc	Holbrook	
NY	Haviland Complex	Town of Hyde Park	
NY	Hertel Landfill	Plattekill	
NY	Hooker (102nd Street)	Niagara Falls	
NY	Hooker (Hyde Park)	Niagara Falls	
NY	Hooker (S Area)	Niagara Falls	
NY	Hooker Chemical/Ruco Polymer Corp	Hicksville	
NY	Hudson River PCBs	Hudson River	
NY	Islip Municipal Sanitary Landfill	Islip	
NY	Johnstown City Landfill	Town of Johnstown	
NY	Jones Chemicals, Inc	Caledonia	
NY	Jones Sanitation	Hyde Park	
NY	Katonah Municipal Well	Town of Bedford	C
NY	Kenmark Textile Corp	Farmingdale	
NY	Kentucky Avenue Well Field	Horseheads	
NY	Li Tungsten Corp	Glen Cove	
NY	Liberty Industrial Finishing	Farmingdale	
NY	Love Canal	Niagara Falls	
NY	Ludlow Sand & Gravel	Clayville	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NY	Malta Rocket Fuel Area	Malta	
NY	Marathon Battery Corp	Cold Springs	
NY	Mattiace Petrochemical Co., Inc	Glen Cove	
NY	Mercury Refining, Inc	Colonie	
NY	Nepera Chemical Co., Inc	Maybrook	
NY	Niagara County Refuse	Wheatfield	
NY	Niagara Mohawk Power Co (Saratoga Springs)	Saratoga Springs	
NY	North Sea Municipal Landfill	North Sea	
NY	Old Bethpage Landfill	Oyster Bay	C
NY	Olean Well Field	Olean	
NY	Pasley Solvents & Chemicals, Inc	Hempstead	
NY	Pollution Abatement Services	Oswego	S
NY	Port Washington Landfill	Port Washington	
NY	Preferred Plating Corp	Farmingdale	
NY	Radium Chemical Co., Inc	New York City	A
NY	Ramapo Landfill	Ramapo	
NY	Richardson Hill Road Landfill/Pond	Sidney Center	
NY	Robintech, Inc./National Pipe Co	Town of Vestal	
NY	Rosen Brothers Scrap Yard/Dump	Cortland	
NY	Rowe Industries Gnd Water Contamination	Noyack/Sag Harbor	
NY	SMS Instruments, Inc	Deer Park	
NY	Sarney Farm	Amenia	
NY	Sealand Restoration, Inc	Lisbon	
NY	Sidney Landfill	Sidney	
NY	Sinclair Refinery	Wellsville	
NY	Solvent Savers	Lincklaen	
NY	Syosset Landfill	Oyster Bay	
NY	Tri-Cities Barrel Co., Inc	Port Crane	
NY	Tronic Plating Co., Inc	Farmingdale	C
NY	Vestal Water Supply Well 1–1	Vestal	
NY	Vestal Water Supply Well 4–2	Vestal	
NY	Volney Municipal Landfill	Town of Volney	
NY	Warwick Landfill	Warwick	
NY	Wide Beach Development	Brant	C
NY	York Oil Co	Moira	
OH	Allied Chemical & Ironton Coke	Ironton	
OH	Alsco Anaconda	Gnadenhutten	
OH	Arcanum Iron & Metal	Darke County	
OH	Big D Campground	Kingsville	
OH	Bowers Landfill	Circleville	C
OH	Buckeye Reclamation	St. Clairsville	
OH	Chem-Dyne	Hamilton	C, S
OH	Coshocton Landfill	Franklin Township	
OH	E.H. Schilling Landfill	Hamilton Township	C
OH	Fields Brook	Ashtabula	
OH	Fultz Landfill	Jackson Township	
OH	Industrial Excess Landfill	Uniontown	
OH	Laskin/Poplar Oil Co	Jefferson Township	C
OH	Miami County Incinerator	Troy	
OH	Nease Chemical	Salem	
OH	New Lyme Landfill	New Lyme	C
OH	Old Mill	Rock Creek	C
OH	Ormet Corp	Hannibal	
OH	Powell Road Landfill	Dayton	
OH	Pristine, Inc	Reading	
OH	Reilly Tar & Chemical (Dover Plant)	Dover	
OH	Republic Steel Corp Quarry	Elyria	C
OH	Sanitary Landfill Co (Industrial Waste)	Dayton	
OH	Skinner Landfill	West Chester	
OH	South Point Plant	South Point	
OH	Summit National	Deerfield Township	
OH	TRW, Inc (Minerva Plant)	Minerva	
OH	United Scrap Lead Co., Inc	Troy	
OH	Van Dale Junkyard	Marietta	
OH	Zanesville Well Field	Zanesville	
OK	Compass Industries (Avery Drive)	Tulsa	C
OK	Double Eagle Refinery Co	Oklahoma City	
OK	Fourth Street Abandoned Refinery	Oklahoma City	
OK	Hardage/Criner	Criner	
OK	Mosley Road Sanitary Landfill	Oklahoma City	
OK	Oklahoma Refining Co	Cyril	
OK	Sand Springs Petrochemical Complex	Sand Springs	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
OK	Tar Creek (Ottawa County)	Ottawa County	
OK	Tenth Street Dump/Junkyard	Oklahoma City	
OR	Allied Plating, Inc	Portland	C
OR	Gould, Inc	Portland	
OR	Joseph Forest Products	Joseph	C
OR	Martin-Marietta Aluminum Co	The Dalles	
OR	Northwest Pipe & Casing Co	Clackamas	
OR	Teledyne Wah Chang	Albany	
OR	Union Pacific Railroad Tie Treatment	The Dalles	
OR	United Chrome Products, Inc	Corvallis	C
PA	A.I.W. Frank/Mid-County Mustang	Exton	
PA	AMP, Inc. (Glen Rock Facility)	Glen Rock	
PA	Aladdin Plating	Scott Township	
PA	Ambler Asbestos Piles	Ambler	C
PA	Austin Avenue Radiation Site	Delaware County	A
PA	Avco Lycoming (Williamsport Division)	Williamsport	
PA	Bally Ground Water Contamination	Bally Borough	
PA	Bell Landfill	Terry Township	
PA	Bendix Flight Systems Division	Bridgewater Township	
PA	Berkley Products Co Dump	Denver	
PA	Berks Landfill	Spring Township	
PA	Berks Sand Pit	Longswamp Township	
PA	Blosenski Landfill	West Caln Township	
PA	Boarhead Farms	Bridgeton Township	
PA	Brodhead Creek	Stroudsburg	
PA	Brown's Battery Breaking	Shoemakersville	
PA	Bruin Lagoon	Bruin Borough	C
PA	Butler Mine Tunnel	Pittston	
PA	Butz Landfill	Stroudsburg	
PA	C & D Recycling	Foster Township	
PA	Centre County Kepone	State College Borough	
PA	Commodore Semiconductor Group	Lower Providence Township	
PA	Craig Farm Drum	Parker	
PA	Crater Resources/Keystone Coke/Alan Wood	Upper Merion Township	
PA	Crossley Farm	Hereford Township	
PA	Croydon TCE	Croydon	
PA	CryoChem, Inc	Worman	
PA	Delta Quarries & Disp./Stotler Landfill	Antis/Logan Twps	
PA	Dorney Road Landfill	Upper Macungie Township	
PA	Douglassville Disposal	Douglassville	
PA	Drake Chemical	Lock Haven	
PA	Dublin TCE Site	Dublin Borough	
PA	East Mount Zion	Springettsbury Township	
PA	Eastern Diversified Metals	Hometown	
PA	Elizabethtown Landfill	Elizabethtown	
PA	Fischer & Porter Co	Warminster	
PA	Foote Mineral Co	East Whiteland Township	
PA	Havertown PCP	Haverford	
PA	Hebelka Auto Salvage Yard	Weisenberg Township	
PA	Heleva Landfill	North Whitehall Township	
PA	Hellertown Manufacturing Co	Hellertown	
PA	Henderson Road	Upper Merion Township	C
PA	Hranica Landfill	Buffalo Township	
PA	Hunterstown Road	Straban Township	
PA	Industrial Lane	Williams Township	
PA	Jacks Creek/Sitkin Smelting and Refinery	Maitland	
PA	Keystone Sanitation Landfill	Union Township	
PA	Kimberton Site	Kimberton Borough	C
PA	Lackawanna Refuse	Old Forge Borough	
PA	Lindane Dump	Harrison Township	
PA	Lord-Shope Landfill	Girard Township	
PA	MW Manufacturing	Valley Township	
PA	Malvern TCE	Malvern	
PA	McAdoo Associates	McAdoo Borough	S
PA	Metal Banks	Philadelphia	
PA	Metropolitan Mirror and Glass	Frackville	
PA	Middletown Air Field	Middletown	
PA	Mill Creek Dump	Erie	
PA	Modern Sanitation Landfill	Lower Windsor Township	
PA	Moyers Landfill	Eagleville	
PA	North Penn—Area 1	Souderton	
PA	North Penn—Area 12	Worcester	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
PA	North Penn—Area 2	Hatfield	
PA	North Penn—Area 5	Montgomery Township	
PA	North Penn—Area 6	Lansdale	
PA	North Penn—Area 7	North Wales	
PA	Novak Sanitary Landfill	South Whitehall Township	
PA	Occidental Chemical Corp./Firestone Tire	Lower Pottsgrove Township	
PA	Ohio River Park	Neville Island	
PA	Old City of York Landfill	Seven Valleys	
PA	Osborne Landfill	Grove City	
PA	Palmerton Zinc Pile	Palmerton	
PA	Paoli Rail Yard	Paoli	
PA	Publicker Industries Inc	Philadelphia	
PA	Raymark	Hatboro	
PA	Recticon/Allied Steel Corp	East Coventry Twp	
PA	Resin Disposal	Jefferson Borough	
PA	Revere Chemical Co	Nockamixon Township	
PA	River Road Landfill/Waste Mngmnt, Inc	Hermitage	
PA	Rodale Manufacturing Co., Inc	Emmaus Borough	
PA	Route 940 Drum Dump	Pocono Summit	C
PA	Saegertown Industrial Area	Saegertown	
PA	Shriver's Corner	Straban Township	
PA	Stanley Kessler	King of Prussia	
PA	Strasburg Landfill	Newlin Township	
PA	Taylor Borough Dump	Taylor Borough	C
PA	Tonolli Corp	Nesquehoning	
PA	Tysons Dump	Upper Merion Twp	
PA	Walsh Landfill	Honeybrook Township	
PA	Westinghouse Electronic (Sharon Plant)	Sharon	
PA	Westinghouse Elevator Co. Plant	Gettysburg	
PA	Whitmoyer Laboratories	Jackson Township	
PA	William Dick Lagoons	West Caln Township	
PA	York County Solid Waste/Refuse Landfill	Hopewell Township	
PR	Barceloneta Landfill	Florida Afuera	
PR	Fibers Public Supply Wells	Jobos	
PR	Frontera Creek	Rio Abajo	
PR	GE Wiring Devices	Juana Diaz	
PR	Juncos Landfill	Juncos	
PR	RCA Del Caribe	Barceloneta	
PR	Upjohn Facility	Barceloneta	
PR	Vega Alta Public Supply Wells	Vega Alta	
RI	Central Landfill	Johnston	
RI	Davis (GSR) Landfill	Glocester	
RI	Davis Liquid Waste	Smithfield	
RI	Landfill & Resource Recovery, Inc. (L&RR)	North Smithfield	
RI	Peterson/Puritan, Inc	Lincoln/Cumberland	
RI	Picillo Farm	Coventry	S
RI	Rose Hill Regional Landfill	South Kingston	
RI	Stamina Mills, Inc	North Smithfield	
RI	West Kingston Town Dump/URI Disposal	South Kingston	
RI	Western Sand & Gravel	Burrillville	C
SC	Beaunit Corp. (Circular Knit & Dye)	Fountain Inn	
SC	Carolawn, Inc	Fort Lawn	
SC	Elmore Waste Disposal	Greer	
SC	Geiger (C & M Oil)	Rantoules	
SC	Golden Strip Septic Tank Service	Simpsonville	
SC	Helena Chemical Co. Landfill	Fairfax	
SC	Independent Nail Co	Beaufort	C
SC	Kalama Specialty Chemicals	Beaufort	
SC	Koppers Co., Inc. (Florence Plant)	Florence	
SC	Leonard Chemical Co., Inc	Rock Hill	
SC	Lexington County Landfill Area	Cayce	
SC	Medley Farm Drum Dump	Gaffney	
SC	Palmetto Recycling, Inc	Columbia	
SC	Palmetto Wood Preserving	Dixiana	
SC	Para-Chem Southern, Inc	Simpsonville	
SC	Rochester Property	Travelers Rest	
SC	Rock Hill Chemical Co	Rock Hill	
SC	SCRDI Bluff Road	Columbia	S
SC	SCRDI Dixiana	Cayce	C
SC	Sangamo Weston/Twelve-Mile/Hartwell PCB	Pickens	
SC	Townsend Saw Chain Co	Pontiac	
SC	Wamchem, Inc	Burton	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
SD	Whitewood Creek	Whitewood	C,S
SD	Williams Pipe Line Co., Disposal Pit	Sioux Falls	
TN	American Creosote Works, (Jackson Plant)	Jackson	
TN	Amnicola Dump	Chattanooga	C
TN	Arlington Blending & Packaging	Arlington	
TN	Carrier Air Conditioning Co	Collierville	
TN	Gallaway Pits	Gallaway	
TN	Lewisburg Dump	Lewisburg	C
TN	Mallory Capacitor Co	Waynesboro	
TN	Murray-Ohio Dump	Lawrenceburg	
TN	North Hollywood Dump	Memphis	S
TN	Velsicol Chemical Corp (Hardeman County)	Toone	
TN	Wrigley Charcoal Plant	Wrigley	
TX	ALCOA (Point Comfort)/Lavaca Bay	Point Comfort	
TX	Bailey Waste Disposal	Bridge City	
TX	Bio-Ecology Systems, Inc	Grand Prairie	C
TX	Brio Refining, Inc	Friendswood	
TX	Crystal Chemical Co	Houston	
TX	Crystal City Airport	Crystal City	C
TX	Dixie Oil Processors, Inc	Friendswood	C
TX	French, Ltd	Crosby	
TX	Geneva Industries/Fuhrmann Energy	Houston	C
TX	Highlands Acid Pit	Highlands	C
TX	Koppers Co. Inc (Texarkana Plant)	Texarkana	
TX	Motco, Inc	La Marque	S
TX	North Cavalcade Street	Houston	
TX	Odessa Chromium #1	Odessa	
TX	Odessa Chromium #2 (Andrews Highway)	Odessa	
TX	Pesses Chemical Co	Fort Worth	C
TX	Petro-Chemical Systems, (Turtle Bayou)	Liberty County	
TX	Sheridan Disposal Services	Hempstead	
TX	Sikes Disposal Pits	Crosby	
TX	Sol Lynn/Industrial Transformers	Houston	C
TX	South Cavalcade Street	Houston	
TX	Stewco, Inc	Waskom	C
TX	Texarkana Wood Preserving Co	Texarkana	
TX	Triangle Chemical Co	Bridge City	C
TX	United Creosoting Co	Conroe	
UT	Midvale Slag	Midvale	
UT	Monticello Radioactive Contaminated Prop	Monticello	
UT	Petrochem Recycling Corp./Ekotek Plant	Salt Lake City	
UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City	
UT	Rose Park Sludge Pit	Salt Lake City	C,S
UT	Sharon Steel Corp. (Midvale Tailings)	Midvale	
UT	Utah Power & Light/American Barrel Co	Salt Lake City	
UT	Wasatch Chemical Co. (Lot 6)	Salt Lake City	
VA	Abex Corp	Portsmouth	
VA	Arrowhead Associates/Scovill Corp	Montross	
VA	Atlantic Wood Industries, Inc	Portsmouth	
VA	Avtex Fibers, Inc	Front Royal	
VA	Buckingham County Landfill	Buckingham	
VA	C & R Battery Co., Inc	Chesterfield County	C
VA	Chisman Creek	York County	C
VA	Culpeper Wood Preservers, Inc	Culpeper	
VA	Dixie Caverns County Landfill	Salem	
VA	First Piedmont Rock Quarry (Route 719)	Pittsylvania County	
VA	Greenwood Chemical Co	Newtown	
VA	H & H Inc., Burn Pit	Farrington	
VA	L.A. Clarke & Son	Spotsylvania County	
VA	Rentokil, Inc. (VA Wood Preserving Div)	Richmond	
VA	Rhinehart Tire Fire Dump	Frederick County	
VA	Saltville Waste Disposal Ponds	Saltville	
VA	Saunders Supply Co	Chuckatuck	
VA	Suffolk City Landfill	Suffolk	C
VA	U.S. Titanium	Piney River	
VT	BFI Sanitary Landfill (Rockingham)	Rockingham	
VT	Bennington Municipal Sanitary Landfill	Bennington	
VT	Burgess Brothers Landfill	Woodford	
VT	Darling Hill Dump	Lyndon	C
VT	Old Springfield Landfill	Springfield	
VT	Parker Sanitary Landfill	Lyndon	
VT	Pine Street Canal	Burlington	S

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
VT	Tansitor Electronics, Inc	Bennington	
WA	ALCOA (Vancouver Smelter)	Vancouver	
WA	American Crossarm & Conduit Co	Chehalis	
WA	American Lake Gardens	Tacoma	
WA	Centralia Municipal Landfill	Centralia	
WA	Colbert Landfill	Colbert	
WA	Commencement Bay, Near Shore/Tide Flats	Pierce County	
WA	Commencement Bay, South Tacoma Channel	Tacoma	
WA	FMC Corp. (Yakima Pit)	Yakima	C
WA	Frontier Hard Chrome, Inc	Vancouver	
WA	General Electric Co. (Spokane Shop)	Spokane	
WA	Greenacres Landfill	Spokane County	
WA	Harbor Island (Lead)	Seattle	
WA	Hidden Valley Landfill (Thun Field)	Pierce County	
WA	Kaiser Aluminum Mead Works	Mead	
WA	Lakewood Site	Lakewood	C
WA	Mica Landfill	Mica	
WA	Midway Landfill	Kent	
WA	Moses Lake Wellfield Contamination	Moses Lake	
WA	North Market Street	Spokane	
WA	Northside Landfill	Spokane	C
WA	Northwest Transformer	Everson	
WA	Northwest Transformer (South Harkness St)	Everson	
WA	Old Inland Pit	Spokane	
WA	Pacific Car & Foundry Co	Renton	
WA	Pasco Sanitary Landfill	Pasco	
WA	Queen City Farms	Maple Valley	
WA	Seattle Municipal Landfill (Kent Hghlnds)	Kent	
WA	Silver Mountain Mine	Loomis	C
WA	Vancouver Water Station #4 Contamination	Vancouver	
WA	Western Processing Co., Inc	Kent	C
WA	Wyckoff Co./Eagle Harbor	Bainbridge Island	
WA	Yakima Plating Co	Yakima	C
WI	Algoma Municipal Landfill	Algoma	
WI	Better Brite Plating Chrome & Zinc Shops	DePere	
WI	City Disposal Corp. Landfill	Dunn	
WI	Delavan Municipal Well #4	Delavan	
WI	Eau Claire Municipal Well Field	Eau Claire	C
WI	Fadrowski Drum Disposal	Franklin	
WI	Hagen Farm	Stoughton	
WI	Hechimovich Sanitary Landfill	Williamstown	
WI	Hunts Disposal Landfill	Caledonia	
WI	Janesville Ash Beds	Janesville	
WI	Janesville Old Landfill	Janesville	
WI	Kohler Co. Landfill	Kohler	
WI	Lauer I Sanitary Landfill	Menomonee Falls	
WI	Lemberger Landfill, Inc	Whitelaw	
WI	Lemberger Transport & Recycling	Franklin Township	
WI	Madison Metropolitan Sewerage District	Blooming Grove	
WI	Master Disposal Service Landfill	Brookfield	
WI	Mid-State Disposal, Inc. Landfill	Cleveland Township	
WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee	
WI	Muskego Sanitary Landfill	Muskego	
WI	N.W. Mauthe Co., Inc	Appleton	S
WI	National Presto Industries, Inc	Eau Claire	
WI	Northern Engraving Co	Sparta	C
WI	Oconomowoc Electroplating Co. Inc	Ashippin	
WI	Omega Hills North Landfill	Germantown	
WI	Onalaska Municipal Landfill	Onalaska	
WI	Refuse Hideaway Landfill	Middleton	
WI	Sauk County Landfill	Excelsior	
WI	Schmalz Dump	Harrison	C
WI	Scrap Processing Co., Inc	Medford	
WI	Sheboygan Harbor & River	Sheboygan	
WI	Spickler Landfill	Spencer	
WI	Stoughton City Landfill	Stoughton	
WI	Tomah Armory	Tomah	
WI	Tomah Fairgrounds	Tomah	
WI	Tomah Municipal Sanitary Landfill	Tomah	
WI	Waste Mgmt of WI (Brookfield Sanit LF)	Brookfield	
WI	Wausau Ground Water Contamination	Wausau	
WI	Wheeler Pit	La Prairie Township	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
WV	Fike Chemical, Inc	Nitro	
WV	Follansbee Site	Follansbee	
WV	Leetown Pesticide	Leetown	C
WV	Ordnance Works Disposal Areas	Morgantown	
WV	West Virginia Ordnance	Point Pleasant	S
WY	Baxter/Union Pacific Tie Treating	Laramie	
WY	Mystery Bridge Rd/U.S. Highway 20	Evansville	C

Notes:
A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be >28.50).
C=Completion Category.
S=State top priority (included among the 100 top priority sites regardless of score).

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994

State	Site name	City/county	Notes
AK	Eielson Air Force Base	Fairbanks N Star Borough.	
AK	Elmendorf Air Force Base	Greater Anchorage Borough.	
AK	Fort Wainwright	Fairbanks N Star Borough.	
AK	Standard Steel & Metals Salvage Yard (USDOT)	Anchorage.	
AL	Alabama Army Ammunition Plant	Childersburg.	
AL	Anniston Army Depot (SE Industrial Area)	Anniston.	
AZ	Luke Air Force Base	Glendale.	
AZ	Williams Air Force Base	Chandler.	
AZ	Yuma Marine Corps Air Station	Yuma.	
CA	Barstow Marine Corps Logistics Base	Barstow.	
CA	Camp Pendleton Marine Corps Base	San Diego County.	
CA	Castle Air Force Base	Merced.	
CA	Edwards Air Force Base	Kern County.	
CA	El Toro Marine Corps Air Station	El Toro.	
CA	Fort Ord	Marina.	
CA	George Air Force Base	Victorville.	
CA	Jet Propulsion Laboratory (NASA)	Pasadena.	
CA	Lawrence Livermore Laboratory (Site 300)	Livermore.	
CA	Lawrence Livermore Laboratory (USDOE)	Livermore.	
CA	March Air Force Base	Riverside.	
CA	Mather Air Force Base	Sacramento.	
CA	McClellan Air Force Base (GW Contam)	Sacramento.	
CA	Moffett Naval Air Station	Sunnyvale.	
CA	Norton Air Force Base	San Bernardino.	
CA	Riverbank Army Ammunition Plant	Riverbank.	
CA	Sacramento Army Depot	Sacramento.	
CA	Sharpe Army Depot	Lathrop.	
CA	Tracy Defense Depot	Tracy.	
CA	Travis Air Force Base	Solano County.	
CA	Treasure Island Naval Station-Hun Pt An	San Francisco.	
CO	Air Force Plant PJKS	Waterton.	
CO	Rocky Flats Plant (USDOE)	Golden.	
CO	Rocky Mountain Arsenal	Adams County.	
CT	New London Submarine Base	New London.	
DE	Dover Air Force Base	Dover.	
FL	Cecil Field Naval Air Station	Jacksonville.	
FL	Homestead Air Force Base	Homestead.	
FL	Jacksonville Naval Air Station	Jacksonville.	
FL	Pensacola Naval Air Station	Pensacola.	
GA	Marine Corps Logistics Base	Albany.	
GA	Robins Air Force Base (Lf#4/Sludge Lagoon)	Houston County.	
GU	Andersen Air Force Base	Yigo.	
HI	Pearl Harbor Naval Complex	Pearl Harbor.	
HI	Schofield Barracks	Oahu.	
IA	Iowa Army Ammunition Plant	Middletown.	
ID	Idaho National Engineering Lab (USDOE)	Idaho Falls.	
ID	Mountain Home Air Force Base	Mountain Home.	
IL	Joliet Army Ammunition Plant (LAP Area)	Joliet.	
IL	Joliet Army Ammunition Plant (Mfg Area)	Joliet.	
IL	Sangamo Electric/Crab Orchard NWR (USDOI)	Carterville.	
IL	Savanna Army Depot Activity	Savanna.	
KS	Fort Riley	Junction City.	
LA	Louisiana Army Ammunition Plant	Doyline.	
MA	Fort Devens	Fort Devens.	
MA	Fort Devens-Sudbury Training Annex	Middlesex County.	

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MA	Otis Air National Guard /Camp Edwards	Falmouth.	
MD	Aberdeen Proving Ground (Edgewood Area)	Edgewood.	
MD	Aberdeen Proving Ground (Michaelsville LF)	Aberdeen.	
ME	Brunswick Naval Air Station	Brunswick.	
ME	Loring Air Force Base	Limestone.	
MN	Naval Industrial Reserve Ordnance Plant	Fridley.	
MN	Twin Cities Air Force Base (SAR Landfill)	Minneapolis.	
MO	Lake City Army Ammu. Plant (NW Lagoon)	Independence.	
MO	Weldon Spring Former Army Ordnance Works	St. Charles County.	
MO	Weldon Spring Quarry/Plant/Pitts (USDOE)	St. Charles County.	
NC	Camp Lejeune Military Reservation	Onslow County.	
NE	Cornhusker Army Ammunition Plant	Hall County.	
NH	Pease Air Force Base	Portsmouth/Newington.	
NJ	Federal Aviation Admin. Tech. Center	Atlantic County.	
NJ	Fort Dix (Landfill Site)	Pemberton Township.	
NJ	Naval Air Engineering Center	Lakehurst.	
NJ	Naval Weapons Station Earle (Site A)	Colts Neck.	
NJ	Picatinny Arsenal	Rockaway Township.	
NJ	W.R. Grace/Wayne Interim Storage (USDOE)	Wayne Township.	
NM	Cal West Metals (USSBA)	Lemitar.	
NM	Lee Acres Landfill (USDOI)	Farmington.	
NY	Brookhaven National Laboratory (USDOE)	Upton.	
NY	Griffiss Air Force Base	Rome.	
NY	Plattsburgh Air Force Base	Plattsburgh.	
NY	Seneca Army Depot	Romulus.	
OH	Feed Materials Production Center (USDOE)	Fernald.	
OH	Mound Plant (USDOE)	Miamisburg.	
OH	Wright-Patterson Air Force Base	Dayton.	
OK	Tinker Air Force (Soldier Cr/Bldg 300)	Oklahoma City.	
OR	Umatilla Army Depot (Lagoons)	Hermiston.	
PA	Letterkenny Army Depot (PDO Area)	Franklin County.	
PA	Letterkenny Army Depot (SE Area)	Chambersburg.	
PA	Naval Air Development Center (8 Areas)	Warminster Township.	
PA	Tobyhanna Army Depot	Tobyhanna.	
PR	Naval Security Group Activity	Sabana Seca.	
RI	Davisville Naval Construction Batt Cent	North Kingston.	
RI	Newport Naval Education/Training Center	Newport.	
SC	Savannah River Site (USDOE)	Aiken.	
SD	Ellsworth Air Force Base	Rapid City.	
TN	Memphis Defense Depot	Memphis.	
TN	Milan Army Ammunition Plant	Milan.	
TN	Oak Ridge Reservation (USDOE)	Oak Ridge.	
TX	Air Force Plant #4 (General Dynamics)	Fort Worth.	
TX	Lone Star Army Ammunition Plant	Texarkana.	
TX	Longhorn Army Ammunition Plant	Karnack.	
UT	Hill Air Force Base	Ogden.	
UT	Monticello Mill Tailings (USDOE)	Monticello.	
UT	Ogden Defense Depot	Ogden.	
UT	Tooele Army Depot (North Area)	Tooele.	
VA	Defense General Supply Center	Chesterfield County.	
VA	Naval Surface Warfare—Dahlgren	Dahlgren.	
VA	Naval Weapons Station—Yorktown	Yorktown.	
WA	Bangor Naval Submarine Base	Silverdale.	
WA	Bangor Ordnance Disposal	Bremerton.	
WA	Bonneville Power Admin Ross (USDOE)	Vancouver.	
WA	Fairchild Air Force Base (4 Waste Areas)	Spokane County.	
WA	Fort Lewis (Landfill No. 5)	Tacoma.	
WA	Fort Lewis Logistics Center	Tillicum.	
WA	Hamilton Island Landfill(USA/COE)	North Bonneville.	

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
WA	Hanford 100–Area (USDOE)	Benton County.	
WA	Hanford 1100–Area (USDOE)	Benton County.	
WA	Hanford 200–Area (USDOE)	Benton County.	
WA	Hanford 300–Area (USDOE)	Benton County.	
WA	McChord Air Force Base (Wash Rack/Treat)	Tacoma.	
WA	Naval Air Station, Whidbey Is (Seaplane)	Whidbey Island.	
WA	Naval Air Station, Whidbey Island (Ault)	Whidbey Island.	
WA	Naval Undersea Warfare Station (4 Areas)	Keyport.	
WY	F.E. Warren Air Force Base	Cheyenne.	

Notes:
A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be >28.50)
C=Completion Category. S=State top priority (included among the 100 top priority sites regardless of score).

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federal register

Wednesday
February 23, 1994

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Part 390, et al.
Private Motor Carriers of Passengers; Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 393, 395, and 396

[FHWA Docket No. MC-88-15]

RIN 2125-AB62

Private Motor Carriers of Passengers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule with request for comments.

SUMMARY: In accordance with changes in the definitions of interstate commerce and commercial motor vehicle contained in the Motor Carrier Act of 1984, the FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to make private motor carriers of passengers involved in interstate transportation subject to them with certain exceptions. Implementation of the final rule is being delayed to allow the new class of regulatees an opportunity to comment on the type and scope of educational and technical assistance necessary and to provide ample time to come into compliance with the FMCSRs.

DATES: This regulation is effective January 1, 1995; comments must be received on or before October 1, 1994.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC-10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. F. Daniel Hartman, Office of Motor Carrier Standards, (202) 366-4009, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Since 1935, the Federal government has been regulating, for safety purposes, interstate transportation performed by for-hire carriers of property and passengers and private carriers of property. Prior to the passage of the Motor Carrier Act of 1984 (Pub. L. 98-554, 98 Stat. 2832, 49 U.S.C. app. 2501 *et. seq.*), the Federal government's jurisdiction did not extend to private motor carriers of passengers (PMCPs).

With the enactment of the Motor Carrier Safety Act of 1984, Congress defined the FHWA's jurisdiction on the basis of vehicles operating in interstate commerce. The stated purposes of the 1984 Act were to (1) promote the safe operation of commercial motor vehicles; (2) minimize dangers to the health of operators of commercial motor vehicles; and (3) assure increased compliance with traffic laws and with the commercial motor vehicle safety rules.

Congress expanded the definition of commercial motor vehicle (CMV) in section 204 of that Act (49 U.S.C. app. 2503) to include any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property if (a) such vehicle has a gross vehicle weight rating of 10,001 or more pounds; (b) such vehicle is designed to transport 16 or more passengers, including the driver; or (c) such vehicle is used in the transportation of hazardous materials which require a placard.

Interstate commerce was defined in the same section of the Act as "trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States." Therefore, anyone operating or causing to be operated vehicles as defined in the Act in interstate commerce became subject to regulation by the Secretary of Transportation.

Current Regulations

The FMCSRs are contained in title 49, Code of Federal Regulations, parts 350 through 399. These regulations set minimum safety standards for motor carriers, vehicles and drivers involved in interstate commerce. The areas covered include driver qualification, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection and maintenance. Consistent with the pre-1984 authority, PMCPs are currently exempt from the FMCSRs (parts 390-399) pursuant to 49 CFR 390.3(f)(6).

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA)(Title XII, Pub. L. 99-570, 49 U.S.C. app. 2701-2718) established requirements for testing and licensing of all drivers of commercial motor vehicles as defined in that Act. Under the implementing regulations in 49 CFR part 383, all drivers subject to that part must successfully complete a knowledge test and skills examination, as applicable, both of which are administered by the driver's State of residence. The State then issues a Commercial Driver's License (CDL), which is the only license that may be possessed by an operator of a commercial motor vehicle. The operative definitions in the CMVSA of 1986 extend jurisdiction to any driver of a defined vehicle, whether in interstate or intrastate commerce, and whether or not otherwise subject to DOT jurisdiction. The current rulemaking does not alter the provisions of Part 383 for any CMV driver, nor does it affect other regulatory exemptions, e.g., the transportation of school children and government operations.

The FHWA issued a Notice of Interpretation (58 FR 27328, May 7, 1993) to clarify its policy relating to for-hire transportation of passengers. That notice clarifies the FHWA's policy that businesses operating passenger-carrying commercial motor vehicles in interstate commerce, and receiving direct or indirect compensation for their transportation services, are for-hire motor carriers subject to the minimum levels of financial responsibility requirements. If the passenger-carrying capacity of the vehicle is 16 or more, including the driver, they are also subject to the remainder of the FMCSRs.

Rulemaking History

In 1985, the FHWA issued an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (50 FR 2998, Docket No. MC-114) to obtain comments on the merits of regulating PMCPs. Recognizing the wide diversity of operating practices, the FHWA (shortly after the 1984 Act) contracted for a study to gain greater insight into the operating practices of these carriers. (ASW Associates, Silver Spring, Md., June 10, 1987.) Although there is little definitive accident data, the study concluded that highway safety would be enhanced by regulating PMCPs. After comments to the ANPRM were received and analyzed, the FHWA issued a notice of proposed rulemaking (NPRM) on February 17, 1989 (MC-88-15), proposing to assert jurisdiction over these carriers with respect to certain requirements of the FMCSRs (see 54 FR 7362).

In the NPRM, the FHWA acknowledged that all buses should be in safe operating condition and driven by qualified drivers. However, it would

be overly burdensome and counterproductive to attempt to require every entity transporting people by bus, regardless of purpose, to comply with the whole range of regulations, including recordkeeping requirements.

In the NPRM, the FHWA divided PMCPs into two groups based on the relationship of the driver to the motor carrier. Group I consisted of all employees hired to perform primarily as drivers. Group II consisted of volunteer drivers (who may also be employees) who received little or no remuneration for their driving and drove for less than 10 percent of their work time. The division of the two groups was intended to recognize the distinction between business and nonbusiness operations.

Under the proposal advanced in the NPRM, Group I would have been treated the same as for-hire motor carriers of passengers and would have been subject to all of the FMCSRs. Group II would have been subject to CDL and the vehicle and maintenance requirements, but would not have been required to keep driver qualification files.

The FHWA was also aware that some buses currently in use may not have been subject to the National Highway Traffic Safety Administration's (NHTSA) fuel system requirements at the time of manufacture. The NPRM proposed to "grandfather" this equipment and, therefore, would not require retrofitting of the fuel systems if the vehicle has been maintained and meets the original manufacturer's standards.

Discussion of Comments to the Docket

The FHWA received 28 comments to this docket: 14 from organizations and groups potentially affected by the rulemaking, 5 from national associations, 3 from for-hire bus companies, 2 from State enforcement agencies, 1 from a Federal advisory board, 1 from a union, and 2 from individuals. Only three commenters, two of which were churches, opposed the rule as an unnecessary regulatory burden.

The American Bus Association (ABA) supported the NPRM, expressing the opinion that PMCPs are less safe than for-hire carriers because they operate older, inferior equipment, with less experienced drivers, and in its opinion, are involved in a disproportionate number of fatal accidents. The ABA also stated that these drivers should be subject to the same driver qualification and hours of service requirements, including recordkeeping, because they are usually less experienced and qualified. The ABA raised questions about the enforceability of the definition in the NPRM for limited PMCPs, specifically the 10 percent driving time factor. It felt these carriers would reduce driving time below 10 percent to avoid the paperwork requirements. The ABA also recommended that all PMCPs get a U.S. DOT number to facilitate enforcement.

The United Bus Owners of America and the National School Transportation Association supported the rule, maintaining that anyone transporting passengers should comply fully with the FMCSRs, including recordkeeping, in the interest of safety for the passengers on board a vehicle and the motoring public at large. The International Brotherhood of Teamsters supported the rule and favored the division of PMCPs into groups for the purpose of paperwork burden relief.

Those commenters opposed to the NPRM were concerned that the rule placed an unnecessary burden on churches, with little accident or safety data to support the rule. They contended that many churches will terminate interstate travel rather than attempt to comply with the requirements.

Two States wrote to the docket—one supporting and one opposing the proposal. The Transportation Cabinet of the Commonwealth of Kentucky supported the rule. The Cabinet believed that school bus operations also should be subject to the FMCSRs, but did not provide data to support its position. The Department of Motor Vehicles in North Carolina opposed the rule as an unnecessary burden, claiming private buses are usually not used in commerce. The Department instead recommended that FHWA staff focus on truck safety problems.

FHWA's Response

In consideration of the comments to the NPRM, the FHWA concluded that the use of volunteer driver status, coupled with the 10 percent driving factor, would not be a workable criterion for separation of the two groups because of the uncertainty in defining "volunteer status" *and* measuring the 10 percent driving time factor. Instead, the FHWA will base its distinction on whether the motor carrier is providing the transportation of passengers in furtherance of a commercial purpose other than transportation.

Those PMCPs involved in a business activity which provides transportation, in the furtherance of a commercial purpose other than for-hire transportation, will be subject to all of the FMCSRs, including recordkeeping. Those PMCPs engaged in nonbusiness activities, but providing transportation of some kind, must have safe drivers and vehicles and will be subject to many of the FMCSRs. These PMCPs will not be required to comply with the current recordkeeping requirements. The FHWA also agrees with, and has incorporated into the final rule, comments that all PMCPs should obtain a U.S. DOT number, which should facilitate the proper collection of accurate roadside inspection and enforcement information. The "grandfather" provision for fuel system requirements, as proposed in the NPRM, also has been retained.

Although interstate commerce is historically defined to include trade, traffic, or transportation across State boundaries and is not limited to business entities in profit-making ventures, the FHWA believes most churches will fall within the definition of nonbusiness PMCPs. As such, these carriers will not be subject to the current recordkeeping requirements. Under this final rule, once a driver obtains a CDL, no additional files, such as driver qualification records including the medical examination certificate, or drivers' record of duty status, are required to be maintained.

Requirements of the Final Rule

The final rule is very similar to the NPRM except that (1) the definition of PMCP has been consolidated with the definition of private motor carrier of property, (2) the definitions of "nonbusiness PMCPs" and "business PMCPs" have been added, (3) nonbusiness PMCPs will be exempt from subpart H of part 391 and all current recordkeeping requirements, (4) PMCPs will not be subject to the road and written test requirements of part 391, and (5) all passenger carriers will be required to obtain a US DOT number to identify their buses for enforcement by Federal and State officials.

Many operations which are classified as PMCPs are companies that transport their workers to and from job sites. PMCPs also include nonbusiness-type organizations, including scout, church and civic groups, that characteristically use volunteers to transport members by bus and charge no fee, or only a nominal fee to cover expenses of the transportation service provided.

Definitions

Business PMCPs

A business PMCPs is defined as any entity involved in the interstate transportation of passengers; the transportation provided is in the furtherance of the entity's commercial

purpose, which is not for-hire transportation; and the transportation is not available to the general public. The FHWA believes that any business entity transporting people should meet the same minimum safety requirements as those businesses involved in the private transportation of property. Therefore, these carriers must comply with the entire body of the FMCSRs, including recordkeeping. These carriers need not comply with the road and written test requirements of part 391, since these requirements are essentially met by acquiring a CDL with proper bus endorsements. In addition, these carriers need not comply with the fuel system requirements of § 393.67, provided the carrier's commercial motor vehicle fuel systems have been maintained and meet the original manufacturer's standards.

Nonbusiness PMCPs

A nonbusiness PMCPs is any entity involved in the interstate transportation of passengers, other than for-hire, and does not meet the definition of a business PMCPs. These carriers will be subject to parts 383, 385 (requiring a Motor Carrier Identification Report), 390, 391 (excluding subpart H and recordkeeping requirements), 392, 393 (excluding fuel systems that have been maintained and meet the original manufacturer's standards), 395 (excluding the recordkeeping requirements), and 396 (excluding the recordkeeping requirements). Churches, civic associations, scouts, and other charitable institutions that may purchase or lease buses for sponsored activities are included in this category.

The special treatment afforded nonbusiness carriers is not to relieve churches or civic associations from compliance with any of the safety regulations when these carriers arrange tours for the public at large and charge a fee with the intent to make a profit. In this instance, nonbusiness carriers are in fact performing transportation services as for-hire carriers. When engaged in chartering operations, the transportation service is the primary activity of the organization and such charter service is not incidental to the non-transportation purposes of the organization. Such activities are and will continue to be treated as for-hire transportation of passengers, subject to all the FMCSRs.

Driver and Carrier Requirements

Business PMCPs

These carriers must meet all of the driver recordkeeping requirements in part 391, except for the road and written test requirements, which are essentially met by acquiring a CDL with proper bus endorsements. This recordkeeping requirement includes maintaining all documents required in a driver qualification file and drug testing documentation. These carriers must also comply with the recordkeeping requirements in part 395 regarding drivers' records of duty status.

Consistent with past FHWA practice, a one-time exemption for currently employed drivers is provided in this rulemaking. The recordkeeping requirements, including application for employment (§ 391.21), investigation and inquiries (§ 391.23), and notifications of previous employment (§ 383.35), will not apply to those drivers regularly employed by a motor carrier prior to July 1, 1994 and for as long as the person continues to be regularly employed as a driver for that motor carrier.

Nonbusiness PMCPs

Nonbusiness PMCPs must comply with the driving and on-duty hours limitation contained in part 395. The costs associated with requiring record retention by these motor carriers, who operate sporadically, would outweigh the benefits and, accordingly, the FHWA will not impose the recordkeeping requirements of part 395 on these carriers. It is recognized that some individuals who volunteer to drive for their church or civic organization may also drive for other motor carriers and in that capacity are required to maintain a record of duty status (driver logs). All on-duty and driving time, performed in a volunteer capacity by an individual who is otherwise regularly employed as a commercial driver, for a nonbusiness PMCP must be recorded on the records of duty-status submitted to that driver's regularly employing motor carrier. On duty and driving time for those drivers regularly employed must be considered in determining whether the driver has adequate time to drive as a volunteer, and vice-versa. The FHWA believes this requirement is necessary to ensure that a fatigued driver is not permitted or required to drive beyond the hours of service limits.

These carriers are not required to have their drivers medically examined and do not have to maintain the records required in parts 391, 395 and 396.

Drug and Alcohol Testing

Nonbusiness PMCPs are not subject to the current drug testing requirements found in 49 CFR part 391. However, business PMCPs are subject to those regulations.

Under a final rule published in the **Federal Register** on February 15, 1994, the FHWA announced new drug and alcohol testing rules. These rules were issued in response to the Omnibus Transportation Employee Testing Act of 1991 and will require that all operators of CMVs subject to the CDL requirements, be tested for controlled substances and alcohol. Both business and nonbusiness PMCPs will be subject to these rules.

Due to the broad scope of these rules, business and nonbusiness PMCPs with 50 or more drivers will have until January 1, 1995 to comply with the new drug and alcohol testing regulations. Business and nonbusiness PMCPs with less than 50 drivers will be required to comply with the new drug and alcohol testing regulations beginning January 1, 1996.

To further the purpose of the Omnibus Transportation Employee Testing Act, no waiver or exemption from any provision of the new rules, including the recordkeeping requirements, is provided. Consequently, all nonbusiness PMCPs will be required to meet certain recordkeeping requirements when the final rule is fully implemented.

Vehicle Requirements

Business PMCPs

Part 393, Parts and Accessories Necessary for Safe Operation, and Part 396, Inspection, Repair and Maintenance, provide detailed safety requirements for commercial motor vehicle components and inspection thereof. Business PMCPs are required to comply with the vehicle equipment requirements contained in part 393 (excluding fuel systems that have been maintained and meet original manufacturer's standards) and the maintenance and recordkeeping requirements in part 396. A few carriers may need to perform minor retrofitting to bring their vehicles into compliance with the requirements of part 393.

Nonbusiness PMCPs

Nonbusiness PMCPs must comply with the vehicle equipment requirements in part 393 (excluding fuel systems that have been maintained and meet original manufacturer's standards) and the maintenance requirements of part 396. These carriers will not have to comply with the recordkeeping requirements contained in part 396.

Insurance Requirements

Section 18 (a) through (g) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261, 96 Stat. 1102, 1120, as

amended) established minimum levels of financial responsibility for for-hire motor carriers of passengers. The Act did not extend coverage to motor carriers involved in private transportation of passengers. Therefore, for purposes of this final rule, PMCPs are not required to comply with part 387.

Enforcement

PMCPs will be subject to the FHWA and State motor carrier safety enforcement activities. The FHWA has a field staff which monitors compliance and enforces the regulations primarily by reviews of company records. Also, the FHWA administers a formula grant program, the Motor Carrier Safety Assistance Program (MCSAP), to reimburse States for uniform enforcement of commercial motor vehicle safety and hazardous materials compliance through roadside driver/vehicle inspections and review of motor carrier safety practices.

Business PMCPs

The primary enforcement activity will be unannounced terminal and roadside driver/vehicle inspections conducted by State personnel. Roadside driver/vehicle inspections may include inspections performed at origin or destination points such as parking lots, amusement parks, sporting complexes, and convention centers as well as on the road. A terminal inspection is a comprehensive vehicle inspection conducted at the carrier's terminal facility, garage or at a bus station. The vehicle standards for these inspections are reflected in the current periodic inspection requirements (part 396, Appendix G). Business PMCP drivers will have CDLs, medical cards, and records of duty status reviewed.

Federal and State investigators will also conduct safety and compliance reviews of these carriers at their principal places of business. The investigators will review motor carriers' safety management practices and regulatory compliance as evidenced by records maintained. These carriers will also be subject to FHWA's rating process and the provisions of the Motor Carrier Act of 1990 regarding the consequences of unsatisfactory safety ratings, i.e., an unsatisfactory rating will prohibit the operation of buses effective 45 days after receipt of the rating. Unsafe carriers will be subject to the same civil and criminal penalties as all other carriers currently under the jurisdiction of the FHWA. Carriers identified in FHWA's information system as having unsafe operations will be scheduled for safety and compliance reviews.

Nonbusiness PMCPs

Nonbusiness PMCPs will be subject to the same terminal and roadside driver/vehicle inspections as business PMCPs, except the drivers will only be subject to having their CDL reviewed and hours of service verified from evidence gathered at the scene. Compliance reviews will not be performed on these carriers nor will they be subject to FHWA's safety rating process, unless the information systems reveal that the carrier has been identified as having ongoing roadside safety inspection problems.

Marking

To facilitate State inspections of these vehicles and drivers, the FHWA is requiring each PMCP to have its name, city and State, and U.S. DOT number marked on the side of the bus to the extent presently required of all motor carriers.

Implementation

Marketing and Educational Program

Because PMCPs have not been regulated in the past, the FHWA and state personnel will be providing educational and technical assistance for these carriers prior to the effective date. The FHWA is seeking comments on the type and scope of educational and technical assistance that should be provided to assist PMCPs in complying with the FMCSRs. Comments must be received on or before October 1, 1994. The FHWA will make the materials available to National and State organizations which represent PMCPs or anyone who requests assistance directly from the FHWA. The FHWA also has Division offices in every State that can answer questions and provide technical assistance to these carriers upon request. The addresses for the FHWA Division Offices are listed in appendix D to 49 CFR part 7.

Effective Date

PMCPs (business and nonbusiness) will have until January 1, 1995, to meet these requirements.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Because this rulemaking has been the subject of substantial congressional and public interest, the FHWA has determined that this final rule is a significant regulatory action within the meaning of Executive Order 12866 and a significant regulation under the DOT regulatory policies and procedures. In the Motor Carrier Act of 1984, Congress expanded the definitions of "interstate commerce" and "commercial motor vehicle" which expanded the Department of Transportation's regulatory jurisdiction to include private motor carriers of passengers. Both Congress and the bus industry have shown a keen interest in the progress of this rulemaking. The safety benefits and opportunities for benefits from this rule will offset any cost. A regulatory evaluation has been prepared and is available for review in the public docket.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Many small entities will be economically impacted by this rulemaking and some may decide to cease transportation of passengers rather than comply with the safety rules and regulations. However, the overall impact on small entities will be minimal. The FHWA is exempting the majority of small entities—those defined as nonbusiness—from the paperwork and recording requirements of this rule. The vast majority of PMCPs are small entities, especially the non-business carriers. Some of the smallest entities may find it preferable to discontinue their operations in interstate commerce, and to charter buses for their interstate trips. Private carriers which pay their drivers are even more likely to consider chartering as an option because of their increased costs for driver salaries or other compensation. Chartering does not reduce the cost of complying with this rule, but does place an effective ceiling on how much this rule might cost small entities. Thus, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This regulation amends certain parts of the FMCSRs pertaining to the scope and applicability of the FMCSRs to interstate transportation by PMCPs as authorized by the Motor Carrier Act of 1984. The FMCSRs establish minimum safety regulations which may be supplemented by the States, provided the State safety laws and regulations are compatible

with the Federal requirements. (See 57 FR 40946, September 8, 1992, which includes the Tolerance Guidelines for Adopting Compatible State Rules and Regulations.) The statutory basis for Federal regulation of interstate commerce has been outlined above. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.217, Motor Carrier Safety, and 20.218, Motor Carrier Safety Assistance Program. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in part 390 of this rule are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390, 391, 393, 395, and 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: February 14, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, parts 390, 391, 393, 395 and 396 as set forth below.

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.3 [Amended]

2. In § 390.3, paragraph (f)(6) is removed.

§ 390.5 [Amended]

3. In § 390.5, the definition of *motor carrier* is revised; the definitions of *private motor carrier of passengers* and *private motor carrier of property* are removed; the definitions of *private motor carrier, private motor carrier of passengers (business)* and *private motor carrier of passengers (nonbusiness)* are added in alphabetical order as follows:

§ 390.5 Definitions.

* * * * *

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition includes the terms *employer*, and *exempt motor carrier*.

* * * * *

Private motor carrier means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

Private motor carrier of passengers (business) means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

Private motor carrier of passengers (nonbusiness) means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

* * * * *

PART 391—[AMENDED]

5. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 391.31 [Amended]

6. In § 391.31, paragraph (a) is revised to read as follows:

§ 391.31 Road test.

(a) Except as provided in subpart G, a person shall not drive a motor vehicle unless he/she has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

* * * * *

§ 391.35 [Amended]

7. In § 391.35, paragraph (a) is revised to read as follows:

§ 391.35 Written examination.

(a) Except as provided in subpart G, a person shall not drive a motor vehicle unless he/she has first taken a written examination in accordance with this section.

* * * * *

8. In § 391.51, paragraph (a) is revised to read as follows:

§ 391.51 Driver qualification files.

(a) Except as provided in subpart G, each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with the driver's personnel file.

* * * * *

9. § 391.68 is added to subpart G to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

(a) The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and their drivers:

(1) Section 391.11(b)(8), (b)(10), (b)(11), and (b)(12), (relating to driver qualifications in general).

(2) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(3) Subpart D (relating to road tests and written examinations).

(4) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person.

(5) Subpart F (relating to maintenance of files and records).

(6) Subpart H (relating to controlled substances testing).

(b) The following rules in this part do not apply to a private motor carrier of passengers (business) driver: subpart D (relating to road tests and written examinations).

10. Section 391.73 is added to subpart G to read as follows:

§ 391.73 Private motor carrier of passengers (business).

The provisions of § 391.21 (relating to applications for employment), § 391.23

(relating to investigations and inquiries), § 391.31 (relating to road tests), and § 391.35 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in § 390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if that driver fulfills the requirements of paragraphs (b)(1) through (b)(9) of § 391.11 (relating to qualifications of drivers).

11. In § 391.83, paragraph (a) is revised to read as follows:

§ 391.83 Applicability.

(a) Except for a private motor carrier of passengers (nonbusiness), this subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of part 391 of this subchapter.

* * * * *

PART 393—[AMENDED]

12. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

§ 393.67 [Amended]

13. Section 393.67 is amended by adding a new paragraph (a)(6) to read as follows:

§ 393.67 Liquid fuel tanks.

(a) * * *

(6) Private motor carrier of passengers. Motor carriers engaged in the private transportation of passengers may continue to operate a commercial motor vehicle which was not subject to this section or 49 CFR 571.301 at the time of its manufacture, provided the fuel tank of such vehicle is maintained to the original manufacturer's standards.

* * * * * *

PART 395—[AMENDED]

16. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; and 49 CFR 1.48.

17. In § 395.8, paragraph (a) introductory text is revised to read as follows:

§ 395.8 Driver's record of duty status.

(a) Except for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period using the methods prescribed in either paragraphs (a)(1) or (2) of this section.

* * * * *

PART 396—[AMENDED]

18. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. app. 2509; 49 U.S.C. 3102; 49 CFR 1.48.

19. In § 396.3, the introductory text of paragraph (b) is revised to read as follows:

§ 396.3 Inspection, repair, and maintenance.

* * * * *

(b) *Required records*—For vehicles controlled for 30 consecutive days or more, except for a private motor carrier of passengers (nonbusiness), the motor carriers shall maintain, or cause to be maintained, the following record for each vehicle:

* * * * *

20. In § 396.11, paragraph (d) is revised to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(d) Exemption. The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness) operations, driveaway-towaway operations as specified in § 396.15, or to any motor carrier operating only one (1) motor vehicle.

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February 23, 1994

Part VIII

Department of Education

Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964; Notice

DEPARTMENT OF EDUCATION

Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964

AGENCY: Department of Education.

ACTION: Notice of final policy guidance.

SUMMARY: The Secretary of Education issues final policy guidance on Title VI of the Civil Rights Act of 1964 and its implementing regulations. The final policy guidance discusses the applicability of the statute's and regulations' nondiscrimination requirement to student financial aid that is awarded, at least in part, on the basis of race or national origin.

EFFECTIVE DATE: This policy guidance takes effect on May 24, 1994, subject to the transition period described in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanette Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036–I Switzer Building, Washington, DC 20202–1174. Telephone (202) 205–8635. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at 1–800–358–8247.

SUPPLEMENTARY INFORMATION: On December 10, 1991, the Department published a notice of proposed policy guidance and request for public comment in the **Federal Register** (56 FR 64548). The purpose of the proposed guidance and of this final guidance is to help clarify how colleges can use financial aid to promote campus diversity and access of minority students to postsecondary education without violating Federal anti-discrimination laws. The Secretary of Education encourages continued use of financial aid as a means to provide equal educational opportunity and to provide a diverse educational environment for all students. The Secretary also encourages the use by postsecondary institutions of other efforts to recruit and retain minority students, which are not affected by this policy guidance.

This guidance is designed to promote these purposes in light of Title VI of the Civil Rights Act of 1964 (Title VI), which states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Department has completed its review of this issue, taking into account the results of a recent study by the General Accounting Office (GAO) and public comments submitted in response to the proposed policy guidance. The Secretary has determined that the proposed policy guidance interpreted the requirements of Title VI too narrowly in light of existing regulations and case law. While Title VI requires that strong justifications exist before race or national origin is used as a basis for awarding financial aid, many of the rationales for existing race-based financial aid programs described by commenters appear to meet this standard.

The recent report by GAO on current financial aid programs does not indicate the existence of serious problems of noncompliance with the law in postsecondary institutions. That report found that race-targeted scholarships constitute a very small percentage of the scholarships awarded to students at postsecondary institutions. The Secretary anticipates that most existing programs will be able to satisfy the principles set out in this final guidance.

The Department will use the principles described in this final policy guidance in making determinations concerning discrimination based on race or national origin in the award of financial aid. These principles describe the circumstances in which the Department, based on its interpretation of Title VI and relevant case law, believes consideration of race or national origin in the award of financial aid to be permissible. A financial aid program that falls within one or more of these principles will be, in the Department's view, in compliance with Title VI.[1] This guidance is intended to assist colleges in fashioning legally defensible affirmative action programs to promote the access of minority students to postsecondary education. The Department will offer technical assistance to colleges in reexamining their financial aid programs based on this guidance.

This notice consists of five simply stated principles and a section containing a legal analysis for each principle. The legal analysis addresses the major comments received in response to the notice of proposed policy guidance.

[1] In identifying these principles, the Department is not foreclosing the possibility that there may be other bases on which a college may support its consideration of race or national origin in awarding financial aid. The Department will consider any justifications that are presented during the course of a Title VI investigation on a case-by-case basis.

Summary of Changes in the Final Policy Guidance

Almost 600 written responses were received by the Department in response to the proposed policy guidance, many with detailed suggestions and analysis. Many additional suggestions and concerns were raised in meetings between Department officials and representatives of postsecondary institutions and civil rights groups. The vast majority of comments expressed support for the objective of clarifying the options colleges have to use financial aid to promote student diversity and access of minorities to postsecondary education without violating Title VI. Many comments, however, took issue with specific principles in the proposed policy guidance and questioned whether those principles would be effective in accomplishing this purpose.

As more fully explained in the legal analysis section of this document, after reviewing the public comments and reexamining the legal precedents in light of those comments, the Department has revised the policy guidance in the following respects:

(1) Principle 3—"Financial Aid to Remedy Past Discrimination"—has been amended to permit a college to award financial aid based on race or national origin as part of affirmative action to remedy the effects of its past discrimination without waiting for a finding to be made by the Office for Civil Rights (OCR), a court, or a legislative body, if the college has a strong basis in evidence of discrimination justifying the use of race-targeted scholarships.

(2) Principle 4—"Financial Aid to Create Diversity"—has been amended to permit the award of financial aid on the basis of race or national origin if the aid is a necessary and narrowly tailored means to accomplish a college's goal to have a diverse student body that will enrich its academic environment.

(3) Principle 5—"Private Gifts Restricted by Race or National Origin"—has been amended to clarify that a college can administer financial aid from private donors that is restricted on the basis of race or national origin only if that aid is consistent with the other principles in this policy guidance.

(4) A provision has been added to permit historically black colleges and universities (HBCUs) to participate in race-targeted programs for black students established by third parties if the programs are not limited to students at HBCUs.

(5) Provisions in the proposed policy guidance for a transition period have

been revised to provide that, as far as the Department's enforcement efforts are concerned—

(a) Colleges and other recipients of federal financial assistance will have a reasonable period of time—up to two years—to review their financial aid programs and to make any adjustments necessary to come into compliance with the principles in this final policy guidance;

(b) No student who has received or applied for financial aid at the time this guidance becomes effective will lose aid as a result of this guidance. Thus, if an award of financial aid is inconsistent with the principles in this guidance, a college or other recipient of Federal financial assistance may continue to provide the aid to a student during the course of his or her enrollment in the academic program for which the aid was awarded, if the student had either applied for or received the aid prior to the effective date of this policy guidance.

Principles

Definitions

For purposes of these principles—

College means any postsecondary institution that receives federal financial assistance from the Department of Education.

Financial aid includes scholarships, grants, loans, work-study, and fellowships that are made available to assist a student to pay for his or her education at a college.

Race-neutral means not based, in whole or in part, on race or national origin.

Race-targeted, race-based, and *awarded on the basis of race or national origin* mean limited to individuals of a particular race or races or national origin or origins.

Principle 1: Financial Aid for Disadvantaged Students

A college may make awards of financial aid to disadvantaged students, without regard to race or national origin, even if that means that these awards go disproportionately to minority students.

Financial aid may be earmarked for students from low-income families. Financial aid also may be earmarked for students from school districts with high dropout rates, or students from single-parent families, or students from families in which few or no members have attended college. None of these or other race-neutral ways of identifying and providing aid to disadvantaged students present Title VI problems. A college may use funds from any source to provide financial aid to disadvantaged students.

Principle 2: Financial Aid Authorized by Congress

A college may award financial aid on the basis of race or national origin if the aid is awarded under a Federal statute that authorizes the use of race or national origin.

Principle 3: Financial Aid To Remedy Past Discrimination

A college may award financial aid on the basis of race or national origin if the aid is necessary to overcome the effects of past discrimination. A finding of discrimination may be made by a court or by an administrative agency—such as the Department's Office for Civil Rights. Such a finding may also be made by a State or local legislative body, as long as the legislature has a strong basis in evidence identifying discrimination within its jurisdiction for which that remedial action is necessary.

In addition, a college may award financial aid on the basis of race or national origin to remedy its past discrimination without a formal finding of discrimination by a court or by an administrative or legislative body. The college must be prepared to demonstrate to a court or administrative agency that there is a strong basis in evidence for concluding that the college's action was necessary to remedy the effects of its past discrimination. If the award of financial aid based on race or national origin is justified as a remedy for past discrimination, the college may use funds from any source, including unrestricted institutional funds and privately donated funds restricted by the donor for aid based on race or national origin.

A State may award financial aid on the basis of race or national origin, under the preceding standards, if the aid is necessary to overcome its own past discrimination or discrimination at colleges in the State.

Principle 4 Financial Aid To Create Diversity

America is unique because it has forged one Nation from many people of a remarkable number of different backgrounds. Many colleges seek to create on campus an intellectual environment that reflects that diversity. A college should have substantial discretion to weigh many factors—including race and national origin—in its efforts to attract and retain a student population of many different experiences, opinions, backgrounds, and cultures—provided that the use of race or national origin is consistent with the constitutional standards reflected in Title VI, *i.e.*, that it is a narrowly tailored means to achieve the goal of a diverse student body.

There are several possible options for a college to promote its First Amendment interest in diversity. First, a college may, of course, use its financial aid program to promote diversity by considering factors other than race or national origin, such as geographic origin, diverse experiences, or socioeconomic background. Second, a college may consider race or national origin with other factors in awarding financial aid if the aid is necessary to further the college's interest in diversity. Third, a college may use race or national origin as a condition of eligibility in awarding financial aid if this use is narrowly tailored, or, in other words, if it is necessary to further its interest in diversity and does not unduly restrict access to financial aid for students who do not meet the race-based eligibility criteria.

Among the considerations that affect a determination of whether awarding race-targeted financial aid is narrowly tailored to the goal of diversity are (1) whether race-neutral means of achieving that goal have been or would be ineffective; (2) whether a less extensive or intrusive use of race or national origin in awarding financial aid as a means of achieving that goal has been or would be ineffective; (3) whether the use of race or national origin is of limited extent and duration and is applied in a flexible manner; (4) whether the institution regularly reexamines its use of race or national origin in awarding financial aid to determine whether it is still necessary to achieve its goal; and (5) whether the effect of the use of race or national origin on students who are not beneficiaries of that use is sufficiently small and diffuse so as not to create an undue burden on their opportunity to receive financial aid.

If the use of race or national origin in awarding financial aid is justified under this principle, the college may use funds from any source.

Principle 5: Private Gifts Restricted by Race or National Origin

Title VI does not prohibit an individual or an organization that is not a recipient of Federal financial assistance from directly giving scholarships or other forms of financial aid to students based on their race or national origin. Title VI simply does not apply.

The provisions of Principles 3 and 4 apply to the use of race-targeted privately donated funds by a college and may justify awarding these funds on the basis of race or national origin if the

college is remedying its past discrimination pursuant to Principle 3 or attempting to achieve a diverse student body pursuant to Principle 4. In addition, a college may use privately donated funds that are not restricted by their donor on the basis of race or national origin to make awards to disadvantaged students as described in Principle 1.

Additional Guidance

Financial Aid at Historically Black Colleges and Universities

Historically black colleges and universities (HBCUs), as defined in Title III of the Higher Education Act (Title III), 20 U.S.C. 1061, are unique among institutions of higher education in America because of their role in serving students who were denied access to postsecondary education based on their race.[2] Congress has made numerous findings reflecting the special role and needs of these institutions in light of the history of discrimination by States and the Federal Government against both the institutions and their students and has required enhancement of these institutions as a remedy for this history of discrimination.

Based upon the extensive congressional findings concerning HBCUs, and consistent with congressional and Executive Branch efforts to enhance and strengthen HBCUs, the Department interprets Title VI to permit these institutions to participate in student aid programs established by third parties that target financial aid to black students, if those programs are not limited to students at the HBCUs. These would include programs to which HBCUs contribute their own institutional funds if necessary for participation in the programs. Precluding HBCUs from these programs would have an unintended negative effect on their ability to recruit talented student bodies and would undermine congressional actions aimed at enhancing these institutions. HBCUs may not create their own race-targeted programs using institutional funds, nor may they accept privately donated race-targeted aid limited to students at the HBCUs, unless they satisfy the requirements of any of the other principles in this guidance.[3]

Transition Period

Although the Department anticipates that most financial aid programs that consider race or national origin in awarding assistance will be found to be consistent with one or more of the principles in this final policy guidance, there will be some programs that require adjustment to comply with Title VI. In order to permit colleges time to assess their programs and to make any necessary adjustments in an orderly manner—and to ensure that students who already have either applied for or received financial aid do not lose their student aid as a result of the issuance of this policy guidance—there will be a transition period during which the Department will work with colleges that require assistance to bring them into compliance.[4]

The Department will afford colleges up to two academic years to adjust their programs for new students. However, to the extent that a college does not need the full two years to make adjustments to its financial aid programs, the Department expects that the adjustments will be made as soon as practicable.

No student who is currently receiving financial aid, or who has applied for aid prior to the effective date of this policy guidance, should lose aid as a result of this guidance. Thus, if a college determines that a financial aid program is not permissible under this policy guidance, the college may continue to provide assistance awarded on the basis of race or national origin to students during the entire course of their academic program at the college, even if that period extends beyond the two-year transition period, if the students had either applied for or received that assistance prior to the effective date of this policy.

Legal Analysis

Introduction

The Department of Education is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, at institutions receiving Federal education funds. Section 601 of Title VI provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. 2000d.

The Department has issued regulations implementing Title VI that are applicable to all recipients of financial assistance from the Department. 34 CFR part 100. The regulations prohibit discrimination in the administration of financial aid programs. Specifically, they prohibit a recipient, on the basis of race, color, or national origin, from denying financial aid; providing different aid; subjecting anyone to separate or different treatment in any matter related to financial aid; restricting the enjoyment of any advantage or privilege enjoyed by others receiving financial aid; and treating anyone differently in determining eligibility or other requirements for financial aid. 34 CFR 100.3(b)(1); see also 34 CFR 100.3(b)(2).

In addition to prohibiting discrimination, the Title VI regulations require that a recipient that has previously discriminated "must take affirmative action to overcome the effects of prior discrimination." 34 CFR 100.3(b)(6)(i). The regulations also permit recipients to take voluntary affirmative action "[e]ven in the absence of such prior discrimination * * * to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin" in the recipient's programs. 34 CFR 100.3(b)(6)(ii); see 34 CFR 100.5(i).

The permissibility of awarding student financial aid based, in whole or in part, on a student's race or national origin involves an interpretation of the preceding provisions concerning affirmative action. The Supreme Court has made clear that Title VI prohibits intentional classifications based on race or national origin for the purpose of affirmative action to the same extent and under the same standards as the Equal Protection Clause of the Fourteenth Amendment.[5] *Guardians Ass'n* v. *Civil Service Commission of the City of New York*, 463 U.S. 582 (1983); *Regents of the University of California* v.

[2] Title III states a number of requirements that an institution must meet in order to be considered an historically black college or university, including the requirement that the college or university was established prior to 1964. 20 U.S.C. 1061. In regulations implementing Title III, the Secretary has identified the institutions that meet these requirements. 34 CFR 608.2(b).

[3] For example, an HBCU might award race-targeted aid to Mexican American students or to white students to promote diversity under Principle 4.

[4] This transition period also applies to recipients of Federal financial assistance that are not colleges, e.g., a nonprofit organization that operates a scholarship program.

[5] Some commenters suggested that Native Americans and Native Hawaiians—because of their special relationship with the Federal Government—should be exempt from the restrictions outlined in the policy guidance. The Department has found no legal authority for treating affirmative action by recipients of Federal assistance any differently if the group involved is Native Americans or Native Hawaiians. Thus, the principles in this policy guidance—including Principle 2, which states that a college may award financial aid on the basis of race or national origin if authorized by Federal statute—apply to financial aid that is limited to Native Americans and Native Hawaiians. However, the policy does not address the authority of tribal governments or tribally controlled colleges to restrict aid to members of their tribes.

Bakke, 438 U.S. 265 (1978). Thus, the Department's interpretation of the general language of the Title VI regulations concerning permissible affirmative action is based on case law under both Title VI and the Fourteenth Amendment.

The following discussion addresses the legal basis for each of the five principles set out in the Department's policy guidance.

1. Financial Aid for Disadvantaged Students

The first principle provides that colleges may award financial aid to disadvantaged students. Colleges are free to define the circumstances under which students will be considered to be disadvantaged, as long as that determination is not based on race or national origin.

As some commenters noted, the Title VI regulations prohibit actions that, while not intentionally discriminatory, have the effect of discriminating on the basis of race or national origin. 34 CFR 100.3(b)(2); see *Guardians Ass'n* v. *Civil Service Commission of the City of New York, supra; Lau* v. *Nichols*, 414 U.S. 563 (1974). However, actions that have a disproportionate effect on students of a particular race or national origin are permissible under Title VI if they bear a "manifest demonstrable relationship" to the recipient's educational mission. *Georgia State Conference of Branches of NAACP* v. *State of Georgia*, 775 F.2d 1403, 1418 11th Cir. (1985). It is the Department's view that awarding financial aid to disadvantaged students provides a sufficiently strong educational purpose to justify any racially disproportionate effect the use of this criterion may entail. In particular, the Department believes that an applicant's character, motivation, and ability to overcome economic and educational disadvantage are educationally justified considerations in both admission and financial aid decisions. Therefore, the award of financial assistance to disadvantaged students does not violate Title VI.

2. Financial Aid Authorized by Congress

This principle states that a college may award financial aid on the basis of race or national origin if the use of race or national origin in awarding that aid is authorized by Federal statute. This is because financial aid programs for minority students that are authorized by a specific Federal law cannot be considered to violate another Federal law, *i.e.*, Title VI. In the case of the establishment of federally funded financial aid programs, such as the Patricia Roberts Harris Fellowship, the authorization of specific minority scholarships by that legislation prevails over the general prohibition of discrimination in Title VI.[6] This result also is consistent with the canon of construction under which the specific provisions of a statute prevail over the general provisions of the same or a different statute. See 2A N. Singer *Sutherland Statutory Construction* section 46.05 (5th ed. 1992); *Radzanower* v. *Touche Ross and Co.*, 426 U.S. 148, 153 (1976); *Morton* v. *Mancari*, 417 U.S. 535, 550–51 (1974); *Fourco Glass Co.* v. *Transmira Products Corp.*, 353 U.S. 225, 228–29 (1957).

Some commenters argued that the existence of congressionally authorized race-targeted financial aid programs supports the position that all race-targeted financial aid programs are permissible under Title VI. However, the fact that Congress has enacted specific Federal programs for race-targeted financial aid does not serve as an authorization for States or colleges to create their own programs for awarding student financial aid based on race or national origin.

3. Financial Aid To Remedy Past Discrimination

Classifications based on race or national origin, including affirmative action measures, are "suspect" classifications that are subject to strict scrutiny by the courts. *Regents of the University of California* v. *Bakke*, 438 U.S. at 292. The use of those classifications must be based on a compelling governmental interest and must be narrowly tailored to serve that interest. *Richmond* v. *J.A. Croson Co.*, 488 U.S. 469 (1989); *Wygant* v. *Jackson Board of Education*, 476 U.S. 267 (1986).

The Supreme Court has repeatedly held that the Government has a compelling interest in ensuring the elimination of discrimination on the basis of race or national origin. To further this governmental interest, the Supreme Court has sanctioned the use of race-conscious measures to eliminate discrimination. *United States* v. *Fordice*, _____ U.S. _____ (1992); *United States* v. *Paradise*, 480 U.S. 149, 167 (1987); *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 15–16 (1971); *McDaniel* v. *Barresi*, 402 U.S. 39 (1971); *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 438 (1968). Most recently, in *United States* v. *Fordice, supra*, the Court found that States that operated *de jure* systems of higher education have an affirmative obligation to ensure that no vestiges of the de jure system continue to have a discriminatory effect on the basis of race.

The implementing regulations for Title VI provide that a recipient of Federal financial assistance that has previously discriminated in violation of the statute or regulations must take affirmative action to overcome the effects of the past discrimination. 34 CFR 100.3(b)(6)(i). Thus, a college that has been found to have discriminated against students on the basis of race or national origin must take steps to remedy that discrimination. That remedial action may include the awarding of financial aid to students from the racial or national origin groups that have been discriminated against.

The proposed policy guidance provided that a finding of past discrimination could be made by a court or by an administrative agency, such as the Department's Office for Civil Rights. It also could be made by a State or local legislative body, as long as the legislature requiring the affirmative action had a strong basis in evidence identifying discrimination within its jurisdiction for which that remedial action is required.

A number of commenters argued that colleges should be able to take remedial action without waiting for a formal finding by a court, administrative agency, or legislature. The Department agrees. The final policy guidance provides that, even in the absence of a finding by a court, legislature, or administrative agency, a college—in order to remedy its past discrimination—may implement a remedial race-targeted financial aid program. It may do so if it has a strong basis in evidence for concluding that this affirmative action is necessary to remedy the effects of its past discrimination and its financial aid program is narrowly tailored to remedy that discrimination. Permitting colleges to remedy the effects of their past discrimination without waiting for a formal finding is consistent with the approach taken by the Supreme Court in *Wygant* v. *Jackson Board of Education, supra*. In *Wygant*, the Court clarified that a school district's race-conscious voluntary affirmative action plan could be upheld based on subsequent judicial findings of past discrimination by the

[6] Of course, an individual may challenge the statute under which the aid is provided as violative of the Constitution. The statute would then be evaluated under the constitutional standards for racial classifications authorized by Federal statute that were established in *Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547 (1990) and *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980). However, as explained previously, such a suit would not be viable under Title VI, for which the Department has enforcement responsibility.

district. *Wygant* v. *Jackson Board of Education*, 476 U.S. at 277.

In the *Wygant* case, teachers challenged their school board's adoption, through a collective bargaining agreement, of a layoff plan that included provisions protecting employees from layoffs on the basis of their race. The school board contended, among other things, that the plan's race-conscious layoff provisions were constitutional because they were adopted to remedy the school board's own prior discrimination. *Id.*, at 276, 277. Justice Powell, in a plurality opinion, stated that a public employer must have "convincing evidence" that an affirmative action plan is warranted by past discrimination before undertaking that plan. *Id.*, at 277. If the plan is challenged by employees who are harmed by the plan, the court must then make a determination that the employer had a "strong basis in evidence for its conclusion that remedial action was necessary." *Id.*

In a concurring opinion, Justice O'Connor agreed that a "contemporaneous or antecedent finding of past discrimination by a court was not a constitutional prerequisite to a public employer's voluntary agreement to an affirmative action plan." *Id.*, at 289. She explained that contemporaneous or antecedent findings were not necessary because "A violation of Federal statutory or constitutional requirements does not arise with the making of findings; it arises when the wrong is committed." Moreover, she explained that important values would be sacrificed if contemporaneous findings were required because "a requirement that public employers make findings that they engaged in illegal discrimination before they engage in affirmative action programs would severely undermine public employers' incentive to meet voluntarily their civil rights obligations." *Id.*, at 289, 290 (citations omitted).

In *Richmond* v. *J.A. Croson, supra*, the Court again emphasized that remedial race-conscious action must be based on strong evidence of discrimination. That case involved the constitutionality of a city ordinance establishing a plan to remedy past discrimination by requiring prime contractors awarded city construction contracts to subcontract at least 30% of the dollar amount of each contract to minority-controlled businesses. The Court found that the city council had failed to make sufficient factual findings to demonstrate a "strong basis in evidence" of racial discrimination "by anyone in the Richmond construction industry." *Richmond* v. *J.A. Croson*, 488 U.S. at 500.

Evidence of past discrimination may, but need not, include documentation of specific incidents of intentional discrimination. Instead, evidence of a statistically significant disparity between the percentage of minority students in a college's student body and the percentage of qualified minorities in the relevant pool of college-bound high school graduates may be sufficient. Such an approach is analogous to cases of employment discrimination where the courts accept statistical evidence to infer intentional discrimination against minority job applicants. See *Hazelwood School District* v. *United States*, 433 U.S. 299 (1977).

Based on this case law, Principle 3 provides that a college may award race-targeted scholarships to remedy discrimination as found by a court or by an administrative agency, such as the Department's Office for Civil Rights. OCR often has approved race-targeted financial aid programs as part of a Title VI remedial plan to eliminate the vestiges of prior discrimination within a State higher education system that previously was operated as a racially segregated dual system. As indicated by the *Croson* decision, a finding of past discrimination also may be made by a State or local legislative body, as long as the legislature has a strong basis in evidence identifying discrimination within its jurisdiction. The remedial use of race-targeted financial aid must be narrowly tailored to remedy the effects of the discrimination.

As revised, Principle 3 also allows a college to award student aid on the basis of race or national origin as part of affirmative action to remedy the effects of the school's past discrimination without waiting for a finding to be made by OCR, a court, or a legislative body, if the college has convincing evidence of past discrimination justifying the affirmative action. The Department's Title VI regulations, like the Fourteenth Amendment, do not require that antecedent or contemporaneous findings of past discrimination be made before remedial affirmative action is implemented, as long as the college has a strong basis in evidence of its past discrimination. Allowing colleges to implement narrowly tailored remedial affirmative action if there is strong evidentiary support for it—without requiring that it be delayed until a finding is made by OCR, a court, or a legislative body—will assist in ensuring that Title VI's mandate against discrimination based on race or national origin is achieved.

4. Financial Aid To Create Diversity

The Title VI regulations permit a college to take voluntary affirmative action, even in the absence of past discrimination, in response to conditions that have limited the participation at the college of students of a particular race or national origin. 34 CFR 100.3(b)(6)(ii); see 34 CFR 100.5(i). In *Regents of the University of California* v. *Bakke, supra*, the Supreme Court considered whether the University could take voluntary affirmative action by setting aside places in each medical school class for which only minority students could compete.[7]

The Court considered four rationales provided by the University of California for taking race and national origin into account in making admissions decisions: (1) To reduce the historic deficit of traditionally disfavored minorities in medical schools and the medical profession. (2) To counter the effects of societal discrimination. (3) To increase the number of physicians who would practice in communities lacking medical services. (4) To obtain the educational benefits of a diverse student body. Similar arguments have been advanced in response to the Department's proposed policy guidance on student financial assistance awarded on the basis of race or national origin.

The Court rejected the first three justifications. The first reason was rejected as facially invalid because setting aside a fixed number of admission spaces only to ensure that members of a specified race are admitted was found to be racial "discrimination for its own sake." *Regents of the University of California* v. *Bakke*, 438 U.S. at 307. In rejecting the second contention that the effects of societal discrimination warranted the racial preferences, the Court recognized that the State had a substantial interest in eliminating the effects of discrimination, but that interest was found to be limited to "redress[ing] the wrongs worked by specific instances of discrimination." *Id.* The third contention, concerning the provision of health care services to underserved communities, was rejected by the *Bakke* Court as an evidentiary matter because the State had "not carried its burden of demonstrating that it must prefer members of particular ethnic groups over all other individuals in order to

[7] The Court noted that the University "does not purport to have made" a determination that its affirmative action plan was necessary to remedy any past discrimination at the medical school. *Regents of the University of California* v. *Bakke*, 438 U.S. at 309.

promote better health-care delivery to deprived citizens." *Id.*, at 311.

With respect to the final objective, the "attainment of a diverse student body," Justice Powell found that—

> This clearly is a constitutionally permissible goal for an institution of higher education. Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body.

Id., at 311, 312. Thus, colleges have a First Amendment right to seek diversity in admissions to fulfill their academic mission through the "robust exchange of ideas" that flows from a diverse student body. *Id.*, at 312–313.[8] However, the means to achieve this "countervailing constitutional interest" under the First Amendment must comport with the requirements of the Fourteenth Amendment. The Medical School's policy of setting aside a fixed number of admission spaces solely for minorities was found not to pass the Fourteenth Amendment's strict scrutiny test, because the policy's use of race as a condition of eligibility for the slots was not necessary to promote the school's diversity interest. *Id.*, at 315–316. Justice Powell found that the Medical School could advance its diversity interest under the First Amendment in a narrowly tailored manner that passed the Fourteenth Amendment's strict scrutiny test by using race or national origin as one of several factors that would be considered as a plus factor for an applicant in the admissions process. *Id.*, at 317–319.

Following the *Bakke* decision, the Department reexamined its Title VI regulations to determine whether any changes were necessary. In a policy interpretation published in the **Federal Register** (44 FR 58509), the Department concluded that no change was warranted. The Department determined that the Title VI regulatory provision authorizing voluntary affirmative action was consistent with the Court's decision and that the provision would be interpreted to incorporate the limitations on voluntary affirmative action announced by the Court.[9] Thus, if a college's use of race or national origin in awarding financial aid meets the Supreme Court's test under the Fourteenth Amendment for permissible voluntary affirmative action, it will also meet the requirements of Title VI.

In the Department's proposed policy guidance on financial aid, a principle was included permitting the use of race or national origin as a "plus" factor in awarding student aid. The basis for the principle was the *Bakke* decision and the Department's assessment that using an approach that had been approved by the Supreme Court as narrowly tailored to achieve diversity in the admissions context also would be permissible in awarding financial aid.[10]

In response to the proposed policy, many colleges submitted comments arguing that the use of race or national origin as a plus factor in awarding financial aid may be inadequate to achieve diversity. They contended that, in some cases, it may be necessary to designate a limited amount of aid for students of a particular race or national origin. According to those commenters, a college's financial aid program can serve a critical role in achieving a diverse student body in at least three respects: First, the availability of financial aid set aside for members of a particular race or national origin serves as a recruitment tool, encouraging applicants to consider the school. Second, it provides a means of encouraging students who are offered admission to accept the offer and enroll at the school. Finally, it assists colleges in retaining students until they complete their program of studies.

The commenters argued that a college—because of its location, its reputation (whether deserved or not) of being inhospitable to minority students, or its number of minority graduates—may be unable to recruit sufficient minority applicants even if race or national origin is considered a positive factor in admissions and the award of aid. That is, the failure to attract a sufficient number of minority applicants who meet the academic requirements of the college will make it impossible for the college to enroll a diverse student body, even if race or national origin is given a competitive "plus" in the admissions process. In addition, a college that has sufficient minority applicants to offer admission to a diverse group of applicants may find that, absent the availability of financial aid set aside for minority students, its offers of admission are disproportionately rejected by minority applicants.

Furthermore, commenters were concerned that, while there may be large amounts of financial aid available for undergraduates at their institutions, there may be insufficient aid for graduate students, almost all of whom are able to demonstrate financial need. Thus, it is possible that a college that is able to achieve a diverse student body in some of its programs using race-neutral financial aid criteria or using race or national origin as a "plus" factor may find it necessary to use race or national origin as a condition of eligibility in awarding limited amounts of financial aid to achieve diversity in some of its other programs, such as its graduate school or particular undergraduate schools.

The Department agrees with the commenters that in the circumstances they have described it may be necessary for a college to set aside financial aid to be awarded on the basis of race or national origin in order to achieve a diverse student body. Whether a college's use of race-targeted financial aid is "narrowly tailored" to achieve this compelling interest involves a case-by-case determination that is based on the particular circumstances involved. The Department has determined, based on the comments, to expand Principle 4 to permit those case-by-case determinations.

The Court in *Bakke* indicated that race or national origin could be used in making admissions decisions to further the compelling interest of a diverse student body even though the effect might be to deny admission to some students who did not receive a competitive "plus" based on race or ethnicity.[11] However, the use of a set-aside of places in the entering class was impermissible because it was not necessary to the goal of diversity. In cases since *Bakke*, the Supreme Court has provided additional guidance on the factors to be considered in determining whether a classification based on race or national origin is narrowly tailored to its purpose. These factors will be

[8] The Secretary believes that a college's academic freedom interest in the "robust exchange of ideas" also includes an interest in the existence of a diverse faculty and, more generally, in diversity of professors nationally, since scholars engage in the interchange of ideas with others in their field, and not merely with faculty at their particular school. A university could contribute to this interest by enrolling graduate students who are committed to becoming professors and who will promote the overall diversity of scholars in their field of study, regardless of the diversity of the students who are admitted to the university's own graduate program.

[9] The present policy guidance on student financial assistance supplements the 1979 policy interpretation.

[10] The Department will presume that a college's use of race or national origin as a plus factor, with other factors, is narrowly tailored to further the compelling governmental interest in diversity, as long as the college periodically reexamines whether its use of race or national origin as a plus factor continues to be necessary to achieve a diverse student body.

[11] *Bakke* was the Supreme Court's first decision in an affirmative action case. Since that time, the Court has decided a number of affirmative action cases, none of which have invalidated Justice Powell's opinion in *Bakke* that the promotion of diversity in the higher education setting is a compelling interest.

considered by the Department in assessing whether a college's race-targeted financial aid program meets the requirements of Title VI.

First, it is necessary to determine the efficacy of alternative approaches. *United States* v. *Paradise*, 480 U.S. at 171. Thus, it is important that consideration has been given to the use of alternative approaches that are less intrusive (*e.g.*, the use of race or national origin as a "plus" factor rather than as a condition of eligibility). *Metro Broadcasting, Inc.* v. *F.C.C.*, 497 U.S. at 583; *Richmond* v. *J.A. Croson*, 488 U.S. at 507. Financial aid that is restricted to students of a particular race or national origin should be used only if a college determines that these alternative approaches have not or will not be effective.

Second, the extent, duration, and flexibility of the racial classification must be addressed. *Metro Broadcasting, Inc.* v. *F.C.C.*, 497 U.S. at 594; *United States* v. *Paradise*, 480 U.S. at 171. The extent of the use of the classification should be no greater than is necessary to carry out its purpose. *Richmond* v. *J.A. Croson*, 488 U.S. at 507. That is, the amount of financial aid that is awarded based on race or national origin should be no greater than is necessary to achieve a diverse student body.

The duration of the use of a racial classification should be no longer than is necessary to its purpose, and the classification should be periodically reexamined to determine whether there is a continued need for its use. *Metro Broadcasting, Inc.* v. *F.C.C.*, 497 U.S. at 594. Thus, the use of race-targeted financial aid should continue only while it is necessary to achieve a diverse student body, and an assessment as to whether that continues to be the case should be made on a regular basis.

In addition, the use of the classification should be sufficiently flexible that exceptions can be made if appropriate. For example, the Supreme Court in *United States* v. *Paradise* found that a race-conscious promotion requirement was flexible in operation because it could be waived if no qualified candidates were available. 480 U.S. at 177. Similarly, racial restrictions on the award of financial aid could be waived if there were no qualified applicants.

Finally, the burden on those who are excluded from the benefit conferred by the classification based on race or national origin (*i.e.*, non-minority students) must be considered. *Id.*, at 171. A use of race or national origin may impose such a severe burden on particular individuals—for example, eliminating scholarships currently received by non-minority students in order to start a scholarship program for minority students—that it is too intrusive to be considered narrowly tailored. See *Wygant* v. *Jackson Board of Education*, 476 U.S. at 283 (use of race in imposing layoffs involves severe disruption to lives of identifiable individuals). Generally, the less severe and more diffuse the impact on non-minority students, the more likely a classification based on race or national origin will address this factor satisfactorily. However, it is not necessary to show that no student's opportunity to receive financial aid has been in any way diminished by the use of the race-targeted aid. Rather, the use of race-targeted financial aid must not place an undue burden on students who are not eligible for that aid.

A number of commenters argued that race-targeted financial aid is a minimally intrusive method to attain a diverse student body, far more limited in its impact on non-minority students, for example, than race-targeted admissions policies. Under this view, and unlike the admissions plan at issue in *Bakke*, a race-targeted financial aid award could be a narrowly tailored means of achieving the compelling interest in diversity.

The Department agrees that there are important differences between admissions and financial aid. The affirmative action admissions program struck down in *Bakke* had the effect of excluding applicants from the university on the basis of their race. The use of race-targeted financial aid, on the other hand, does not, in and of itself, dictate that a student would be foreclosed from attending a college solely on the basis of race. Moreover, in contrast to the number of admissions slots, the amount of financial aid available to students is not necessarily fixed. For example, a college's receipt of privately donated monies restricted to an underrepresented group might increase the total pool of funds for student aid in a situation in which, absent the ability to impose such a limitation, the donor might not provide any aid at all.

Even in the case of a college's own funds, a decision to bar the award of race-targeted financial aid will not necessarily translate into increased resources for students from non-targeted groups. Funds for financial aid restricted by race or national origin that are viewed as a recruitment device might be rechanneled into other methods of recruitment if restricted financial aid is barred. In other words, unlike admission to a class with a fixed number of places, the amount of financial aid may increase or decrease based on the functions it is perceived to promote.

In summary, a college can use its financial aid program to promote diversity by considering factors other than race or national origin, such as geographic origin, diverse experiences, or socioeconomic background. In addition, a college may take race or national origin into account as one factor, with other factors, in awarding financial aid if necessary to promote diversity. Finally, a college may use race or national origin as a condition of eligibility in awarding financial aid if it is narrowly tailored to promote diversity.

5. Private Gifts Restricted by Race or National Origin

The fifth principle sets out the circumstances under which a recipient college can award financial aid provided by private donors that is restricted on the basis of race or national origin.

As noted by many commenters, pursuant to the Civil Rights Restoration Act of 1987, all of the operations of a college are covered by Title VI if the college receives any Federal financial assistance. 42 U.S.C. 2000d-4a(2)(A). Since a college's award of privately donated financial aid is within the operations of the college, the college must comply with the requirements of Title VI in awarding those funds.[12]

A college may award privately donated financial aid on the basis of race or national origin if the college is remedying its past discrimination pursuant to Principle 3 or attempting to achieve a diverse student body pursuant to Principle 4. In other words, Principles 3 and 4 apply to the use of privately donated funds and may justify awarding these funds on the basis of race or national origin in accordance with the wishes of the donor. Similarly, under Principle 1, a college may award privately donated financial aid that is restricted to disadvantaged students.

Some commenters were uncertain whether it is permissible under Title VI for a college to solicit private donations of student financial aid that are restricted to students of a particular race or national origin. If the receipt and award of these funds is permitted by Title VI, that is, in the circumstances

[12] Similarly, other organizations that receive Federal financial assistance must comply with Title VI in their award of student financial aid. On the other hand, individuals or organizations not receiving Federal funds are not subject to Title VI. They may thus, as far as Title VI is concerned, directly award financial aid to students on the basis of race or national origin.

previously described, it is similarly permissible to solicit the funds from private sources.

Financial Aid at Historically Black Colleges and Universities

To ensure that the principles in this policy guidance do not subvert congressional efforts to enhance historically black colleges and universities (HBCUs), these institutions may participate in student aid programs established by third parties for black students that are not limited to students at the HBCUs and may use their own institutional funds in those programs if necessary for participation.[13] See 20 U.S.C. 1051, 1060, and 1132c (congressional findings of past discrimination against HBCUs and of the need for enhancement).

This finding is based upon congressional findings of past discrimination against HBCUs and the students they have traditionally served, as well as the Department's determination that these institutions and their students would be harmed if precluded from participation in programs created by third parties that designate financial aid for black students. That action would have an unintended negative effect on their ability to recruit excellent student bodies and could undermine congressional actions aimed at enhancing these institutions.

Congress has repeatedly made findings that recognize the unique historical mission and important role that HBCUs play in the American system of higher education, and particularly in providing equal educational opportunity for black students. 20 U.S.C. 1051, 1060, and 1132c. Congress has created programs that strengthen and enhance HBCUs in Titles II through VII of the Higher Education Act, as amended by Public Law 99–498, 20 U.S.C. 1021–1132i-2. It has found that "there is a particular national interest in aiding institutions of higher education that have historically served students who have been denied access to postsecondary education because of race or national origin . . . so that equality of access and quality of postsecondary education opportunities may be enhanced for all students." 20 U.S.C. 1051. "A key link to the chain of expanding college opportunity for African American youth is strengthening the Nation's historically Black colleges and universities." House Report No. 102–447, 1992 U.S. Code Cong. and Adm. News p. 353.

Congress has found that "the current state of HBCUs is partly attributable to the discriminatory action of the States and the Federal Government and this discriminatory action requires the remedy of enhancement of Black postsecondary institutions to ensure their continuation and participation in fulfilling the Federal mission of equality of educational opportunity." 20 U.S.C. 1060. See also, House Report No. 102–447, 1992 U.S. Code Cong. and Adm. News p. 353; House Report No. 99–383, 1986 U.S. Code Cong. and Adm. News 2592–2596. This includes providing access and quality education to low-income and minority students, and improving HBCUs' academic quality. 20 U.S.C. 1051.

For these same reasons, every Administration in recent years has recognized the special role and contributions of HBCUs and expressed support for their enhancement. See "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education," 43 FR 6658 (1977); Exec. Orders Nos. 12232, 45 FR 53437 (1980); 12320, 46 FR 48107 (1981); 12677, 54 FR 18869 (1989); and 12876, 58 FR 58735 (1993). The Department's own data indicate that HBCUs continue to play a vital role in providing higher education for many black students. In 1989 and 1990, more than one in four black bachelor's degree recipients received their degree from an HBCU (26.7%). See, "Historically Black Colleges and Universities, 1976–90" (U.S. Department of Education, Office of Educational Research and Improvement, July 1992).

This policy guidance is not intended to limit the efforts to enhance HBCUs called for by Congress and the President. The Department recognizes, however, that Principle 3 (remedying past discrimination) and Principle 4 (creating diversity) may not provide for HBCUs the same possibility of participating in race-targeted programs of financial aid for black students established by third parties as are provided for other colleges and universities. As some commenters pointed out, HBCUs continue to enroll a disproportionate percentage of black students and need to be able to compete for the most talented black students if they are to improve the quality and prestige of their academic environments and, therefore, enhance their attractiveness to all students regardless of race or national origin.

HBCUs' abilities to recruit, enroll and retain talented students will be undermined unless HBCUs are permitted to attract talented black students by participating in aid programs for black students that are established by third parties in which other colleges, *i.e.*, those that meet Principle 3 or 4, participate. Limiting or precluding HBCUs' participation in private programs, such as the National Achievement Scholarship program, would have an unintended negative effect on their ability to recruit a talented student body. Under this scholarship program, which is restricted to academically excellent black students, one type of National Achievement Scholarship is funded by the institution. If HBCUs were unable to participate in this program, some top black students might be forced to choose between (1) receiving a National Achievement Scholarship to attend a school that met Principle 3 or 4 and (2) attending an HBCU. For these reasons, the Department interprets Title VI to permit HBCUs to participate in certain race-targeted aid programs for black students, such as the National Achievement Scholarship program.

The Department reads Title VI consistent with other statutes and Executive orders addressing the special needs and history of HBCUs. In particular, the Department notes congressional findings of discrimination against black students that are the basis for enhancement efforts at HBCUs. Additionally, the Department interprets Title VI to permit limited use of race to avoid an anomalous and absurd result, *i.e.*, penalizing HBCUs and students who seek admission to HBCUs, and putting HBCUs at a disadvantage with respect to other schools precisely because of the special history and composition of the HBCUs.

The use of race-targeted aid by HBCUs that the Department is interpreting Title VI to permit under this provision is narrowly tailored to further the congressionally recognized purpose of enhancement of HBCUs. HBCUs may not discriminate on the basis of race or national origin in admitting students. They may not create their own race-targeted financial aid programs using their own institutional funds unless they satisfy the requirements of any of the other principles in this guidance. Nor may they accept private donations of race-targeted aid for black students that are limited to students at the institution unless otherwise permitted by the guidance. Because HBCUs have traditionally enrolled black students, it should not subvert the goal of enhancing the institutions to require

[13] This provision is limited to HBCUs as defined in Title III of the Higher Education Act. It does not apply generally to predominantly black institutions of higher education. The reason for this distinction is that Congress has made specific findings concerning the unique status of the HBCUs that serve as the basis for this provision.

that they not restrict aid to black students if using their own funds or funds from private donors that wish to set up financial aid programs at these institutions. However, because the applicant pool that is attracted to HBCUs presently consists primarily of black students, HBCUs would be placed at a distinct disadvantage with regard to other colleges in attracting talented students if they could not participate in financial aid programs set up by third parties for black students. Thus, the Department interprets Title VI to permit an HBCU to participate in race-targeted financial aid programs for black students that are created by third parties, if the programs are not restricted to students at HBCUs.

The participation by HBCUs in those race-targeted aid programs will be subject to periodic reassessment by the Department. The Department will regularly review the results of enhancement efforts at HBCUs, including the annual report to the President on the progress achieved in enhancing the role and capabilities of HBCUs required by Section 7 of Executive Order 12876. If an HBCU has been enhanced to the point that the institution is attractive to individuals regardless of their race or national origin to the same extent as a non-HBCU, then that institution may participate in only those race-targeted aid programs that are consistent with the other principles in this policy guidance.

Transition Period

The proposed policy guidance would have provided a four-year transition period for individual students to ensure that they did not lose their financial aid as a result of the guidance. Commenters pointed out that, in some cases, four years may not be a sufficient time for a student to complete his or her academic program at a college. In addition, commenters expressed concern that revising the policies and procedures used in recruiting minority students and in providing student financial assistance would require time to develop and implement. The revisions that have been made to the final policy guidance should result in far fewer instances in which colleges will be required to change their financial aid programs. However, the Department recognizes that colleges may need to conduct extensive reviews of their current programs and that in some cases adjustments to those programs may be necessary. As a result, the Department is expanding the proposed transition period.

The Department is providing colleges a reasonable period of time to review and, if necessary, adjust their financial aid programs in an orderly manner that causes the least possible disruption to their students. Colleges must adjust their financial aid programs to be consistent with the principles previously set out no later than two years after the effective date of the Department's policy guidance. However, colleges may continue to provide financial aid awarded on the basis of race or national origin to students who had either applied for or received that assistance prior to the effective date of this guidance during the full course of those students' academic program at the college, even though, in many cases, this will extend beyond the two-year period and, in some cases, the four-year period identified in the proposed policy.

Although some commenters questioned the Department's authority to create a transition period, such a period for adjustments is consistent with the Department's approach in the past under other civil rights statutes it enforces. See 34 CFR 106.41(d) (transition period to permit recipients to bring their athletic programs into compliance with Title IX of the Education Amendments of 1972); 34 CFR 104.22(e) (transition period to permit recipients to make facilities accessible to individuals with disabilities, as required by Section 504 of the Rehabilitation Act of 1973). It is based on the Department's recognition of the practical difficulties that some colleges may face in making changes to their recruitment and financial aid award processes.

The transition period also is consistent with the Department's policy, in approving plans for the desegregation of State systems of higher education, that students who have been the beneficiaries of past discriminatory conduct not be required to bear the burden of corrective action. For example, while the Department requires State higher education systems to take remedial action to increase the enrollment of previously excluded students, it does not require the expulsion of any student in order to permit admission of those previously excluded. See *Wygant* v. *Jackson Board of Education*, 476 U.S. at 282–85.

Finally, the transition period is consistent with the Department's obligations under Title VI to seek voluntary compliance by recipients that have been found in violation of the statute. 42 U.S.C. 2000d–1. During the transition period, the Department will provide colleges with technical assistance to help them make any necessary changes to their financial aid programs in order to achieve compliance with Title VI.

Program Authority: 42 U.S.C. 2000d.

Dated: February 17, 1994.

Richard W. Riley,

Secretary of Education.

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