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Wednesday
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1421-91]

RIN 1115—AC45

Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR part 204 in accordance with the Immigration Act of 1990 (IMMACT), by providing procedures and criteria for certain family members who were not previously eligible, but who now qualify for immigration benefits. Section 101 of IMMACT allows certain widows and widowers to apply for immigration benefits on their own behalf, and section 112 provides additional visa numbers for family members of legalized aliens during fiscal years 1992, 1993, and 1994. Although these provisions do not change the process for petitioning for family members, this rule implements the provisions of sections 101 and 112 of IMMACT for qualified widows, widowers, and legalized aliens, and also provides filing procedures. In addition, this final rule reorganizes the sections for clarity. This rule is necessary to provide United States citizens and lawful permanent residents who file relative visa petitions with clear instructions regarding eligibility and proper filing procedures.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K., Rita Boie, or Susan Dugas, Senior Immigration Examiners, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990, Public Law 101-649, made substantial revisions to the immigration statutes and required corresponding changes to immigration-related regulations. This rule makes changes required by section 112 of IMMACT, which extends additional visa numbers to certain family members of legalized aliens during fiscal years 1992 through 1994, and section 101, which classifies a widow or widower of a United States citizen as an immediate relative when certain conditions are met. The rule also makes changes designed to promote clarity and ease of reference. Since the last major reform of the Immigration and Nationality Act of 1952, as amended, 8 CFR part 204 had undergone numerous revisions and amendments. These revisions not only expanded part 204 but also made it difficult to read and understand. The revisions also made the section difficult to research, since the requirements and procedures under certain paragraphs of the law were spread throughout the section.

On August 19, 1991, the Service published a proposed rule with request for comments in the **Federal Register** at 56 FR 41084-41097. The Service proposed to reorganize part 204 so that each petition classification would be discussed in a separate section for easy access. The proposed rule also included procedures for implementing sections 101 and 112 of IMMACT. During the 30-day comment period, which closed on September 18, 1991, the Service received thirty-nine constructive and useful comments from the public.

The following is a discussion of the issues raised in those comments, the Service's position on those issues, and the revisions adopted in the final rule.

1. General Comments

In general, commenters were supportive of and pleased with the reorganization of 8 CFR part 204 and indicated that the regulation would be easier to read and more easily understood by the average reader.

One commenter indicated that the rule does not provide for a certification to accompany true copies of documents which are submitted in lieu of originals. Because the petitioner's signature on the petition constitutes a certification that the petition and all supporting documentation consist of true statements, it is unnecessary to require a separate certification of documents submitted in support of a petition. Accordingly, the final rule will not require that copies be certified as true.

Thirty-two commenters suggested that an exemption to the blood test requirements be made available to persons who have religious objections to such tests. In general, blood tests are required only after other forms of evidence have proven inconclusive. Where a legitimate religious objection can be established, alternate forms of evidence may be considered based upon documentation already submitted. The final rule reflects this change.

Thirty-one commenters pointed out that 8 CFR 204.3(c)(2)(iii)(A) does not refer to individuals when using the term "agency" in that section. However, 8 CFR 204.3(c)(2)(i) contains the definition of "agency" as it is used in this part, which includes both organizations and individuals.

One commenter suggested that a United States passport, when used as proof of United States citizenship, be considered secondary evidence, or that 8 CFR 204.1(g)(1)(ii) be modified to require that a United States passport be accepted only after it is established to the satisfaction of an immigration officer that a birth certificate is unavailable. By law, a full validity unexpired United States passport is considered primary evidence of citizenship. See 22 U.S.C. 2705 (Pub. L. 97-241); 96 Stat 273. Accordingly, a United States passport shall continue to be considered primary evidence of United States citizenship. In addition, the rule will amend the definition of a full validity unexpired United States passport, as suggested by another commenter, to clarify that passports issued to persons who are under the age of eighteen are valid for five years.

One commenter expressed concern that, as evidence for preliminary processing of Amerasian children, sons, and daughters in 8 CFR 204.4, the Service does not require that the father be identified by name. Given the liberal intent of the statute, if United States citizen parentage is established, the name of the father is not relevant. This liberal intent should be considered when weighing evidence in these cases.

Two commenters suggested that 8 CFR 204.1(e) be amended to require that petitions be mailed directly to the Service Center having jurisdiction, thus changing the current jurisdictional provision. The Service believes that such a change is premature at this time and that this issue should not be considered until after the complete implementation of the "direct mail" program.

One commenter felt that 8 CFR 204.2(a)(2) should be amended to include photographs and signed G–325A forms for the petitioner and the spouse in the initial evidence requirements for spouse petitions. Although a Form G–325A and photographs of the petitioner and beneficiary are currently required as supporting documents with the Form I–130, they are not listed in 8 CFR 204.2(a)(2). On October 4, 1991, the Service published in the **Federal Register** a draft of a revised Form I–130. The revised Form I–130 incorporates vital information found in the Form G–325A and, therefore, eliminates the need for the submission of a Form G–325A in support of spouse petitions. This rule will not require the submission of signed G–325A forms in support of spouse petitions, but will add photographs of the petitioner and the beneficiary as part of the initial evidence for spouse petitions. Because color photographs or ADIT style photographs from some countries may be unavailable or cost prohibitive, specifications for the petitioner's photograph will be modified to permit the submission of black and white or non-ADIT style photographs in certain cases.

One commenter, citing considerations of cost and convenience, suggested that the Service should accept as evidence a signed, unsworn declaration under penalty of perjury in lieu of a sworn affidavit. While the suggested declaration may be less expensive and easier to obtain, a sworn affidavit is a more reliable form of secondary evidence and provides a mechanism for enforcing criminal perjury provisions. The final rule thus retains the requirement of a sworn affidavit.

2. Priority Dates

Thirty-five commenters suggested that the priority date of a petition should be the date the petition is received by the Service. These commenters expressed concern that delays in processing could cause a petition to be fee-receipted some time after the actual date on which the petition is received by the Service. If, during normal processing, a delay results from deficiencies in the initial filing, the priority date will be established only when the petition is properly signed by the petitioner and the fee has been collected by the Service. If questions arise concerning the filing of the petition which cannot be resolved through a check of the Service fee receipting system (FARES) or other fee collection system, then the director may consider the date of receipt of the petition to be the priority date.

3. Widow or Widower of a United States Citizen

Thirty-seven commenters felt that the Service's interpretation of the statute that the citizen spouse must have been a citizen for the entire two-year period before death was too restrictive. In other sections of law that make United States citizenship a prerequisite to an immigration benefit, Congress has been specific about the requisite period of citizenship. For example, under section 319(a) of the Act, a person married to a United States citizen may be naturalized only if the spouse was a citizen for the entire three-year period preceding the filing of an application for naturalization. No such requirement is contained in section 101 of IMMACT. Accordingly, the commenters' suggestion will be adopted. The final rule does not condition benefits upon a specific period of United States citizenship for the deceased spouse; he or she need only have been a United States citizen at the time of death.

In addition, section 302(a)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1992, Public Law 102–232, which was signed into law by President Bush on December 12, 1991, amends section 101 of IMMACT by providing a transitional filing period for a widow or widower whose United States citizen spouse died before the date of the enactment of IMMACT. This provision allows a widow or widower whose United States citizen spouse died before November 29, 1990, to file for immediate relative status before November 29, 1992. The rule will incorporate this amendment.

4. Orphans in the United States

One commenter noted that 8 CFR 204.1(b)(1)(iii) of the existing regulation had been omitted. It is important to advise adoptive parents of the restrictions outlined in this section and the effect they will have on the petitioning process and on adjustment of status. 8 CFR 204.1(b)(1)(iii) of the current rule will be redesignated as 8 CFR 204.3(e), Child in the United States, and will be made part of the final rule.

5. Living Arrangements of Adopted Children and Natural Parents

Thirty-five commenters suggested that the evidentiary requirements in 8 CFR 204.2(c)(2)(vii)(B) and 204.2(e)(2)(iv)(B) were burdensome and unnecessary to establish the residency requirement imposed by statute. The Service has learned through experience that evidence of the physical living arrangements of the adoptive child, adoptive parent(s), and natural parents is necessary to establish whether any unusual living conditions exist which warrant further consideration. Additionally, in *Matter of Cuello*, 20 I. & N. Dec. _____ (I.D. 3117, BIA 1990), the Board of Immigration Appeals held that, where an adoption has been effected but the adopted child continues to reside with the natural parent or parents, the petitioner has the burden of establishing that the adoptive parent exercised primary parental control during that period of residence. The Board further held that the evidence of parental control must indicate the physical living arrangements of the adopted child, the adoptive parents, and the natural parents for the period of time during which the adoptive parent claims to have met the residence requirement of the statute and, where a fraudulent or ad hoc adoption is suspected, for any period following the adoption which the adjudicating officer deems appropriate. The proposed evidentiary requirements will therefore be retained in the final rule.

6. Evidence of Marriage Fraud as it Relates to Section 204(c) of the Act

Thirty-five commenters suggested that the Service clarify the type and extent of the evidence necessary to substantiate a denial under 8 CFR 204.2(a)(1)(ii) for prior marriage fraud. The Service is currently required by regulation to notify the petitioner of any derogatory information contained in the record which will be used to support such a denial; however, there is room for further clarification based upon recent precedent decisions. Accordingly, the final rule will be amended to reflect that such evidence must be "substantial and probative," in accordance with the standard articulated in *Matter of Tawfik*, 20 I. & N. Dec. _____ (I.D. 3130, BIA 1990).

7. Illegitimate Child in Parent/Child Relationship

Thirty-eight commenters were concerned that 8 CFR 204.2(c)(2)(iii), 204.2(e)(2)(iii), and 204.2(f)(2)(iii), which contain additional evidentiary requirements to demonstrate a parent/

child relationship in visa proceedings relative to illegitimate children, are unnecessary and burdensome. The Service disagrees that these evidentiary requirements exceed reasonable standards since the requirements have been expanded to conform to current precedent. The more extensive evidentiary requirements of this section will give the adjudicator a broader range of evidence to consider. For example, the final rule states that "[t]here should be evidence that the father and child actually lived together or that the father held the child out as his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child." See *Matter of Vizcaino*, 19 I. & N. Dec. 644 (BIA 1988); *Matter of Pineda*, 20 I. & N. Dec. _____ (I.D. 3112, BIA 1989). The final rule also identifies "persuasive evidence" establishing a bona fide parent-child relationship and describes the types of primary evidence that must accompany the petition.

8. Denial of Visa Petitions for Lack of Initial Documentation

Thirty-eight commenters felt that the automatic denial provision contained in the proposed rule would lead to arbitrary and inconsistent denials of visa petitions throughout the Service and unfair losses of priority dates. Changes in the requirements for initial documentary evidence are currently being addressed in the proposed revision of 8 CFR part 103. It is the Service's view that initial evidentiary requirements are more efficiently addressed in 8 CFR part 103, rather than by specifying such requirements throughout part 204. Accordingly, 8 CFR 204.1(f)(4) and (5) have been eliminated from the final rule.

One commenter suggested that there were internal conflicts within the sections of 8 CFR part 204 that contain evidentiary requirements. The relocation of initial evidentiary requirements from part 204 to part 103 will resolve any perceived conflict.

9. Supervisory Review of Petition Denials

Thirty-three commenters suggested that automatic petition denials for lack of initial documentation should be subject to supervisory review and that only truly deficient visa petitions should be denied. The Service does provide for supervisory review of petition denials, and often conducts more than one supervisory review of a denial before it becomes final. This concern has been noted, however, and will be addressed with the relocation of initial documentary evidence requirements to 8 CFR part 103 when that section is revised.

10. Requests for Additional Documentation

Thirty-eight commenters opposed the proposed time limit for the submission of additional documentation, and one commenter suggested that no time limit should be set. The Service believes that such a time limit is necessary, but the final rule provides for an extension of time upon request, if appropriate justification is provided. If the director determines that the initial 60-day period for submission of additional documentation is insufficient, he or she may provide an additional sixty-day period for the submission. The total time for submission of additional documentation shall not exceed 120 days unless the director is satisfied that unusual circumstances exist. The final rule also specifies that the Service will provide an explanation of the evidentiary deficiency when requesting additional documentary evidence.

11. Evidentiary Requirements for Civil Documents

Thirty-four commenters argued that documentation from civil authorities is not always available for various reasons, including natural disasters, fires, wars, or the nonexistence of a recordkeeping authority. To determine whether primary documents are available in a specific country, the Service refers to the Foreign Affairs Manual (FAM) published by the Department of State. When the FAM shows that primary documents are generally unavailable in the country at issue for any reason, including those described by the commenters, the Service will accept secondary evidence and a letter from the appropriate registrar will not be required. However, when the FAM indicates that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar attesting to the unavailability of the record will be necessary. Any time that secondary evidence is submitted, it will be evaluated for its authenticity and credibility.

12. Good Faith Marriage Under Section 204(g) of the Act

Thirty-four commenters felt that the Service's standard for interpreting the term "good faith" was contrary to established precedent and suggested that this terminology be clarified. The Service disagrees and seeks to interpret the term "good faith" in accordance with existing precedent. In *Matter of Laureano*, 19 I. & N. Dec. 1 (BIA 1983), the Board of Immigration Appeals ruled in part as follows: "In determining whether a marriage is fraudulent for immigration purposes, the conduct of the parties after the marriage is relevant as to their intent at the time of marriage, evidence to establish intent may take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences." The rule reflects this decision as well as other relevant precedent decisions by listing types of documentary evidence which may be submitted to establish "good faith". Other relevant decisions include: *Bark* v. *INS*, 511 F.2d 1200 (9th Cir. 1975); *Matter of McKee*, 17 I & N. Dec. 332 (BIA 1980); *Lutwak* v. *United States*, 344 U.S. 604 (1953); and *Matter of Phillis*, 15 I. & N Dec. 385 (BIA 1975).

13. Visas for Family Members of Legalized Aliens

Thirty-seven commenters were concerned that 8 CFR 204.2(d) of the proposed rule limits eligibility for immigrant visas under section 112 of IMMACT to those spouses and children who held that status at the time the petitioner achieved lawful permanent resident status. Some of the commenters believed that the Service interpretation of the statute was more restrictive than Congress had intended. They contend that the definition of legalized alien includes those who were merely granted temporary resident status. This contention is based upon the language in section 112(c) (1) and (2) of IMMACT, which defined "legalized alien" to include certain persons provided "temporary or permanent" residence status.

The view of the Service has been that the intent of section 112 of IMMACT was to provide visas for family members of legalized aliens who could not qualify in their own right for the legalization program but who are family members of permanent residents who acquired status through the program. Section 302(b)(1) of Public Law 102–232 amended section 112(c) of the IMMACT by striking the term "temporary or," thereby confirming the Service's view. The requirement that the legalized alien must have achieved permanent resident status will remain in the final rule.

On the other hand, the Service has determined that, although the primary intent of the statute was to benefit those aliens who were the spouses and

children of legalized aliens at the time the latter acquired permanent residence, a careful reading of the statute and the legislative history would permit dependents acquired after the legalized alien's date of permanent residence to qualify. Accordingly, the requirement that the dependent must have been the spouse or child of the "eligible alien" (as defined in the statute) at the time he or she became a permanent resident has been dropped from the final rule.

On June 20, 1991, an interim rule with a thirty-day comment period was published in the **Federal Register** at 56 FR 28311. This rule established a bona fide marriage exemption for aliens who marry while under deportation or exclusion proceedings. That interim rule revised § 204.1(a)(2)(iii). The final rule has redesignated the revised § 204.1(a)(2)(iii) as § 204.2(a)(1)(iii).

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not considered a major rule within the meaning of section 1(b) of Executive Order 12292, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 204

Administrative practice and procedures, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The title of Part 204 is revised as set forth above.

2. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186A, 1255; 8 CFR part 2.

3. Sections 204.1 through 204.4 are revised to read as follows:

§ 204.1 General information about relative petitions.

(a) *Types of relative petitions.* A petitioner seeking to accord a classification as an immediate relative under section 201(b) of the Act or a classification as a preference immigrant under section 203(a) of the Act on behalf of a qualifying relative must file a Form I-30, Petition for Alien Relative. A widow or widow seeking classification as an immediate relative must file a Form I-360, Petition for Amerasian, Widow, or Special Immigrant. A petitioner seeking classification on behalf of an orphan as defined in § 101(b)(1)(F) of the Act must file either Form I-600 or Form I-600A. A petitioner seeking classification as, or on behalf of, an Amerasian under Public Law 97-359 must file a Form I-360, Petition for Amerasian, Widow, or Special Immigrant. The Form I-130 and Form I-360 petitions are described in § 204.2; orphan petitions are described in § 204.3; and Amerasian petitions are described in § 204.4.

(b) *Filing fee.* Forms I-130 and I-360 must be accompanied by the appropriate fee under 8 CFR 103.7(b)(1).

(c) *Filing date.* The filing date of a petition shall be the date it is properly filed under paragraph (d) of this section and shall constitute the priority date.

(d) *Proper filing.* A petition shall be considered properly filed if:

(1) It is signed by the petitioner, and

(2) A fee has been received by the Service office or United States Consular office having jurisdiction.

(3) If, during normal processing, a delay results from deficiencies in the initial filing, the priority date will be established only when the petition is properly signed by the petitioner and the fee has been collected by the Service. If questions arise concerning the filing of the petition which cannot be resolved through a check of the Service fee receipting system (FARES) or other fee collection system, then the director may consider the date of receipt of the petition to be the priority date.

(e) *Jurisdiction.*—(1) *Petitioner residing in the United States.* The petition must be filed with the Service office having jurisdiction over the place where the petitioner is residing. When the petition is accompanied by an application for adjustment of status, the petition may be filed with the Service office having jurisdiction over the beneficiary's place of residence.

(2) *Petitioner residing in certain countries abroad.* The Service has overseas offices located in Vienna, Austria; Frankfurt, Germany; Athens, Greece; Hong Kong; New Delhi, India; Rome, Italy; Nairobi, Kenya; Seoul, Korea; Ciudad Juarez, Mexico City, Monterrey, Guadalajara, and Tijuana, Mexico; Manila, the Philippines; Singapore; Bangkok, Thailand; and London, the United Kingdom of Great Britain and Northern Ireland. If the petitioner resides in one of these countries, the petition must be filed with the Service office located in that country. The beneficiary does not have to reside in the same jurisdiction as the petitioner for the Service to accept the petition. The overseas Service officer may accept and adjudicate a petition filed by a petitioner who does not reside within the office's jurisdiction when it is established that emergent or humanitarian reasons for acceptance exist or when it is in the national interest.

(3) *Jurisdiction assumed by United States consular officer.* United States consular officers assigned to visa-issuing posts abroad, except those in countries listed in paragraph (e)(2) of this section, are authorized to accept and approve a relative petition or a petition filed by a widow or widower if the petitioner resides in the area over which the post has jurisdiction, regardless of the beneficiary's residence or physical presence at the time of filing. In emergent or humanitarian cases and cases in the national interest, the United States consular officer may accept a petition filed by a petitioner who does not reside within the consulate's jurisdiction. While consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate Service office. Consular officers may consult with the appropriate Service office abroad prior to stateside referral, if they deem it necessary.

(f) *Supporting documentation:* (1) Documentary evidence consists of those documents which establish the United States citizenship or lawful permanent resident status of the petitioner and the claimed relationship of the petitioner to the beneficiary. They must be in the form of primary evidence, if available. When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country of issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will not be required before the Service will accept secondary evidence.

(2) Original documents or legible, true copies of original documents are acceptable. The Service reserves the right to require submission of original documents when deemed necessary.

Documents submitted with the petition will not be returned to the petitioner, except when originals are requested by the Service. If original documents are requested by the Service, they will be returned to the petitioner after a decision on the petition has been rendered, unless their validity or authenticity is in question. When an interview is required, all original documents must be presented for examination at the interview.

(3) Foreign language documents must be accompanied by an English translation which has been certified by a competent translator.

(g) *Evidence of petitioner's United States citizenship or lawful permanent residence.*—(1) *Primary evidence.* A petition must be accompanied by one of the following:

(i) A birth certificate that was issued by a civil authority and that establishes the petitioner's birth in the United States;

(ii) An unexpired United States passport issued initially for a full ten-year period to a petitioner over the age of eighteen years as a citizen of the United States (and not merely as a noncitizen national);

(iii) An unexpired United States passport issued initially for a full five-year period to the petitioner under the age of eighteen years as a citizen of the United States (and not merely as a noncitizen national);

(iv) A statement executed by a United States consular officer certifying the petitioner to be a United States citizen and the bearer of a currently valid United States passport;

(v) The petitioner's Certificate of Naturalization or Certificate of Citizenship;

(vi) Department of State Form FS–240, Report of Birth Abroad of a Citizen of the United States, relating to the petitioner;

(vii) The petitioner's Form I–151 or I–551 Alien Registration Receipt Card, or other proof given by the Service as evidence of lawful permanent residence. The Service will accept copies of Forms I–151 or I–551, Certificate of Naturalization, or Certificate of Citizenship when submitted as evidence of United States citizenship or lawful permanent residence.

(2) *Secondary evidence.* If primary evidence is unavailable, the petitioner must present secondary evidence. Any evidence submitted as secondary evidence will be evaluated for authenticity and credibility. Secondary evidence may include, but is not limited to, one or more of the following documents:

(i) A baptismal certificate with the seal of the church, showing the date and place of birth in the United States and the date of baptism;

(ii) Affidavits sworn to by persons who were living at the time and who have personal knowledge of the event to which they attest. The affidavits must contain the affiant's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant acquired knowledge of the event;

(iii) Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);

(iv) Census records showing the name, place of birth, and date of birth or age of the petitioner; or

(v) If it is determined that it would cause unusual delay or hardship to obtain documentary proof of birth in the United States, a United States citizen petitioner who is a member of the Armed Forces of the United States and who is serving outside the United States may submit a statement from the appropriate authority of the Armed Forces. The statement should attest to the fact that the personnel records of the Armed Forces show that the petitioner was born in the United States on a certain date.

(h) *Requests for additional documentation.* When the Service determines that the evidence is not sufficient, an explanation of the deficiency will be provided and additional evidence will be requested. The petitioner will be given 60 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. If the director determines that the initial 60-day period is insufficient to permit the presentation of additional documents, the director may provide an additional 60 days for the submission. The total time shall not exceed 120 days, unless unusual circumstances exist. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted.

§ 204.2 Relative petitions.

(a) *Petition for a spouse.*—(1) *Eligibility.* A United States citizen or alien admitted for lawful permanent residence may file a petition on behalf of a spouse.

(i) *Marriage within five years of petitioner's obtaining lawful permanent resident status.* (A) A visa petition filed on behalf of an alien by a lawful permanent resident spouse may not be approved if the marriage occurred within five years of the petitioner being accorded the status of lawful permanent resident based upon a prior marriage to a United States citizen or alien lawfully admitted for permanent residence, unless:

(*1*) The petitioner establishes by clear and convincing evidence that the marriage through which the petitioner gained permanent residence was not entered into for the purposes of evading the immigration laws; or

(*2*) The marriage through which the petitioner obtained permanent residence was terminated through death.

(B) *Documentation.* The petitioner should submit documents which cover the period of the prior marriage. The types of documents which may establish that the prior marriage was not entered into for the purpose of evading the immigration laws include, but are not limited to:

(*1*) Documentation showing joint ownership of property;

(*2*) A lease showing joint tenancy of a common residence;

(*3*) Documentation showing commingling of financial resources;

(*4*) Birth certificate(s) of child(ren) born to the petitioner and prior spouse;

(*5*) Affidavits sworn to or affirmed by third parties having personal knowledge of the bona fides of the prior marital relationship. (Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit; his or her relationship, if any, to the petitioner, beneficiary or prior spouse; and complete information and details explaining how the person acquired his or her knowledge of the prior marriage. The affiant may be required to testify before an immigration officer about the information contained in the affidavit. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph.); or

(*6*) Any other documentation which is relevant to establish that the prior marriage was not entered into in order to evade the immigration laws of the United States.

(C) The petitioner must establish by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading the immigration laws. Failure to meet the "clear and convincing evidence" standard will result in the denial of the petition. Such a denial shall be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings based upon

information gained through the adjudication of the petition; however, failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not entered into for the purpose of evading the immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition.

(ii) *Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

(iii) *Marriage during proceedings—general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, or judicial proceedings relating thereto.

(A) *Commencement of proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto, commences:

(*1*) With the issuance of the Order to Show Cause and Notice of Hearing (Form I–221) prior to June 20, 1991;

(*2*) With the filing of an Order to Show Cause and Notice of Hearing (Form I–221), issued on or after June 20, 1991, with the Office of the Immigration Judge; or

(*3*) With the issuance of the Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I–122).

(B) *Termination of proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto, terminates:

(*1*) When the alien departs from the United States while an order of deportation is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation under 8 CFR 243.5;

(*2*) When the alien departs from the United States pursuant to an order of exclusion;

(*3*) When the alien is found not to be excludable or deportable from the United States;

(*4*) When the Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(*5*) When proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or

(*6*) When a petition for review or an action for habeas corpus is granted by a Federal Court on judicial review.

(C) *Exemptions.* This prohibition shall no longer apply if:

(*1*) The alien is found not to be excludable or deportable from the United States;

(*2*) The Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(*3*) Proceedings are terminated by the immigration judge or the Board of Immigration Appeals;

(*4*) A petition for review or an action for habeas corpus is granted by a Federal Court on judicial review;

(*5*) The alien has resided outside the United States for two or more years following the marriage; or

(*6*) The petitioner establishes eligibility for the bona fide marriage exemption under section 204(g) of the Act by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of the petition.

(D) *Request for exemption.* No application or fee is required to request an exemption. The request must be made in writing and submitted with the Form I–130. The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(E) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

(*1*) Documentation showing joint ownership of property;

(*2*) Lease showing joint tenancy of a common residence;

(*3*) Documentation showing commingling of financial resources;

(*4*) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;

(*5*) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or

(*6*) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

(F) *Decision.* Any petition filed during the prohibited period shall be denied, unless the petitioner establishes eligibility for an exemption from the general prohibition. The petitioner shall be notified in writing of the decision of the director.

(G) *Denials.* The denial of a petition because the marriage took place during the prohibited period shall be without prejudice to the filing of a new petition after the beneficiary has resided outside the United States for the required period of two years following the marriage. The denial shall also be without prejudice to the consideration of a new petition or a motion to reopen the visa petition proceedings if deportation or exclusion proceedings are terminated after the denial other than by the beneficiary's departure from the United States. Furthermore, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the visa petition proceedings, if the petitioner establishes eligibility for the bona fide marriage exemption contained in this part: *Provided*, That no motion to reopen visa petition proceedings may be accepted if the approval of the motion would result in the beneficiary being accorded a priority date within the meaning of section 203(c) of the Act earlier than November 29, 1990.

(H) *Appeals.* The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition because the petitioner failed to establish eligibility for the bona fide

marriage exemption contained in this part will constitute the single level of appellate review established by statute.

(I) *Priority date.* A preference beneficiary shall not be accorded a priority date within the meaning of section 203(c) of the Act based upon any relative petition filed during the prohibited period, unless an exemption contained in this part has been granted. Furthermore, a preference beneficiary shall not be accorded a priority date prior to November 29, 1990, based upon the approval of a request for consideration for the bona fide marriage exemption contained in this part.

(2) *Evidence for petition for a spouse.* In addition to evidence of United States citizenship or lawful permanent residence, the petitioner must also provide evidence of the claimed relationship. A petition submitted on behalf of a spouse must be accompanied by a recent ADIT-style photograph of the petitioner, a recent ADIT-style photograph of the beneficiary, a certificate of marriage issued by civil authorities, and proof of the legal termination of all previous marriages of both the petitioner and the beneficiary. However, non-ADIT-style photographs may be accepted by the district director when the petitioner or beneficiary reside(s) in a country where such photographs are unavailable or cost prohibitive.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* No alien may be classified as an immediate relative as defined in section 201(b) of the Act unless he or she is the direct beneficiary of an approved petition for that classification. Therefore, a child of an alien approved for classification as an immediate relative spouse is not eligible for derivative classification and must have a separate petition filed on his or her behalf. A child accompanying or following to join a principal alien under section 203(a)(2) of the Act may be included in the principal alien's second preference visa petition. The child will be accorded second preference classification and the same priority date as the principal alien. However, if the child reaches the age of twenty-one prior to the issuance of a visa to the principal alien parent, a separate petition will be required. In such a case, the original priority date will be retained if the subsequent petition is filed by the same petitioner. Such retention of priority date will be accorded only to a son or daughter previously eligible as a derivative beneficiary under a second preference spousal petition.

(b) *Petition by widow or widower of a United States citizen.*

(1) *Eligibility.* A widow or widower of a United States citizen may file a petition and be classified as an immediate relative under section 201(b) of the Act if:

(i) He or she had been married for at least two years to a United States citizen.

(**Note:** The United States citizen is not required to have had the status of United States citizen for the entire two year period, but must have been a United States citizen at the time of death.)

(ii) The petition is filed within two years of the death of the citizen spouse or before November 29, 1992, if the citizen spouse died before November 29, 1990;

(iii) The alien petitioner and the citizen spouse were not legally separated at the time of the citizen's death; and

(iv) The alien spouse has not remarried.

(2) *Evidence for petition of widow or widower.* If a petition is submitted by the widow or widower of a deceased United States citizen, it must be accompanied by evidence of citizenship of the United States citizen and primary evidence, if available, of the relationship in the form of a marriage certificate issued by civil authorities, proof of the termination of all prior marriages of both husband and wife, and the United States citizen's death certificate issued by civil authorities. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will be required before the Service will accept secondary evidence. Secondary evidence will be evaluated for its authenticity and credibility. Secondary evidence may include:

(i) Such evidence of the marriage and termination of prior marriages as religious documents, tribal records, census records, or affidavits; and

(ii) Such evidence of the United States citizen's death as religious documents, funeral service records, obituaries, or affidavits. Affidavits submitted as secondary evidence pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section must be sworn to or affirmed by people who have personal knowledge of the event to which they attest. Each affidavit should contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship, if any, to the widow or widower. Any such affidavit must contain complete information and details explaining how knowledge of the event was acquired.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the widow or widower is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the widow or widower will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A child or unmarried son or daughter of an alien widow or widower classified as an immediate relative is not eligible for derivative classification as an immediate relative and must have a petition filed on his or her behalf if seeking immigrant classification.

(c) *Petition for a child or son or daughter*—(1) *Eligibility.* A United States citizen may file a petition on behalf of an unmarried child under twenty-one years of age for immediate relative classification under section 201(b) of the Act. A United States citizen may file a petition on behalf of an unmarried son or daughter over twenty-one years of age under section 203(a)(1) or for a married son or daughter for preference classification under section 203(a)(3) of the Act. An alien lawfully admitted for permanent residence may file a petition on behalf of a child or an unmarried son or daughter for preference classification under section 203(a)(2) of the Act.

(2) *Evidence to support petition for child or son or daughter.* In addition to evidence of United States citizenship or lawful permanent resident, the petitioner must also provide evidence of the claimed relationship.

(i) *Primary evidence for a legitimate child or son or daughter.* If a petition is submitted by the mother, the birth certificate of the child showing the mother's name must accompany the petition. If the mother's name on the birth certificate is different from her name on the petition, evidence of the

name change must also be submitted. If a petition is submitted by the father, the birth certificate of the child, a marriage certificate of the parents, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities must accompany the petition. If the father's name has been legally changed, evidence of the name change must also accompany the petition.

(ii) *Primary evidence for a legitimated child or son or daughter.* A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the beneficiary's birth certificate and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) *Primary evidence for an illegitimate child or son or daughter.* If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported father of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child relationship was established when the child or son or daughter was unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence to establish that the petitioner is the child's natural father is the beneficiary's birth certificate, issued by civil authorities and showing the father's name. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent/child relationship should establish more than merely a biological relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent/child relationship and financial responsibility by the father is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or cancelled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the beneficiary as a dependent; school records for the beneficiary; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

(iv) *Primary evidence for a stepchild.* If a petition is submitted by a stepparent on behalf of a stepchild or stepson or stepdaughter, the petition must be supported by the stepchild's or stepson's or stepdaughter's birth certificate, issued by civil authorities and showing the name of the beneficiary's parent to whom the petitioner is married, a marriage certificate issued by civil authorities which shows that the petitioner and the child's natural parent were married before the stepchild or stepson or stepdaughter reached the age of eighteen; and evidence of the termination of any prior marriages of the petitioner and the natural parent of the stepchild or stepson or stepdaughter.

(v) *Secondary evidence.* When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will be required before the Service will accept secondary evidence. Secondary evidence will be evaluated for its authenticity and credibility. Secondary evidence may take the form of historical evidence; such evidence must have been issued contemporaneously with the event which it documents any may include, but is not limited to, medical records, school records, and religious documents. Affidavits may also by accepted. When affidavits are submitted, they must be sworn to by persons who were born at the time of and who have personal knowledge of the event to which they attest. Any affidavit must contain the affiant's full name and address, date and place of birth, relationship to the party, if any, and complete details concerning how the affiant acquired knowledge of the event.

(vi) *Blood tests.* The director may require that a specific Blood Group Antigen Test be conducted of the beneficiary and the beneficiary's father and mother. In general, blood tests will be required only after other forms of evidence have proven inconclusive. If the specific Blood Group Antigen Test is also found not to be conclusive and the director determines that additional evidence is needed, a Human Leucocyte Antigen (HLA) test may be requested. Tests will be conducted, at the expense of the petitioner or beneficiary, by the United States Public Health Service physician who is authorized overseas or by a qualified medical specialist designated by the district director. The results of the test should be reported on Form G–620. Refusal to submit to a Specific Blood Group Antigen or HLA test when requested may constitute a basis for denial of the petition, unless a legitimate religious objection has been established. When a legitimate religious objection is established, alternate forms of evidence may be considered based upon documentation already submitted.

(vii) *Primary evidence for an adopted child or son or daughter.* A petition may be submitted on behalf of an adopted child or son or daughter by a United States citizen or lawful permanent resident if the adoption took place before the beneficiary's sixteenth birthday, and if the child has been in the legal custody of the adopting parent or parents and has resided with the adopting parent or parents for at least two years. A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

(A) *Legal custody* means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the

adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

(B) Evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a familial relationship. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent owns or maintains the property where the child resides and provides financial support and day-to-day supervision. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the same household as a natural parent(s) during the period in which the adoptive parent petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence.

(C) Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody, like residence, is accounted for in the aggregate. Therefore, a break in legal custody or residence will not affect the time already fulfilled. To meet the definition of child contained in sections 101(b)(1)(E) and 101(b)(2) of the Act, the child must have been under 16 years of age when the adoption is finalized.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A spouse or child accompanying or following to join a principal alien as used in this section may be accorded the same preference and priority date as the principal alien without the necessity of a separate petition. However, a child of an alien who is approved for classification as an immediate relative is not eligible for derivative classification and must have a separate petition approved on his or her behalf.

(5) *Name change.* When the petitioner's name does not appear on the child's birth certificate, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the petition. If the beneficiary's name has been legally changed, evidence of the name change must also accompany the petition.

(d) *Relatives of legalized aliens.* A second preference petition which is filed to accord an alien immigrant classification under section 203(a)(2) of the Act will also be considered for immigrant visa numbers which will be issued during fiscal years 1992, 1993, and 1994 for spouses and children of legalized aliens in accordance with section 112 of the Immigration Act of 1990. To be eligible, the lawful permanent resident alien petitioner must have obtained permanent resident status through legalization under section 245A or section 210 of the Act or section 202 of the Immigration Reform and Control Act of 1986. The relationship may have been created either before or after the date that the petitioner was admitted to the United States as a lawful permanent resident, as long as it existed prior to the filing of a relative petition.

(e) *Petition for a parent*—(1) *Eligibility.* Only a United States citizen who is twenty-one years of age or older may file a petition on behalf of a parent for classification under section 201(b) of the Act.

(2) *Evidence to support a petition for a parent.* In addition to evidence of United States citizenship as listed in § 204.1(g) of this part, the petitioner must also provide evidence of the claimed relationship.

(i) *Primary evidence if petitioner is a legitimate son or daughter.* If a petition is submitted on behalf of the mother, the birth certificate of the petitioner showing the mother's name must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If a petition is submitted on behalf of the father, the birth certificate of the petitioner, a marriage certificate of the parents, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities must accompany the petition. If the father's name on the birth certificate has been legally changed, evidence of the name change must also accompany the petition.

(ii) *Primary evidence if petitioner is a legitimated son or daughter.* A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parent's marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of petitioner's birth certificate and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) *Primary evidence if the petitioner is an illegitimate son or daughter.* If a petition is submitted on behalf of the mother, the petitioner's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted on behalf of the purported father of the petitioner, the petitioner must show that the beneficiary is his or her natural father and that a bona fide parent-child relationship was established when the petitioner was unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence to establish that the beneficiary is the petitioner's natural father is the petitioner's birth certificate, issued by civil authorities and showing the father's name. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent/child relationship should establish more than merely a biological relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction,

and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent/child relationship is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or cancelled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the petitioner as a dependent; school records for the petitioner; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable as to the relationship.

(iv) *Primary evidence if petitioner is an adopted son or daughter.* A petition may be submitted for an adoptive parent by a United States citizen who is twenty-one years of age or older if the adoption took place before the petitioner's sixteenth birthday and if the two year legal custody and residence requirements have been met. A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

(A) *Legal custody* means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

(B) Evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a parental relationship. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement.

(C) Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody, like residence, is accounted for in the aggregate. Therefore, a break in legal custody or residence will not affect the time already fulfilled. To meet the definition of child contained in sections 101(b)(1)(E) and 101(b)(2) of the Act, the child must have been under 16 years of age when the adoption is finalized.

(v) *Name change.* When the petition is filed by a child for the child's parent, and the parent's name is not on the child's birth certificate, evidence of the name change (such as the parent's marriage certificate, a legal document showing the parent's name change, or other similar evidence) must accompany the petition. If the petitioner's name has been legally changed, evidence of the name change must also accompany the petition.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A child or a spouse of a principal alien who is approved for classification as an immediate relative is not eligible for derivative classification and must have a separate petition approved on his or her behalf.

(f) *Petition for a brother or sister*—(1) *Eligibility.* Only a United States citizen who is twenty-one years of age or older may file a petition of a brother or sister for classification under section 203(a)(4) of the Act.

(2) *Evidence to support a petition for brother or sister.* In addition to evidence of United States citizenship, the petitioner must also provide evidence of the claimed relationship.

(i) *Primary evidence if the siblings share a common mother or are both legitimate children of a common father.* If a sibling relationship is claimed through a common mother, the petition must be supported by a birth certificate of the petitioner and a birth certificate of the beneficiary showing a common mother. If the mother's name on one birth certificate is different from her name as reflected on the other birth certificate or in the petition, evidence of the name change must also be submitted. If a sibling relationship is claimed through a common father, the birth certificates of the beneficiary and petitioner, a marriage certificate of the parents' and proof of legal termination of the parents, prior marriage(s), if any, issued by civil authorities must accompany the petition. If the father's name has been legally changed, evidence of the name change must also accompany the petition.

(ii) *Primary evidence if either or both siblings are legitimated.* A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the petitioner's birth certificate, the beneficiary's birth certificate, and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) *Primary evidence if either sibling is illegitimate.* If one or both of the siblings is (are) the illegitimate child(ren) of a common father, the petitioner must show that they are the natural children of the father and that a bona fide parent-child relationship was established when the illegitimate child(ren) was (were) unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence is the petitioner's and beneficiary's birth certificates, issued by civil authorities and showing the father's name, and evidence that the siblings have or had a bona fide parent/child relationship with the natural father. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent/child relationship should establish more than merely a biological

relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent/child relationship is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or canceled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the beneficiary as a dependent; school records for the beneficiary; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

(iv) *Primary evidence for stepsiblings.* If the petition is submitted on behalf of a brother or sister having a common father, the relationship of both the petitioner and the beneficiary to the father must be established as required in paragraphs (f)(2)(ii) and (f)(2)(iii) of this section. If the petitioner and beneficiary are stepsiblings through the marriages of their common father to different mothers, the marriage certificates of the parents and evidence of the termination of any prior marriages of the parents must be submitted.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A spouse or a child accompanying or following to join a principal alien beneficiary under this section may be accorded the same preference and priority date as the principal alien without the necessity of a separate petition.

(5) *Name change.* If the name of the petitioner, the beneficiary, or both has been legally changed, evidence showing the name change (such as a marriage certificate, a legal document showing the name change, or other similar evidence) must accompany the petition.

(g) *Validity of approved petitions*—(1) *General.* Unless terminated pursuant to section 203(g) of the Act or revoked pursuant to part 205 of this chapter, the approval of a petition to classify an alien as a preference immigrant under paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of section 203 of the Act, or as an immediate relative under section 201(b) of the Act, shall remain valid for the duration of the relationship to the petitioner and of the petitioner's status as established in the petition.

(2) *Subsequent petition by same petitioner for same beneficiary.* When a visa petition has been approved, and subsequently a new petition by the same petitioner is approved for the same preference classification on behalf of the same beneficiary, the latter approval shall be regarded as a reaffirmation or reinstatement of the validity of the original petition, except when the original petition has been terminated pursuant to section 203(g) of the Act or revoked pursuant to Part 205 of this chapter, or when an immigrant visa has been issued to the beneficiary as a result of the petition approval.

(h) *Automatic conversion of preference classification*—(1) *By change in beneficiary's marital status.* (i) A currently valid petition previously approved to classify the beneficiary as the unmarried son or daughter of a United States citizen under section 203(a)(1) of the Act shall be regarded as having been approved for preference status under section 203(a)(3) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(1) of the Act was properly filed.

(ii) A currently valid petition previously approved to classify a child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as having been approved for preference status under section 203(a)(3) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for 201(b) classification was properly filed.

(iii) A currently valid petition classifying the married son or married daughter of a United States citizen for preference status under section 203(a)(3) of the Act shall, upon legal termination of the beneficiary's marriage, be regarded as having been approved under section 203(a)(1) of the Act if the beneficiary is over twenty-one years of age. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(3) of the Act was properly filed. If the beneficiary is under twenty-one years of age, the petition shall be regarded as having been approved for classification as an immediate relative under section 201(b) of the Act as of the date the petition for classification under section 203(a)(3) of the Act was properly filed.

(2) *By the beneficiary's attainment of the age of twenty-one years.* A currently valid petition classifying the child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as having been approved for preference status under section 203(a)(1) of the Act as of the beneficiary's twenty-first birthday. The beneficiary's priority date is the same as the date the petition for section 201(b) classification was filed.

(3) *By the petitioner's naturalization.* Effective upon the date of naturalization of a petitioner who had been lawfully admitted for permanent residence, a currently valid petition according preference status under section 203(a)(2) of the Act to the petitioner's spouse and unmarried children under twenty-one years of age shall be regarded as having been approved for immediate relative status under section 201(b) of the Act. Similarly, a currently valid petition according preference status under section 203(a)(2) of the Act for the unmarried son or daughter over twenty-one years of age shall be regarded as having been approved under section 203(a)(1) of the Act. In any case of conversion to classification under section 203(a)(1) of the Act, the beneficiary's priority date is the same as the date the petition for classification under section 203(a)(2) of the Act was properly filed.

§ 204.3 Orphans.

(a) *Eligibility.* An alien is eligible for classification under section 201(b) of the Act as an orphan if he or she meets the definition of "child" contained in section 101(b)(1)(F) of the Act. To obtain immigration benefits on behalf of an orphan, the United States citizen and spouse, if married, must file a Form I-600, Petition to Classify Orphan as an Immediate Relative. In some cases, it may be advantageous for the petitioner(s) to file a Form I-600A, Application for Advance Processing of Orphan Petition, prior to filing the petition.

(b) *Advance processing.* (1) The prospective petitioner(s) may file a Form I-600A, Application for Advance Processing of Orphan Petition, when:

(i) A prospective adoptive child has not been located and identified;

(ii) The prospective petitioner, and/or spouse if married, is traveling abroad to locate a child for adoption in the United States or to adopt while abroad; or

(iii) The prospective petitioner, and/or spouse if married, is traveling abroad to a country with no Service office to adopt a known child while abroad, or to facilitate the adoption of a known child in the United States, and wants to file a petition, Form I–600, at the American consulate or embassy having jurisdiction over the child's place of residence.

(2) *Filing the application for advance processing.* A United States citizen and spouse, if married, may file Form I–600A. The prospective petitioner(s) must complete the certification required on the form. The form must be accompanied by the fee specified in 8 CFR 103.7(b)(1). If the petitioner is married, the petitioner's spouse shall also sign the Form I–600A. If unmarried, the petitioner must be at least twenty-four years of age at the time of filing Form I–600A and at least twenty-five years of age at the time of the child's adoption and the filing of a petition, Form I–600, on behalf of the child.

(3) *Evidence to be furnished with application for advance processing of orphan petition.* An Application for Advance Processing of Orphan Petition, Form I–600A, must be accompanied by:

(i) Two sets of fingerprints on Form FD–258 for the United States citizen petitioner and two sets for the spouse, if the petitioner is married;

(ii) Proof of the petitioner's United States citizenship and age;

(iii) Proof of marriage, if the petitioner is married;

(iv) Proof of the termination of any prior marriages; and

(v) A valid home study as described in paragraph (c)(2)(iii) of this section, if available. If not available, the home study must be submitted within one year from the date of submission of the advance processing application or the application will be considered to have been abandoned.

(4) *Decision and disposition of application for advance processing*—(i) *Favorable determination.* If the district director or officer in charge makes a favorable determination concerning the ability of the adoptive parent of parents to furnish proper care to a beneficiary orphan if admitted to the United States, the district director of officer in charge shall advise the petitioner of that determination. The district director or officer in charge shall also advise the petitioner that the advance processing application will be retained for one year from the date of completion of all advance processing; that, if a child is not identified to the Service within that year, the application will be considered to have been abandoned; and that any further proceedings will require the filing of a new advance processing application or an orphan petition.

(ii) *Unfavorable determination on completed advance processing application.* When information about the prospective adoptive parent or parents indicates that an orphan petition should not be approved because the prospective adoptive parent or parents would be unable to furnish proper care to a beneficiary orphan, the district director or officer in charge shall render an unfavorable determination concerning the advance processing application. The district director or officer in charge shall advise the petitioner(s) of the reasons for the unfavorable determination and of the right to appeal in accordance with the provisions of Part 103 of this chapter. When an unfavorable determination is made concerning an advance processing application, the fee will not be refunded.

(5) *When a child is identified*—(i) *Pending advance processing.* When a child is identified while an advance processing application is pending, the petitioner(s) shall submit a completed Form I–600 with all documentary evidence relating to the child. A new fee is not required.

(ii) *After advance processing has been completed.* When a child has been identified after a favorable determination concerning an advance processing application, the petitioner(s) shall submit a completed Form I–600 with all documentary evidence relating to the child. A new fee is not required if the petitioner submits the Form I–600 within one year from the date of completion of all advance processing.

(c) *Petition for orphan*—(1) *Filing.* A petition for an orphan as defined in section 101(b)(1)(F) of the Act must be filed on a Form I–600 by a United States citizen and spouse, if the petitioner is married. The petition must identify the child and must be accompanied by the fee required under 8 CFR 103.7(b)(1). If the petitioner is married, the Form I–600 must also be signed by the petitioner's spouse. If unmarried, the petitioner must be at least twenty-five years of age at the time of the adoption and when the petition is filed.

(2) *Evidence to support a petition for an orphan*—(i) *General.* As used in this part, the term "agency" includes both organizations and individuals, and the term "responsible state agency" means the public adoption agency in any state in the United States authorized by statute or license to perform home studies. A petition filed on behalf of an orphan under § 204.1(b) must be accompanied by:

(A) A valid home study which has been favorably recommended by an agency of the state of the child's proposed residence, by an agency authorized by that state to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or a private adoption agency licensed in the United States;

(B) Fingerprints on Form FD–258 of the United States citizen petitioner, and of the spouse, if the petitioner is married;

(C) Evidence of the age and the United States citizenship of the petitioner;

(D) A marriage certificate for the petitioner and spouse, if the petitioner is married, and evidence of the termination of any previous marriages;

(E) The child's birth certificate or, if a certificate is not available, other proof of age;

(F) If the child has only one parent, evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption;

(G) Death certificate(s) of the child's parent(s), if applicable; and

(H) A legible, true copy of the adoption decree together with a copy of a certified translation if the child has been adopted abroad.

(ii) A child shall be considered as having a sole maternal parent when it is established that the child is illegitimate and has not acquired a stepparent within the contemplation of section 101(b)(2) of the Act. A child shall be considered as having a surviving parent when it is established that one of the child's parents is living while one is deceased and the child has not acquired a stepparent within the meaning of section 101(b)(2) of the Act. When a child who has a sole or surviving parent has been adopted abroad, the requirement for an irrevocable release in writing for the child's emigration and adoption shall be considered to have been met if the adoption decree clearly sets forth that the adoptive petitioner and spouse, if married, reside in the United States and that the child's only parent has agreed to release the child for adoption. A child who has been unconditionally abandoned to an orphanage shall be considered as having no parents. However, a child who has been placed temporarily in an orphanage shall not be considered as having been abandoned when the parent or parents intend to retrieve the child; the parent or parents are contributing or attempting to contribute to the child's support; or the parent or

parents otherwise exhibit that they have not terminated their parental obligations to the child. If the child was adopted abroad by an unmarried United States citizen, the latter must have been at least twenty-five years of age at the time the child was adopted. It the child was adopted abroad by a married United States citizen, the decree shall show that the adoption was undertaken jointly by both husband and wife.

(iii) *Valid home study.*—(A) *Child coming to the United States for adoption.* A home study for a child to be adopted in the United States is considered to be valid if it contains the following:

(*1*) A factual evaluation of the financial, physical, mental, and moral capabilities of the prospective parent or parents to rear and educate the child properly;

(*2*) A detailed description of the living accommodations where the prospective parent or parents currently reside;

(*3*) A detailed description of the living accommodations in the United States where the child will reside, if known; and

(*4*) A statement or attachment recommending the proposed adoption and signed by an official of the responsible state agency in the state of the child's proposed residence, or signed by an official of an agency authorized by that state. When a home study contains a favorable recommendation by an agency claiming to be authorized by the state of the child's proposed residence, it will not be accepted as valid unless the district director is satisfied that the recommending agency is authorized to conduct the home study. If the recommending agency is a licensed adoption agency, the recommendation shall indicate that fact as well as the state in which it is licensed, its license number, if any, and the period of validity of its license. The district director may require such proof of licensure as is deemed necessary. The authorized agency need not be located in the state of the child's proposed residence or anywhere in the United States.

(B) *Child adopted abroad.* A home study for a child adopted abroad is considered to be valid if it contains the following:

(*1*) A factual evaluation of the financial, physical, mental, and moral capabilities of the adoptive parent or parents to rear and educate the child properly;

(*2*) A detailed description of the living accommodations where the adoptive parent or parents currently reside;

(*3*) A detailed description of the living accommodations in the United States where the child will reside, if known; and,

(*4*) A statement or attachment recommending or approving the adoption signed by an official of an appropriate public or private adoption agency which is licensed in any state in the United States. For purposes of this part, the responsible state agency in any state of the United States shall be considered to be an appropriate public agency which is licensed in the United States. The home study of any agency other than a responsible state agency will not be considered valid unless the district director is satisfied that the agency is licensed by a state in the United States. The recommendation from such licensed agency shall indicate the fact that it is licensed as well as the state in which it is licensed, its license number, if any, and the period of validity of its license. The district director may require such proof of licensure as is deemed necessary. The licensed agency need not be located in the United States.

(C) *Research and preparation of home study.* Research, including interviewing, and the preparation of the home study may be performed by an individual or group, in the United States or abroad, approved or authorized by the agency which makes the determination that the home study supports a favorable recommendation.

(3) *Preadoption requirements.* If the orphan is to be adopted in the United States, the petitioner(s) must submit evidence of compliance with the preadoption requirements, if any, of the state of the orphan's proposed residence, except for any such requirements that cannot be complied with prior to the child's arrival in the United States. If the child is to be adopted in the United States by an unmarried United States citizen, the petitioner must also establish that adoption by an unmarried person is permitted in the state of the child's proposed residence.

(4) *Beneficiary whose adoption abroad is not deemed valid or who is adopted abroad without having been seen and observed.* An orphan whose adoption abroad is determined by the Service to be invalid for the purposes of granting benefits under the immigration or nationality laws, or who is adopted abroad without having been personally seen and observed by the petitioner (and by the spouse, if the petitioner is married) prior to or during the adoption proceedings, shall be processed as a child coming to the United States for adoption. Before a petition on behalf of such a child is approved, the petitioner (and spouse, if the petitioner is married) must submit a statement indicating the petitioner's (and, if the petitioner is married, the spouse's) willingness and intent to readopt the child in the United States. Unless the Service has already ascertained from the appropriate state authority that readoption is permissible in that state, the petitioner shall be required to submit a statement from the court having jurisdiction over adoption, the state department of welfare, or the attorney general of the state indicating that readoption is permissible. As in the case of a petition for any other orphan coming to the United States for adoption, evidence of compliance with the preadoption requirements, if any, of the state of proposed residence must be submitted. If the child is to be readopted in the United States by an unmarried United States citizen, the petitioner must also establish that adoption by an unmarried person is permitted in the state of the child's proposed residence.

(5) *Preliminary processing of orphan petition without full documentation or home study.* When a child has been identified but the documentary evidence relating to the child or the home study is not yet available, an orphan petition may be filed without such evidence or home study. All other evidence required in paragraph (c)(2) of this section, including fingerprints, must be submitted. The petition will not be considered properly filed until complete documentary evidence relating to the child and the home study are furnished. If the necessary evidence and home study are not submitted within one year from the date of submission of the petition, the petition will be considered as having been abandoned and the fee will not be refunded. Any further proceedings will require the filing of a new petition.

(6) *Decision and disposition of petition.* (i) *Favorable determination.* If the district director or officer in charge makes a favorable determination concerning the ability of the adoptive parent or parents to furnish proper care to a beneficiary orphan if admitted to the United States, the district director or officer in charge shall advise the petitioner of that determination.

(ii) *Unfavorable determination.* If the petitioner submits a petition, Form I–600, on behalf of a child when there has been an unfavorable determination concerning an advance processing application, the fee specified in 8 CFR 103.7(b)(1) must be submitted. If the grounds for the unfavorable determination have not been overcome, the district director shall deny the petition.

(d) *Jurisdiction.*—(1) *Petitioner residing in the United States.* A petitioner residing in the United States shall file a petition on behalf of a child defined in section 101(b)(1)(F) of the Act or an application for advance processing with the Service office having jurisdiction over the place where the petitioner resides.

(2) *Petitioner residing abroad.*—(i) *General.* A petitioner residing outside of the United States shall file an orphan petition or an application for advanced processing with the overseas or stateside office of the Service designated to act on the petition or application. This can be ascertained by consulting an American consulate.

(ii) *Petitioner residing in Canada.* A petitioner residing in Canada shall file an orphan petition or an application for advance processing with the office of the Service having jurisdiction over the place of the child's intended residence in the United States.

(iii) *Petitioner proceeding abroad when a district director at a stateside office has made a favorable determination concerning an application for advance processing.*—(A) *Jurisdiction retained by stateside office.* When a district director at a stateside office has made a favorable determination concerning an application for advance processing and an unmarried petitioner or a married petitioner and/or spouse are traveling abroad to locate or adopt a child, the petition on behalf of the child may be filed at the stateside office if such filing will facilitate the processing of the petition.

(B) *Jurisdiction assumed by American consulate or embassy.* In an advance processing case where the petitioner does not wish to have jurisdiction retained by the stateside Service office, the orphan petition may be filed at the American consulate or embassy having jurisdiction over the place where the child is residing, unless the child is residing in Austria, Germany, Greece, Hong Kong, India, Italy, Kenya, Korea, Mexico, the Philippines, Singapore, Thailand, or the United Kingdom of Great Britain and Northern Ireland.

(C) *Authority of consular officers.* An American consular officer is authorized to approve an orphan petition when the District Director at a stateside Service office has made a favorable determination concerning an advance processing application and the unmarried petitioner or the married petitioner and/or spouse have traveled abroad either to locate or adopt a child or facilitate the adoption in the United States of a known child who resides in a country with no Service office. A consular officer, however, shall refer any petition which is not clearly approvable for a decision by the Service office having jurisdiction over the place where the child is residing. The consular officer's adjudication shall include all aspects of eligibility for classification as an orphan under section 101(b)(1)(F) of the Act other than the ability of the prospective adoptive parent or parents to furnish proper care to the beneficiary orphan.

(D) *Jurisdiction assumed by overseas Service office.* If the child is residing in Austria, Germany, Greece, Hong Kong, India, Italy, Kenya, Korea, Mexico, the Philippines, Singapore, Thailand, or the United Kingdom of Great Britain and Northern Ireland, the orphan petition may be filed at the overseas Service office having jurisdiction over the child's place of residence.

(e) *Child in the United States.* A child who is in parole status and who has not been adopted in the United States is eligible to receive the benefits of an orphan petition and to adjust status to permanent residence when all the requirements of sections 101(b)(F) and 204(e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible to receive the benefits of an orphan petition and to adjust status on that basis.

§ 204.4 Amerasian child of a United States citizen.

(a) *Eligibility.* An alien is eligible for benefits under Public Law 97–359 as the Amerasian child or son or daughter of a United States citizen if there is reason to believe that the alien was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a United States citizen. Such an alien is eligible for classification under sections 201(b), 203(a)(1), or 203(a)(3) of the Act as the Amerasian child or son or daughter of a United States citizen, pursuant to section 204(f) of the Act.

(b) *Filing petition.* Any alien claiming to be eligible for benefits as an Amerasian under Public Law 97–359, or any person on the alien's behalf, may file a petition, Form I–360, Petition for Amerasian, Widow, or Special Immigrant. Any person filing the petition must either be eighteen years of age or older or be an emancipated minor. In addition, a corporation incorporated in the United States may file the petition on the alien's behalf.

(c) *Jurisdiction.* The petition must be filed with the Service office having jurisdiction over the place of the alien's intended residence in the United States or with the overseas Service office having jurisdiction over the alien's residence abroad.

(d) *Two-stage processing.*—(1) *Preliminary processing.* Upon initial submission of a petition with the documentary evidence required in paragraph (f)(1) of this section, the director shall adjudicate the petition to determine whether there is reason to believe the beneficiary was fathered by a United States citizen. If the preliminary processing is completed in a satisfactory manner, the director shall advise the petitioner to submit the documentary evidence required in paragraph (f)(1) of this section and the fingerprints of the sponsor on Form FD–258, if not previously submitted. The petitioner must submit all required documents within one year of the date of the request or the petition will be considered to have been abandoned. To reactivate an abandoned petition, the petitioner must submit a new petition, Form I–360, without the previously submitted documentation, to the Service office having jurisdiction over the prior petition.

(2) *Final processing.* Upon submission of the documentary evidence required in paragraph (f)(1) of this section, the director shall complete the adjudication of the petition.

(e) *One-stage processing.* If all documentary evidence required in paragraph (f)(1) of this section is available when the petition is initially filed, the petitioner may submit it at that time. In that case, the director shall consider all evidence without using the two-stage processing procedure set out in paragraph (d) of this section.

(f) *Evidence to support a petition for an Amerasian child of a United States citizen.*—(1) *Two-stage processing of petition.*—(i) *Preliminary processing.* (A) A petition filed by or on behalf of an Amerasian under this section must be accompanied by evidence that the beneficiary was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982. If the beneficiary was born in Vietnam, the beneficiary's ID card must be submitted, if available. If it is not available, the petitioner must submit an affidavit explaining why the beneficiary's ID card is not available. Evidence that the beneficiary was fathered by a United States citizen must also be presented. The putative father must have been a United States citizen at the time of the beneficiary's birth or at the time of the father's death, if his death occurred prior to the beneficiary's birth. It is not required that the name of the father be given. Such evidence may include, but need not be limited to:

(*1*) The beneficiary's birth and baptismal certificates or other religious documents;

(*2*) Local civil records;

(*3*) Affidavits from knowledgeable witnesses;

(*4*) Letters or evidence of financial support from the beneficiary's putative father;

(*5*) Photographs of the beneficiary's putative father, especially with the beneficiary; and

(*6*) Evidence of the putative father's United States citizenship.

(B) The beneficiary's photograph must be submitted.

(C) The beneficiary's marriage certificate, if married, and evidence of the termination of any previous marriages, if applicable, is required.

(D) If the beneficiary is under eighteen years of age, a written irrevocable release for emigration must be received from the beneficiary's mother or legal guardian. The mother or legal guardian must authorize the placing agency or agencies to make decisions necessary for the child's immediate care until the sponsor receives custody. Interim costs are the responsibility of the sponsor. The mother or legal guardian must show an understanding of the effects of the release and state before signing the release whether any money was paid or any coercion was used. The signature of the mother or legal guardian must be authenticated by the local registrar, the court of minors, or a United States immigration or consular officer. The release must include the mother's or legal guardian's full name, date and place of birth, and current or permanent address.

(ii) *Final processing.* (A) If the director notifies the petitioner that all preliminary processing has been completed in a satisfactory manner, the petitioner must then submit Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, executed by the beneficiary's sponsor, along with the documentary evidence of the sponsor's financial ability required by that form. If the beneficiary is under eighteen years of age, the sponsor must agree to petition the court having jurisdiction, within thirty days of the beneficiary's arrival in the United States, for legal custody under the laws of the state where the beneficiary will reside until the beneficiary is eighteen years of age. The term "legal custody" as used in this section means the assumption of responsibility for a minor by an adult under the laws of the state in a court of law. The sponsor must be a United States citizen or lawful permanent resident who is twenty-one years of age or older and who is of good moral character.

(B) Other documents necessary to support the petition are:

(*1*) Evidence of the age of the beneficiary's sponsor;

(*2*) Evidence of United States citizenship or lawful permanent residence of the sponsor as provided in § 204.1(f); and

(C) If the beneficiary is under eighteen years of age, evidence that a public, private, or state agency licensed in the United States to place children and actively involved, with recent experience, in the intercountry placement of children has arranged the beneficiary's placement in the United States. Evidence must also be provided that the sponsor with whom the beneficiary is being placed is able to accept the beneficiary for care in the sponsor's home under the laws of the state of the beneficiary's intended residence. The evidence must demonstrate the agency's capability, including financial capability, to arrange the placement as described in paragraph (f)(1) of this section, either directly or through cooperative agreement with other suitable provider(s) of service.

(iii) *Arrangements for placement of beneficiary under eighteen years of age.* (A) If the beneficiary is under eighteen years of age, the petitioner must submit evidence of the placement arrangement required under paragraph (f)(1) of this section. A favorable home study of the sponsor is necessary and must be conducted by an agency in the United States legally authorized to conduct that study. If the sponsor resides outside the United States, a home study of the sponsor must be conducted by an agency legally authorized to conduct home studies in the state of the sponsor's and beneficiary's intended residence in the United States and must be submitted with a favorable recommendation by the agency.

(B) A plan from the agency to provide follow-up services, including mediation and counselling, is required to ensure that the sponsor and the beneficiary have satisfactorily adjusted to the placement and to determine whether the terms of the sponsorship are being observed. A report from the agency concerning the placement, including information regarding any family separation or dislocation abroad that results from the placement, must also be submitted. In addition, the agency must submit to the Director, Outreach Program, Immigration and Naturalization Service, Washington, DC, within 90 days of each occurrence, reports of any breakdowns in sponsorship that occur, and reports of the steps taken to remedy these breakdowns. The petitioner must also submit a statement from the agency:

(*1*) Indicating that, before signing the sponsorship agreement, the sponsor has been provided a report covering pre-placement screening and evaluation, including a health evaluation, of the beneficiary;

(*2*) Describing the agency's orientation of both the sponsor and the beneficiary on the legal and cultural aspects of the placement;

(*3*) Describing the initial facilitation of the placement through introduction, translation, and similar services; and

(*4*) Describing the contingency plans to place the beneficiary in another suitable home if the initial placement fails. The new sponsor must execute and submit a Form I–361 to the Service office having jurisdiction over the beneficiary's residence in the United States. The original sponsor nonetheless retains financial responsibility for the beneficiary under the terms of the guarantee of financial support and intent to petition for legal custody which that sponsor executed, unless that responsibility is assumed by a new sponsor. In the event that the new sponsor does not comply with the terms of the new guarantee of financial support and intent to petition for legal custody and if, for any reason, that guarantee is not enforced, the original sponsor again becomes financially responsible for the beneficiary.

(iv) *Fingerprints of sponsor.* The petitioner must submit the fingerprints of the sponsor on Form FD–258. The petitioner may submit Form FD–258 at any time during the processing of the petition. The Form FD–258 must reflect the originating agency (ORI) number or special office code relating to the Service office where the petition is filed, if that office has Forms FD–258 with the relating ORI number.

(2) *One-stage processing of petition.* If the petitioner chooses to have the petition processed under the one-stage processing procedure described in paragraph (e) of this section, the petitioner must submit all evidence required by paragraph (f)(1) of this section.

(g) *Decision*—(1) *General.* The director shall notify the petitioner of the decision and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner may appeal the decision under Part 103 of this chapter.

(2) *Denial upon completion of preliminary processing.* The director may deny the petition upon completion of the preliminary processing under paragraph (d) of this section for:

(i) Failure to establish that there is reason to believe the alien was fathered by a United States citizen; or

(ii) Failure to meet the sponsorship requirements if the fingerprints of the sponsor, required in paragraph (f)(1) of this section, were submitted during the preliminary processing and the completed background check of the sponsor discloses adverse information resulting in a finding that the sponsor is not of good moral character.

(3) *Denial upon completion of final processing.* The director may deny the petition upon completion of final processing if it is determined that the sponsorship requirements, or one or more of the other applicable requirements, have not been met.

(4) *Denial upon completion of one-stage processing.* The director may deny the petition upon completion of all processing if any of the applicable requirements in a case being processed under the one-stage processing described in paragraph (e) of this section are not met.

(h) *Classification of Public Law 97-359 Amerasian.* If the petition is approved the beneficiary is classified as follows:

(1) An unmarried beneficiary under the age of twenty-one is classified as the child of a United States citizen under section 201(b) of the Act;

(2) An unmarried beneficiary twenty-one years of age or older is classified as the unmarried son or daughter of a United States citizen under section 203(a)(1) of the Act; and

(3) A married beneficiary is classified as the married son or daughter of a United States citizen under section 203(a)(3) of the Act.

(i) *Enforcement of affidavit of financial support and intent to petition for legal custody.* A guarantee of financial support and intent to petition for legal custody on Form I-361 may be enforced against the alien's sponsor in a civil suit brought by the Attorney General in the United States District Court for the district in which the sponsor resides, except that the sponsor's estate is not liable under the guarantee if the sponsor dies or is adjudicated as bankrupt under title 11, United States Code. After admission to the United States, if the beneficiary of a petition requires enforcement of the guarantee of financial support and intent to petition for legal custody executed by the beneficiary's sponsor, the beneficiary may file Form I-363 with the Service office having jurisdiction over the beneficiary's residence in the United States. If the beneficiary is under eighteen years of age, any agency or individual (other than the sponsor) having legal custody of the beneficiary, or a legal guardian acting on the alien's behalf, may file Form I-363.

Dated: August 25, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-21525 Filed 9-8-92; 8:45 am]

BILLING CODE 4410-10-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Restatement to Accrual Method of Accounting

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On January 22, 1992, the Small Business Administration (SBA) published in the **Federal Register** (57 FR 2443) an interim rule amending its size regulations to provide that small business concerns whose size status is determined pursuant to annual receipts must restate their books of account to the accrual method of accounting only with respect to fiscal years beginning on or after January 1, 1990. This rule makes final, as published, the interim regulation.

DATES: This rule is effective September 9, 1992.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, (202) 205-6645.

SUPPLEMENTARY INFORMATION: On January 22, 1992, SBA published an interim rule which substantively amended SBA's size regulations to explicitly apply, for size determination purposes, the requirement for restatement of receipts to the accrual method of accounting only as to fiscal years beginning on or after January 1, 1990, the date such restatement requirement was added to the regulation. The revision applied to all size self-certifications made after January 22, 1992, the effective date of the interim rule, and to all size determinations begun *or* completed after that date. In those cases, a firm could elect to show revenues for fiscal years beginning *prior to* January 1, 1990, on either a cash or an accrual basis of accounting. (For a complete description of the regulatory history leading to the interim rule, see the preamble to the January 22, 1992, interim rule. 57 FR 2443.)

In promulgating the interim rule, the Agency adopted the interpretation given SBA's January 1, 1990, regulation announced in SBA Size Policy Statement No. 2 and the rationale contained therein. (See **Federal Register** November 19, 1990, 55 FR 48106.) Size Policy Statement No. 2 was not intended to create a new substantive regulation, but merely to provide an interpretation of the January 1, 1990, regulation. However, in two separate size appeals decisions, SBA's Office of Hearings and Appeals (OHA) held that SBA Size Policy Statement No. 2 could be applied only to size self-certifications occurring on or after its publication date of November 19, 1990. Size Appeal of Geofon, Inc., No. 3429 (March 4, 1991); Size Appeal of Research Analysis and Maintenance, Inc. and Stewart Associates, Inc., No. 3445 (March 28, 1991); Appellant petition for reconsideration denied, No. 3486 (June 20, 1991); SBA petition for reconsideration denied, No. 3489 (July 3, 1991). Thus, the interim rule was needed to ensure the uniform application of the regulations as intended and to promote stability in the procurement process.

SBA received one comment on the interim rule which objected to the possibility of retroactive application of the rule. SBA responds to this comment by restating that the rule applies only prospectively to self-certifications or size determinations that occur after the effective date of the interim rule, January 22, 1992. Further, this assertion is reinforced by a decision of OHA to the same effect. See Size Appeal of Nations, Inc., No. 3611 (April 24, 1992). As such, SBA is adopting the interim rule a final without change.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (55 U.S.C. 601, et. seq.), and the Paperwork Reduction Act (44 U.S.C. Chap. 35)

SBA certifies that this final rule is not a major rule within the meaning of Executive Order 12291 and will not have a significant economic impact on a substantial number of entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The change in the size regulations will affect a very limited number of concerns and procurements. In theory, the change in the size regulations will affect all size certifications made between January 1, 1990, and November 19, 1990. However, because size with respect to those certifications has been, for the most part, already decided in accord with the interpretation set forth in Size Policy Statement No. 2, the interim rule, and this final rule, there should be very little impact on any concerns or Government acquisitions currently being finalized. In addition, this rule does not affect any of

the size standards contained in § 121.601. This rule, in and of itself, would not impose costs upon the businesses which might be affected by it. Because the rule will have no affect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside and 8(a) programs, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA amends part 121 of Title 13, Code of Federal Regulations (CFR), as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

2. Paragraph 121.402(d)(1) is amended to read as follows:

§ 121.402 Annual receipts.

(d)(1) *Method of determining annual receipts.* Revenue may be taken from the regular books of account of the concern. If the concern so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the concern, then revenues shown on the Federal Income Tax return of the concern may be used in determining annual receipts. Subject to the exception in paragraph (d)(2) of this section, revenue shown on the regular books of account or the Federal Income Tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years beginning on or after January 1, 1990. For purposes of either a self-certification as to size made, or any size determination initiated or completed, subsequent to January 22, 1992, a firm may elect to show revenues for fiscal years beginning *prior to* January 1, 1990, on either a cash or an accrual basis of accounting. Further, where the completed contract method of determining income has been used, revenue must be restated to a percentage of completion method prior to determining annual receipts.

* * * * *

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-21506 Filed 9-8-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 097CE, Special Conditions 23-ACE-65]

Special Conditions; Extra-Flugzeugbau GmbH Model 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: This special condition is being issued for the Extra-Flugzeugbau GmbH Model 300 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These design features include the use of composite materials for primary structure for which the regulations do not contain adequate or appropriate airworthiness standards and structural design criteria utilizing higher design load factors, because the design flight envelope of the Extra 300 far exceeds the minimum required design limits of part 23. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1989, Extra-Flugzeugbau GmbH located in Germany applied to the FAA for type certification of the model Extra 300. The Extra 300 is a single-engine, acrobatic category FAR part 23 airplane capable of performing "Flick Rolls" producing high angular rotation rates. The configuration is conventional with a low horizontal tail, and tubular steel frame fuselage. The wing and empennage are constructed with composite material. The airplane is designed for high performance acrobatic maneuvers with a design flight envelope of ±10g. The current FAR part 23 acrobatic category design requires that the flight envelope shall not be less than +6.0g, −3.0g.

Type Certification Basis

The type certification basis for the Extra 300 airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29 and § 21.183(c); part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-34; part 36 of the FAR, effective December 1, 1969, including amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any, and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis as provided by § 21.17(a)(2).

The type design of the Extra 300 contains novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model Extra 300 airplane.

Composite Flight Structure

The Extra-Flugzeugbau GmbH Model Extra 300 airplane is made of composite

material and is assembled differently from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the Extra 300 are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of § 23.572 are inadequate to ensure that composite material structure can withstand the repeated loads of variable magnitude expected in service. The use of composite materials and bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the certification basis for the Model Extra 300 airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from composite materials equivalent to those existing for aluminum airplanes.

The special conditions will require composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements, such as the fuselage, and the vertical and horizontal stabilizers and their carry-through structure, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worked to permit approval based on safe-life testing. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572. Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the Model Extra 300 airplane equivalent to that required by the airworthiness standards of part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as movable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to ensure an appropriate level of safety for the Model Extra 300 airframe structure. This special condition is intended to require: (1) Accounting for environmental effects, that is, temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used instead of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable nondestructive testing techniques do not yet exist in state of the art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA. Because the composite material and bonding may require maintenance and inspection procedures different from those commonly utilized for existing aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Structural Design and Loads Criteria

An analysis of world championship acrobatic sequences shows a significant number of occurrences of high load factors, up to ±10g.

Wing

For airplanes capable of performing "flick rolls" (snap rolls), the wing should be designed for 100/0 percent maximum wing load distribution, in addition to the roll maneuver criteria of § 23.349(b), unless lower values can be substantiated. These load conditions are based on a V_A and $C_{1\ max}$ corresponding to the selected positive 10g design load factor. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational or conservative manner, considering the principal masses furnishing the reacting interia forces. Furthermore, consideration should be given to the fact that pilots may make significant aileron control inputs above V_A; therefore, a warning prohibiting unrestricted control system input above V_A should be included in the Pilot Operating Handbook/Airplane Flight Manual (POH/AFM) and on a cockpit placard.

Empennage

Extra conducted flight tests to develop and record acrobatic generated unsymmetrical load values in the horizontal tail and torsion load values in the fuselage. Flight tests were conducted to specifically generate maximum unsymmetric loading by varying speed and phasing of maximum elevator and rudder inputs (elevator and rudder inputs were made to full deflection in approximately 0.15 seconds).

The use of rational flight test results is preferred as a basis for design. Pilots may make significant rudder and elevator control inputs above V_A; therefore, adequate pilot warnings such as discussed above are necessary.

In lieu of the 1.3 factor specified for rudder maneuver conditions of § 23.441(a)(2), a value of 1.5 for the overswing factor should be used unless a lower value can be substantiated by flight test.

Rational chord load distributions should be used for the vertical and horizontal tail surfaces. These may be developed by flight test data, wind tunnel test data, theoretical analysis, or a combination thereof.

Gyroscopic Forces

Since the aircraft will be performing maneuvers which generate high pitch and yaw rates, the airplane, including the engine, engine mount, and fuselage attachment, must be designed for rational gyroscopic forces generated in specific acrobatic maneuvers.

Fatigue

The fatigue load should be developed from representative sequences and cross country flight profiles.

Discussion

Notice of proposed special condition, Docket No. 097CE, Notice No. 23 ACE-65 (57 FR 23165, June 2, 1992) proposed a special condition for the Extra-Flugzeugbau GmbH Model 300 Series airplane. The comment period closed August 3, 1992.

No comments pertaining to the notice were received. The special condition, as proposed by Notice No. 23 ACE-65, is issued without change.

Conclusion

This action affects only novel and unusual design features on the Extra-Flugzeugbau GmbH Model 300 Series airplane. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended [49 U.S.C. 1354(a), 1421, and 1423]; 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49(b).

Adoption of the Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Extra-Flugzeugbau GmbH Model 300 Series airplane.

Evaluation of Composite Structures

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, i.e., each wing, wing carry-through and its attaching structure, horizontal stabilizer, and horizontal stabilizer carry-through and its attaching structure, fuselage, vertical stabilizer and its attaching structure, and all movable control surfaces and their attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (i) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstration, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that, after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) Each wing and horizontal stabilizer carry-through and attaching structure, and vertical stabilizer and attaching structure, and all movable control surfaces and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, test, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(h) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) The airplane must be shown to be free from flutter with the extent of damage for which residual strength is demonstrated.

(j) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon test must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite materials components that may occur may be considered in the demonstration. The impact damage level considered must be consistent with detectability of the inspection procedures employed.

Structural Design and Loads Criteria

Wing

In addition to the roll maneuver criteria of § 23.349(b), for airplanes designed to perform "flick-rolls" (snap rolls), the wing must be designed for a 100/0 percent maximum wing load distribution. Accurate flight test load measurements may be used in lieu of 100/0 percent maximum airload distribution. A notation shall be placed in the Limitations Section of the POH/AFM, and an appropriate warning placard shall be installed on the main instrument panel prohibiting full or abrupt control inputs above V_A.

Empennage

The horizontal tail and its attachments to the fuselage, and the aft fuselage must be designed for the worst case load condition using either accurate flight test load measurements or an acceptable analytical method.

Unsymmetrical load combinations acting on the wing and on the horizontal tail are assumed to be turning the airplane in the same direction around the roll axis. A notation shall be placed in the limitation section of the POH/

AFM, and an appropriate warning placard shall be installed on the main instrument panel prohibiting full or abrupt control inputs above V_A. In lieu of the 1.3 factor specified for rudder maneuver, conditions of § 23.441(a)(2), a value of 1.5 for the overswing factor must be used, unless a lower value is substantiated by flight test. Rational chord load distributions must be used for the vertical and horizontal tail surfaces. Appropriate data must be used to develop unsymmetrical loading of the horizontal tail surface and as a basis for fuselage torsion. This must include simultaneous application of full rudder and elevator input.

Gyroscopic Forces

The airplane, including the engine, engine mount and fuselage attachment, must be designed for representative gyroscopic forces generated in acrobatic maneuvers.

Fatigue

Representative acrobatic maneuver sequences and cross-country flight profiles must be used in establishing a rational fatigue load spectrum.

Issued in Kansas City, Missouri, on August 28, 1992.

Joseph H. Snitkoff,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21655 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 096CE, Special Conditions 23-ACE-64]

Special Conditions; FFT Model Eurotrainer 2000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: This special condition is being issued for the FFT Gesellschaft Fur Flugzeug und Faserverbund Technologie mbH Model Eurotrainer 2000 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These design features include the use of composite materials for primary structure for which the regulations do not contain adequate or appropriate airworthiness standards. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1991, FFT Gesellschaft Fur Flugzeug and Faserverbund Technologie mbh, located in Germany applied to the FAA for type certification of their model Eurotrainer 2000 Series airplane. The Eurotrainer 2000 Series airplane is a 4-seat, low-wing, conventional airplane with Fowler flaps and retractable landing gear. The powerplant consists of a 6 cylinder, 270 hp, piston engine and a 3 bladed constant speed propeller. Construction of the airplane structure is of all composite materials.

Type Certification Basis

The type certification basis for the FFT Model Eurotrainer 2000 Series airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29 and § 21.183(c); part 23 of the FAR, effective February 11, 1965, including amendments 23-1 through 23-42; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any, and the special condition adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and § 11.29(b), effective October 14, 1980, and become a part of the type certification basis as provided by § 21.17(a)(2).

The proposed type design of the FFT Model Eurotrainer 2000 Series airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the FFT Model Eurotrainer 2000 Series airplane.

Composite Flight Structure

The FFT Model Eurotrainer 2000 Series airplane is made of composite material and is assembled differently from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the FFT Model Eurotrainer 2000 Series airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of § 23.572 are inadequate to ensure that composite material structure can withstand the repeated loads of variable magnitude expected in service. The use of composite materials and bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the certification basis for the FFT Model Eurotrainer 2000 Series airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from composite materials equivalent to those existing for aluminum airplanes.

The special conditions will require composite structural components critical to safe flight to be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements, such as the fuselage, and the vertical and horizontal stabilizers and their carry through structure, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worked to permit approval based on safe-life testing. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572. Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the

composite material airframe structure used in the FFT Model Eurotrainer 2000 Series airplane equivalent to that required by the airworthiness standards of part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as movable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to ensure an appropriate level of safety for the FFT Eurotrainer Model 2000 Series airframe structure. This special condition is intended to require: (1) Accounting for environmental effects, that is, temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used instead of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable nondestructive testing techniques do not yet exist in state of the art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA. Because the composite material and bonding may require maintenance and inspection procedures different from those commonly utilized for existing aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Discussion of Comments

Notice of Proposed Special Condition, Docket No. 096CE, Notice No. 23–ACE–64 (57 FR 11691, April 7, 1992) proposed a special condition for the FFT Gesellschaft Fur Flugzeug und Faserverbund Technologie mbH Model Eurotrainer 2000 Series airplanes. The comment period closed August 5, 1992.

No comments pertaining to this Notice were received. The special condition, as proposed by Notice No. 23–ACE–64, is issued without change.

Conclusion

This action affects only novel and unusual design features on the FFT Model Eurotrainer 2000 Series airplane. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49(b).

Adoption of the Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the FFT Model Eurotrainer 2000A Series airplane:

1. Evaluation of Composite Structures

In lieu of complying with §§ 23.571 and 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, each wing, wing carry through and its attaching structure, horizontal stabilizer, horizontal stabilizer carry through and attaching structure, fuselage, vertical stabilizer and its attaching structure, and all movable control surfaces and their attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition.

Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(A) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; for example, bond defects, or damage from discrete sources under repeated loads expected in service; that is, between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstration, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that, after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength test, to be able to withstand the loads listed in subparagraphs (1) and (2) below, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) Each wing, wing carry through and its attaching structure, and horizontal stabilizer carry through and attaching structure, and vertical stabilizer, horizontal stabilizer and its attaching structure, and all movable control

surfaces and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a nondestructive inspection technique that ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination.

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) and (g) of this special condition must be determined by analysis, test, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; for example, exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown to be free from flutter with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with the detectability of the inspection procedures employed.

Issued in Kansas City, Missouri on August 28, 1992.

Joseph H. Snitkoff,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21656 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26955; Amdt. No. 1507]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated

at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on August 28, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revise Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective December 10, 1992

Nick Wilson Field, AR—Pocahontas, VOR RWY 36, Amdt. 6

Riverside, CA—Riverside Muni, VOR–B, Orig.

Marianna, FL—Marianna Muni, VOR–B, Amdt. 3

. . . Effective November 12, 1992

Kaunakakai, Molokai, HI—Molokai, VOR or TACAN–A, Amdt. 14

. . . Effective October 15, 1992

Phoenix, AZ—Phoenix Sky Harbor Intl, ILS RWY 26R, Orig.

Orlando, FL—Orlando Intl, RADAR–1, Amdt. 5

Atlanta, GA—Peachtree City-Falcon Field, LOC RWY 31, Orig.

Atlanta, GA—Peachtree City-Falcon Field, NDB RWY 31, Orig.

Peachtree City, GA—Falcon Field, VOR/DME–B, Amdt. 1, CANCELLED

Peachtree City, GA—Falcon Field, RNAV RWY 31, Amdt. 3, CANCELLED

Klye-Oakley Field, KY—Murray, NDB RWY 23, Amdt. 6

Las Vegas, NV—McCarran Intl, VOR/DME RWY 1R, Orig.

Gwinner-Roger Melroe Field, ND—Gwinner, NDB RWY 34, Orig.

Eagle Lake, TX—Eagle Lake, VOR RWY 17, Amdt. 3

Salt Lake City, UT—Salt Lake City Intl, ILS/DME RWY 16R, Amdt. 6

*** * * Effective September 17, 1992**

Detroit, MI—Detroit Metropolitan Wayne County, RADAR–1, Amdt. 22

Portsmouth, NH—Pease International Tradeport, VOR/DME or TACAN RWY 16, Orig., CANCELLED

Portsmouth, NH—Pease International Tradeport, VOR or TACAN RWY 16, Orig.

Portsmouth, NH—Pease International Tradeport, VOR/DME or TACAN RWY 34, Orig., CANCELLED

Portsmouth, NH—Pease International Tradeport, VOR or TACAN RWY 34, Orig.

Clermont County, OH—Batavia, NDB RWY 22, Orig.

Medford, OR—Medford-Jackson County, ILS/DME RWY 14, Amdt. 14

Erie, PA—Erie Intl, NDB RWY 6, Orig.

Dallas, TX—Dallas Love Field, ILS RWY 31L, Amdt. 17

[FR Doc. 92–21657 Filed 9–8–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 26956; Amtd. No. 1508]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards

Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore-(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on August 28, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
08/13/92	TN	Athens	McMinn County	FDC 2/4751	NDB Rwy 20 Amdt 5.
08/17/92	MA	Worcester	Worcester Muni	FDC 2/4799	NDB Rwy 11 Amdt 17.
08/17/92	MA	Worcester	Worcester Muni	FDC 2/4800	ILS Rwy 11 Amdt 18.
08/18/92	CT	Meriden	Meriden Markham Muni	FDC 2/4827	VOR Rwy 36 Amdt 2.
08/20/92	TX	Brownwood	Brownwood Muni	FDC 2/4895	VOR/DME Rwy 35 Amdt 1.
08/24/92	PA	Carlisle	Carlisle	FDC 2/5018	NDB Rwy 28 Amdt 1.
08/25/92	CA	San Francisco	San Francisco Intl	FDC 2/5021	LDA/DME Rwy 28R Orig.

Carlisle

Carlisle

Pennsylvania
NDB RWY 28 AMDT 1...
Effective: 08/24/92
FDC 2/5018/N94/ FI/P Carlisle, Carlisle, Pa. NDB Rwy 28 Amdt 1...Lancaster Initial—LRP VORTAC to latle distance should read 33.1NM. This becomes NDB Rwy 28 Amdt 1A.

Athens

McMinn County

Tennessee
NDB RWY 20 AMDT 5...
Effective: 08/13/92
FDC 2/4751/MMI/ FI/P McMinn County, Athens, Tn. NDB Rwy 20 Amdt 5...terminal route... gross Int to MMI NDB Min Alt 3100. This becomes NDB Rwy 20 Amdt 5A.

Brownwood

Brownwood Muni

Texas
VOR/DME RWY 35 AMDT 1...
Effective: 08/20/92
FDC 2/4895/BWD/ FI/P Brownwood Muni, Brownwood, Tx. VOR/DME Rwy 35 Amdt 1...terminal route... LLO Vortac (IAF) to zannf/BWD 22DME (NOPT) minimum alt 5000. This is VOR/DME Rwy 35 Amdt 1A.

NFDC Transmittal Letter Attachment

San Francisco

San Francisco Intl

California
LDA/DME RWY 28R ORIG...
Effective: 08/25/92
FDC 2/5021/SFO/ FI/P San Francisco Intl, San Francisco, Ca. LDA/DME RWY 28R Orig...add note...ILS Rwy 28R I-GWQ Freq 111.7. This Becomes LDA/DME Rwy 28R Orig-A.

Meriden

Meriden Markham Muni

Connecticut
VOR RWY 36 AMDT 2...
Effective: 08/18/92
FDC 2/4827/MMK/ FI/P Meriden Markham Muni, Meriden, Ct. VOR Rwy 36 Amdt 2...delete missed approach point DME, MAD R-345/13 DME in Profile view. This is VOR Rwy 36 Amdt 2A.

Worcester

Worcester Muni

Massachusetts
NDB RWY 11 AMDT 17...
Effective: 08/17/92
FDC 2/4799/ORH/ FI/P Worcester Muni, Worcester, Ma. NDB Rwy 11 Amdt 17...S-NDB-11 CAT A/B MDA 1780/HAT 799 RVR 4000, CAT C MDA 1780/HAT 799 VIS 1-3/4, CAT D MDA 1780/HAT 799 VIS 2-1/4. For inoperative MALSR increase CAT B S-11 TO RVR 6000. Circling CAT D MDA 2100/HAA 1092 VIS 3. This is NDB Rwy 11 Amdt 17A.

Worcester

Worcester Muni

Massachusetts
ILS RWY 11 AMDT 18...
Effective: 08/17/92
FDC 2/4800/ORH/ FI/P Worcester Muni, Worcester, Ma. ILS Rwy 11 Amdt 18...S-ILS-11 all cats DH 1231/HAT 250, VIS RVR 4000. INOPERATIVE TABLE DOES NOT APPLY. S-LOC-11 CAT A/B VIS RVR 4000. for inoperative MALSR increase S-LOC-11 to RVR 5000. Circling CAT D MDA 2100/HAA 1092 VIS 3. This is ILS Rwy-11 Amdt 18A.

[FR Doc. 92-21658 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Shuttle

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is adopting 14 CFR part 1214, subpart 1214.9, "Use of Small Self-Contained Payloads," as a final rule. This rule revises the prices for standard launch support of Small Self-Contained Payloads (SSCP's) by adjusting previous prices to compensate for the impact of inflation from fiscal years 1975 through 1991. In addition, this rule clarifies and revises various other features of the previous policy: flight scheduling, provision of optional services, conditions upon which a reflight is provided, rules on transfer of reservation ownership, and rules on the apportionment, and assignment of SSCP services.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Tucker, Jr., 202-453-2347.

SUPPLEMENTARY INFORMATION: NASA published this rule in the **Federal Register** on September 18, 1991, as an interim final rule (56 FR 47146). Any comments from concerned parties were to be received by NASA Headquarters on or before October 18, 1991.

One letter was received regarding the revised rule. The letter was generally favorable, but did express concerns with the price increases. NASA's response reiterated its rationale for the decision to raise the prices as strictly one of an increase for the effects of inflation from 1975 to 1991. However, for domestic education purposes, NASA plans a new policy whereby domestic educational institutions will have an option to qualify for reduced prices subject to their agreement to certain conditions and their meeting certain criteria. This new policy will be separately published in the **Federal Register.** Questions on the new policy should be referred to the Education Division, Code FE, NASA Headquarters, Washington, DC 20546.

Since no significant changes were made to this regulation, the interim final rule amending 14 CFR part 1214, subpart 1214.9, which was published at 56 FR 47146 on September 18, 1991, is adopted as a final rule without change.

Dated: August 31, 1992.

Daniel S. Goldin,

Administrator.

[FR Doc. 92-21588 Filed 9-8-92; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1690]

Amendment to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule is the result of a notice of proposed rulemaking published in the **Federal Register,** 57 FR 1886, January 16, 1992. It amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, this rule moves military Global Positioning System (GPS) receivers into Category XV, which covers spacecraft and related equipment, from Category XI (a)(2), which covers military electronics equipment, where military GPS receivers were previously controlled. This rule reduces the burden on exporters by identifying the specific parameters for a GPS receiver that justify its control as a defense article. Any GPS receiver not meeting these parameters is deemed to be predominantly commercial rather than military in nature and subject to the export licensing controls of the U.S. Department of Commerce. The Department of Commerce has long

controlled exports of "commercial GPS receivers" while the Department of State controlled "military GPS receivers"; however, no attempt had previously been made to differentiate between the two. The Department of Commerce will soon be amending the Commerce Control List (CCL) to reflect this clarification.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, tel. 703-875-6619.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measure directed by the President included removal from the USML of all items contained on the COCOM dual-use list (also known as the "CORE" list) unless significant U.S. national security interests would be jeopardized.

In implementing this directive, the Department headed an interagency working group which reviewed coverage of spacecraft and related components. Chaired by the Department of State, the Space Technical Working Group (STWG) is comprised of representatives of the Departments of State, Commerce, Defense, and other executive agencies. The group was established to identify and recommend removal from the USML of commercial satellites and related articles covered by the COCOM Industrial List (IL) except where such movement would jeopardize U.S. national security interests. On September 5, 1991, the Department published a notice of advanced rulemaking, establishing a new Category XV on the USML for spacecraft and related systems, including military GPS receivers (56 FR 43894). A final rule formally creating Category XV for Spacecraft Systems and Associated Equipment was published in the **Federal Register**, 57 FR 15227, April 27, 1992.

On January 16, 1992, the Department published a proposed rule on military GPS receivers (57 FR 1886). This final rule derives from the January 16 proposed rule and marks the first actual movement from another category in the USML of a defense article into Category XV. Additional **Federal Register** Notices will follow as the working group completes its review, moving articles from the USML to Cateogry XV or to the CCL, as appropriate.

Three responses were received during the 30-day public comment period for the January 16, 1992, proposed rule, raising three major comments on the proposed language. Regarding industry's remarks, the working group is unable to comply with some of the requests, because the parameters contained in the proposed rule derive from commitments made by the United States Government under the multilateral Missile Technology Control Regime (MTCR) and are specifically cited in the Guidelines to that regime. In addition, any GPS receivers specifically designed for capabilities such as those outlined in the parameters are intended primarily for military, rather than commercial, end-use and should properly be controlled under the U.S. Munitions List.

As for other industry concerns, it should be noted that the Department of Commerce intends to publish a **Federal Register** Notice advising industry of this change and modifying the CCL as appropriate. Accordingly, the advisory notice published herein is intended to assist both U.S. industry and its foreign customers by providing the U.S. Government's parameters for military GPS receivers which are controlled on the USML. The "notice" as published at the end of this paragraph is an advisory notice and is not regulatorily binding.

This final rule creates a new paragraph (c) in Category XV for GPS receivers. Because GPS receivers are not themselves complete satellites, it was more appropriate to control them in a separate paragraph instead of within a paragraph controlling complete satellites, as was the case in the proposed rule. Except for moving them into their own separate paragraph, the actual language controlling GPS receivers in Category XV has not been changed from the language of the January 16 proposed rule. Note, however, that the language of paragraph (d) on components, parts, etc., and paragraph (e) on technical data and defense services will change when complete spacecraft are added to Category XV. (See the proposed rule published in the **Federal Register**, 57 FR 14671, April, 22, 1992.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations is amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation or part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In section 121.1, Category XV is added to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

(a) [Reserved]

(b) [Reserved]

(c) Global Positioning System (GPS) receiving equipment specially designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

(1) Designed for encryption or decryption (e.g.: Y-Code) of GPS precise positioning service (PPS) signals;

(2) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

(3) Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

(4) Designed or modified for use with unmanned air vehicle systems capable for delivering at least a 500 kg payload to a range of at least 300 km.

Note: GSP receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified, or configured for military use and therefore covered under this paragraph (c).

Note: Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this paragraph (c). The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following:

Advisory Notice: This receiver uses the GPS P-Code signal, which by U.S. policy may be switched off without notice.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed, modified, or configured for the articles in paragraph (c) if this category.

(e) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) related to the defense

articles listed in paragraphs (c) and (d) of this category. (See § 125.4 for exemptions.) Technical data directly related to manufacture and production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Dated: August 24, 1992.

Frank G. Wisner,

Under Secretary of State for International Security Affairs.

[FR Doc. 92-21495 Filed 9-8-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1 and 602

[T.D. 8434]

RIN 1545-AM16

Treatment of Dual Consolidated Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations implementing section 1503(d) of the Internal Revenue Code of 1986. Section 1503(d) was added to the Code by section 1249 of the Tax Reform Act of 1986 (Pub. L. 99-514) and was amended by section 1012(u) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation may not be used to offset the taxable income of any domestic corporate affiliate. These regulations provide guidance needed to comply with section 1503(d) and generally affect domestic corporations that are subject to an income tax of a foreign country on their worldwide income or on a residence basis.

EFFECTIVE DATE: These regulations are effective for taxable years commencing on or after October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Sim Seo of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-0399-88) (202-622-3840, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1083. The estimated annual burden per respondent/recordkeeper varies from 0.5 to 1 hour, with an estimated average of .75 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, D.C. 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On September 8, 1989, proposed and temporary regulations implementing section 1503(d) were published in the **Federal Register** at 54 FR 37314. Written comments were received in response to the proposed regulations and a public hearing was held on March 2, 1990. After consideration of all the comments, these final regulations are adopted by this Treasury Decision. The revisions made in the final regulations and relevant comments are discussed below.

Explanation of Provisions

Section 1503(d)

Section 1503(d) generally provides that a "dual consolidated loss" of a domestic corporation cannot offset the taxable income of any other member of the corporation's affiliated group. The statute generally defines a dual consolidated loss as a net operating loss of any domestic corporation that is subject to an income tax of a foreign country without regard to the source of its income or on a residence basis (a "dual resident corporation"). The statute authorizes the issuance of regulations permitting the use of a dual consolidated loss to offset the income of a domestic affiliate if the loss does not offset the income of a foreign corporation under foreign law.

Section 1503(d) further states that, to the extent provided in regulations, similar rules shall apply to any loss of a "separate unit" of a domestic corporation as if such unit where a wholly-owned subsidiary of the corporation. Although the statute does not define the term separate unit, the legislative history to the provision refers to the loss of any "separate and clearly identifiable unit of a trade or business of a taxpayer" and cites as an example a foreign branch of a domestic corporation. See H.R. Rep. No. 795, 100th Cong., 2d Sess. July 26, 1988) at 293.

Section 1503(d) was enacted to prevent a single economic loss from being used to reduce tax on two separate items of income—one of which is subject to current tax in a foreign country but not in the United States and the other of which is taxed in the United States but not in the foreign jurisdiction. Through such "double dipping," worldwide economic income can be rendered partially or fully exempt from current taxation. Moreover, even if the foreign income against which the loss is used will eventually be subject to U.S. tax (upon a repatriation of earnings), there are timing benefits of double dipping that the statute was intended to prevent.

The Temporary Regulations

The temporary regulations apply substantially different rules to dual resident corporations and most separate units. (The temporary regulations, previously designated as § 1.1503-2T, have been redesignated by this Treasury Decision as § 1.1503-2A).

1. Rules Governing Dual Resident Corporations

The temporary regulations provide that, unless one of three exceptions applies, a dual consolidated loss of a dual resident corporation cannot offset the income of any other member of the dual resident corporation's affiliated group. Specifically, the dual consolidated loss shall be treated as a loss incurred in a separate return limitation year (SRLY) within the meaning of § 1.1502-21(c).

The first exception to this loss limitation rule is set forth in § 1.1503-2A(c)(1). To qualify, two conditions must be satisfied. First, the dual resident corporation must have been in "stand alone" status since December 31, 1986 (or single engaging in a pre-1991 "qualified restructuring"). This means that, at no time since December 31, 1986, have the laws of a foreign country permitted the losses, expenses, or deductions of the dual resident

corporation to be used currently to offset the income of another person (*e.g.*, under a consolidated return provision). Second, at no time since December 31, 1986, can the laws of a foreign country have permitted the losses, expenses, or deductions of the dual resident corporation to be carried forward or back to offset the income of another person (*e.g.*, pursuant to a reorganization). Because almost all countries provide for loss carryovers in at least some circumstances, this exception rarely is applicable.

The second exception to the loss limitation rule is set forth in § 1.1503–2A(c)(2). It applies if the dual resident corporation elects to deduct the loss in the United States pursuant to an agreement entered into between the United States and a foreign country that puts into place an elective procedure through which losses offset income in only one of the countries. At the time of publication of these regulations, there are not such agreements in force.

The third exception to the loss limitation rule is set forth in § 1.1503–2A(c)(3). It provides relief for dual resident corporations that satisfy the stand alone requirement, but fail to satisfy the carryover requirement, under the first exception. To qualify for this exception, the U.S. consolidated group must enter into an agreement (a so-called "(c)(3) agreement") pursuant to which, for a 15 year period following the taxable year in which the dual consolidated loss is incurred, the consolidated group is required to file with its income tax return (i) an annual certification that the dual resident corporation continues to be in stand alone status, and (ii) a waiver of the statute of limitations with respect to the dual consolidated loss. If at any time during the 15 year period a "triggering event" occurs, the consolidated group must amend its tax return for the year which the dual consolidated loss was incurred (and for all other affected years), treating the dual consolidated loss as a SRLY loss. Triggering events include (i) a failure of the dual resident corporation to be in stand alone status; (ii) the dual resident corporation's ceasing to be a member of the consolidated group; and (iii) a failure of the group to file an annual certification or waiver of the statute of limitations.

2. Rules Governing Separate Units

Under the temporary regulations, a separate unit owned by a domestic corporation is generally treated as if it were a wholly-owned subsidiary of the domestic corporation. However, eligibility for relief from the loss limitation rule in the case of a separate unit differs depending on whether the unit is governed by the provisions of § 1.1503–2A(d)(1) or § 1.1503–2A(d)(2). A "(d)(1)" unit generally consists of an interest in a hybrid entity that is classified as a partnership for U.S. purposes but is taxed as a corporation under foreign law. A hybrid unit must qualify for one of the three exceptions discussed above, applicable to dual resident corporations, to obtain relief from the loss limitation rule.

All other types of separate units are classified as "(d)(2)" units. Less restrictive rules apply to such units. Most importantly, a (d)(2) unit need not be in stand alone position to qualify for relief from the SRLY limitation. Rather, in the year that the loss is recognized, the domestic owner of the separate unit simply must file a certification that the loss has not been actually used to offset income of a foreign person and will not been so used in the future. The domestic owner is not required to file subsequent annual certifications or a waiver of the statue of limitations with regard to the loss.

If, after certification, the (d)(2) unit's loss is actually used to offset income of a foreign person, the domestic owner must recapture the loss as income in the year of such foreign use. In addition, the domestic owner must pay interest, computed as if the tax on the recaptured amount accrued in the year that the loss reduced the tax liability of the domestic owner or consolidated group.

Comments on Temporary Regulations

Commentators generally have criticized the temporary regulations as being unnecessarily restrictive. In particular, they have contended that the application of a stand alone requirement to dual resident corporations is inconsistent with Congressional intent and that a SRLY limitation should apply only if a dual consolidated loss is actually used to offset income of another person for foreign tax purposes. Commentators have also argued that the conditions for obtaining relief through a (c)(3) agreement are excessively burdensome, including the requirement that the statute of limitations be waived for 15 years and the requirement that taxpayers amend their returns if a triggering event occurs.

In response to such comments, the final regulations contain a more narrowly targeted application of the loss limitation rule. In particular, the stand alone requirement has been eliminated as a prerequisite for obtaining relief. The regulations instead apply an actual use standard to both dual resident corporations and separate units. If a triggering event occurs, the dual consolidated loss must be recaptured in the year of the triggering event, subject to an interest charge. Amended returns need not be filed.

The Final Regulations

1. *Limitation on the Use of a Dual Consolidated Loss*

Section 1.1503–2 (b) retains the general rule that a dual consolidated loss of a dual resident corporation is not available to offset the income of any other member of the corporation's consolidated group. The same limitation applies to a dual consolidated loss of a separate unit of a domestic corporation as if the separate unit were a wholly-owned subsidiary of such corporation.

The final regulations also provide that a dual consolidated loss of a dual resident corporation cannot be used to offset the income of another corporation by means of a transaction in which the other corporation succeeds to the tax attributes of the dual resident corporation under section 381 of the Code. Similarly, a dual consolidated loss of a separate unit of a domestic corporation cannot be used to offset income of the corporation following the termination, liquidation, sale or other disposition of the separate unit.

However, in contrast to the temporary regulations, the final regulations provide that, if a dual resident corporation transfers its assets to another corporation in a transaction subject to section 381, and the acquiring corporation is a dual resident corporation of the same foreign country of which the transferor dual resident corporation is a resident or a domestic corporation that carries on the business activities of the transferor dual resident corporation as a separate unit, then income generated by the transferee dual resident corporation, or separate unit, may be offset by the carryover losses of the transferor dual resident corporation. In addition, if a domestic corporation transfers a separate unit to another domestic corporation in a transaction subject to section 381, then the income generated by the separate unit following the transfer may be offset by the carryover losses of the separate unit.

2. Definitions

Section 1.1503–2 (c) defines terms used in the final regulations, including the following.

a. *Dual resident corporation.* The definition of "dual resident corporation" has been modified in the final regulations to conform to the language of the statute. Thus, the regulations define a dual resident corporation as a

domestic corporation that is subject to the income tax of a foreign country on its worldwide income or on a residence basis. An "S corporation" is not treated as a dual resident corporation because it cannot have a domestic corporation as one of its shareholders.

Many commentators have criticized the application of the dual consolidated loss regulations to section 1504(d) corporations, stating that the statute was not intended to apply to such corporations. The final regulations, however, continue to treat section 1504(d) corporations as dual resident corporations because the language of the statute and legislative history do not support an exclusion for such corporations.

b. *Dual consolidated loss.* Commentators have suggested that the definition of "dual consolidated loss" in the temporary regulations be amended to exclude any item of loss, expense, or deduction that cannot be used to offset the income of a foreign person. Such an item-by-item analysis has not been adopted in the final regulations because of the administrative complexity of such an approach and because the statutory language and legislative history reflect an intent to disallow a dual resident corporation's entire net operating loss, not specific components thereof. For the same reasons, the Service has not adopted the suggestion that the disallowance or recapture of a dual consolidated loss be limited to the portion of the loss that is actually used to offset income of another person for foreign tax purposes.

c. *Separate unit.* Commentators have argued that branches should not be treated as separate units unless, under the laws of a foreign country, the branch is taxed on its worldwide income or on a residence basis, regardless of the source of its income. The potential for "double dipping" of losses, however, is not limited to such cases and the legislative history to the statute does not evidence an intent that the regulations be applied so narrowly. This suggestion, therefore, has not been adopted.

"Commentators have also argued that the treatment of partnership interests a separate units should be limited in the final regulations. Commentators do not question the application of the regulations to partnership interests that are defined as "(d)(1)" units under the temporary regulations (*i.e.*, an interest in an entity that is characterized as a partnership for federal income tax purposes but is taxed as a corporation under foreign law), in cases where the entity can file, under foreign tax law, a form of consolidated return with a foreign affiliate. Such a partnership interest is defined as a "hybrid entity separate unit" under the final regulations. Commentators, however, have suggested that, apart from such a case, the regulations should not apply to partnership interests on the general ground that a loss of a pass-through entity cannot be used twice.

The final regulations have not been limited in this manner because the potential for abusive double dipping exists with respect to interests in ordinary partnerships, as well as interests in hybrid entities. The Service is considering including within the definition of a dual consolidated loss items of partnership loss in at least two circumstances where, because of a special allocation, the loss is used to offset one stream of income for U.S. tax purposes and a separate stream of income for foreign tax purposes. The first case involves a special allocation, under an ordinary partnership, of a single item of loss to a domestic partner for U.S. tax purposes and to a foreign partner for foreign tax purposes. The second situation involves a loss allocation to a domestic partner of a hybrid entity for U.S. tax purposes in a case where there are no affiliates with which the entity can consolidate under foreign law but where the loss represents a special allocation that is disproportionate to the partner's income allocations.

The final regulations reserve a paragraph that will address the treatment of such loss allocations. The Service solicits comments on how the regulations should apply in such cases, including comments on appropriate ways of limiting the application of the regulations so as not to affect adversely the use of special allocations for legitimate business or investment purposes. Comments should be directed to the Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL–0037–92), Washington, DC 20224.

Several commentators have requested that section 1503(d) be applied to separate units prospectively, as of the date the temporary regulations were published, rather than retroactively, as of the general effective date of the statute. Although the final regulations generally are effective for taxable years commencing on or after October 1, 1992, the effective date of the temporary regulations has not been modified in response to this suggestion. This is because the 1988 amendment to section 1503(d) pertaining to separate units was made applicable to net operating losses occurring in taxable years commencing after December 31, 1986.

d. *Actual use.* Section 1.1503–2(c)(15) of the final regulations describes events that will be considered a use of a dual consolidated loss to offset the income of another person under the laws of a foreign country. These new rules are necessary to implement an "actual use" standard.

The final regulations, in contrast to the temporary regulations, provide that the use of the losses, expenses, or deductions of a dual resident corporation or separate unit under the laws of a foreign country to offset the income of another dual resident corporation or separate unit within the same consolidated group (or another separate unit owned by the unaffiliated domestic owner of the first separate unit) is not considered a use of the losses, expenses, or deductions to offset the income of another person under the laws of a foreign country for purposes of the regulations. Such use of a dual consolidated loss does not result in double dipping because the income of the other dual resident corporation or separate unit is subject to current U.S. taxation. The regulations provide an ordering rule that applies in the absence of applicable rules under foreign law, under which the losses, expenses, or deductions of the dual resident corporation or separate unit shall be deemed to offset the income of such other dual resident corporation or separate unit before being considered to offset the income of other persons.

In addition, the final regulations retain the "mirror legislation" provision under which, if a foreign country prohibits a loss of a dual resident corporation from offsetting the income of another person because the dual resident corporation is subject to income taxation by another country on its worldwide income or on a resident basis, the loss shall be deemed to offset the income of another person for foreign purposes.

3. Accounting for Dual Consolidated Losses

a. *Calculation of dual consolidated loss.* Commentators have noted that the calculation of a dual consolidated loss under the temporary regulations could result in the inclusion of a dual resident corporation's capital losses as part of its dual consolidated loss, which is inconsistent with legislative intent. Such a result is unintended. Therefore, the final regulations provide that a dual consolidated loss shall be computed by taking into account a dual resident corporation's items of income, gain, loss, and deduction for the taxable year, other than any net capital loss incurred by the dual resident corporation, or any carryover or carryback losses. If the dual resident corporation has a net

capital loss for the year, the loss shall be included in the computation of the consolidated group's net capital gain (or loss).

Commentators have also noted that the non-application of the deferral or elimination rules of § 1.1502–13 (b)(2) or (c) and § 1.1502–14 under the temporary regulations results in a mismatching of intercompany items. Addressing these concerns, the final regulations do not override the application of § § 1.1502–13 and 1.1502–14 or the provisions of sections 267 and 163(e)(3).

b. *Basis adjustments.* Commentators have criticized the basis adjustment rules of the temporary regulations, stating that the disallowance of a positive basis adjustment for the amount of unabsorbed dual consolidated loss results in a double penalty to the taxpayer and is contrary to the principles of § 1.1502–32(b). The final regulations, however, retain the basis adjustment rules because the application of § 1.1502–32(b), without modification, could result in an indirect deduction of a dual consolidated loss.

4. Tainted Assets

Section 1.1503–2(e) retains the tainted asset provision of the temporary regulations. However, in response to comments that the tainted asset rules, as contained in the temporary regulations, are overbroad, the final regulations incorporate the following modifications. First, the exceptions to the definition of a tainted asset have been broadened to cover assets contributed after the corporation ceases to be a dual resident corporation, as well as assets contributed prior to such date. Second, the exceptions to the definition of a tainted asset have been expanded to include (i) assets contributed in a year in which the corporation did not incur a dual consolidated loss (or have a carryover of a dual consolidated loss) and (ii) assets acquired as replacement property in the ordinary course of business. The final regulations also contain a rule for determining the amount of income attributable to tainted assets.

5. Computation of Foreign Tax Credit Limitation

The final regulations clarify that, if the loss limitation rule applies to a dual consolidated loss of a dual resident corporation or separate unit, the loss shall be disregarded for purposes of computing the consolidated groups or unaffiliated domestic owner's foreign tax credit limitation. The dual consolidated loss shall be taken into account for foreign tax credit limitation purposes in the year in which it is absorbed.

6. Exceptions

a. *Overview.* The final regulations substantially modify the provisions for obtaining relief from the loss limitation rule. In contrast to the temporary regulations, the final regulations contain a uniform set of rules applicable to both dual resident corporations and separate units. The final regulations retain the exception to the loss limitation rule set forth in paragraph (c)(2) of the temporary regulations, applicable in a case where the Untied States has entered into an agreement with a foreign country that provides the taxpayer with an election to use the dual consolidated loss in one country. In addition, the final regulations have incorporated as a qualification to the definition of a dual consolidated loss the exception contained in paragraph (c)(1) of the temporary regulations, applicable in a case where the laws of a foreign country do not permit a dual consolidated loss to offset the income of another person either in the taxable year in which the loss is incurred or in a carryover year.

The final regulations, however, have eliminated the exception contained in paragraph (c)(3) of the temporary regulations, applicable in a case where the dual resident corporation is in stand alone status but the laws of the foreign country permit a carryover of losses. In place of this exception, § 1.1503–2(g)(2) of the final regulations permits a taxpayer to elect to use a dual consolidated loss of a dual resident corporation or separate unit by entering into an agreement under which the taxpayer certifies that the dual consolidated loss has not been, and will not be, used to offset the income of another person under the laws of a foreign country. The requirements of this election are similar to, but in important ways different from, the certification provisions applicable to separate units under paragraph (d)(2) of the temporary regulations. The following is a summary of these requirements.

b. *Consistency rule.* Section 1.1503–2(g)(2)(ii) of the final regulations contains a new consistency rule. Under the rule, it any losses, expenses, or deductions taken into account in computing the dual consolidated loss of a dual resident corporation or separate unit are used to offset the income of another person under the laws of a foreign country, the losses, expenses, or deductions taken into account in computing the dual consolidated losses of other dual resident corporations or separate units within the same consolidated group (or other separate units owned by the unaffiliated domestic owner of the first separate unit) shall be deemed to offset income of another person in the foreign country if such losses, expenses, or deductions are recognized in the foreign country in the same taxable year. This rule, however, shall not apply if, under foreign law, the other dual resident corporation or separate unit cannot use its losses, expenses, or deductions to offset income of another person in such taxable year. The purpose of this rule is to ensure that a consolidated group applies consistent treatment to all dual consolidated losses that are available for use in a foreign country in a given year.

c. *Triggering events.* Section 1.1503–2(g)(2)(iii) of the final regulations provides that, in the year of a triggering event, the taxpayer must recapture and report as gross income the amount of dual consolidated loss computed under § 1.1503–2 (g)(2)(vii). The triggering events under the final regulations differ somewhat from those contained in the temporary regulations. The primary triggering event under the regulations is the use of any portion of the losses, expenses, or deductions that make up the dual consolidated loss to offset the income of another person under the laws of a foreign country in any taxable year up to and including the 15th taxable year following the year in which the dual consolidated loss was incurred.

With respect to other triggering events, an effort has been made to target more closely than under the temporary regulations transactions that either increase the likelihood that the dual consolidated loss will be used to offset the income of another person for foreign tax purposes or increase the difficulty of monitoring such foreign use. The triggering events are as follows: (1) A dual resident corporation or domestic owner of a separate unit ceases to be a member of the consolidated group that filed the agreement at a time when there is a continuing ability to use the dual consolidated loss to offset income of another person for foreign tax purposes; (2) an unaffiliated dual resident corporation or unaffiliated domestic owner of a separate unit becomes a member of a new consolidated group; (3) a dual resident corporation or separate unit transfers its assets in a transaction that results, under the laws of a foreign country, in a carryover of the losses, expenses, or deductions that make up the dual consolidated loss to the transferee of the assets; (4) a domestic owner of a separate unit disposes of 50% or more of its interest in the separate unit at a time when there is a continuing ability to use the dual consolidated loss

to offset income of another person for foreign tax purposes; (5) an unaffiliated dual resident corporation or unaffiliated domestic owner of a separate unit becomes a foreign corporation in a transaction that, for foreign tax purposes, is not treated as involving a transfer of assets to a new entity; and (6) the taxpayer fails to file an annual certification required under § 1.1503–2(g)(2)(vi).

The final regulations provide an exception to these triggering events in cases where the dual resident corporation or separate unit, or its assets, is acquired by another member of the dual resident corporation's or separate unit's consolidated group. In addition, subject to certain conditions, transactions in which the dual resident corporation or domestic owner of a separate unit becomes disaffiliated from its consolidated group, or in which an unaffiliated domestic corporation or new consolidated group acquires the dual resident corporation or separate unit, or its assets, shall not constitute triggering events.

d. *Ordering rules.* Section 1.1503–2(g)(2)(iv) of the final regulations provides general rules for determining whether a dual resident corporation's losses are used to offset the income of another person for foreign tax purposes in cases where the laws of the foreign country do not provide rules sufficient to make this determination.

e. *Reporting requirements.* It is anticipated that questions pertaining to dual consolidated losses will be added to Form 1120 (or the Schedules thereto). In general, these questions will monitor the occurrence of triggering events.

Until these questions are added to the income tax return, dual resident corporations and domestic owners of hybrid entity separate units will be required to file annual certifications in accordance with the provisions of § 1.1503–2(g)(2)(vi), for the 15 year period following the year in which the dual consolidated loss has been incurred. The annual certification must warrant that the dual consolidated loss has not been used to offset the income of another person under foreign law. Owners of separate units other than hybrid entities will not be required to file such annual certifications but must answer the applicable questions on Form 1120.

f. *Recapture rules.* Section 1.1503–2(g)(2)(vii) of the final regulations adopts the recapture and interest charge provisions of the temporary regulations applicable to separate units, with important modifications. Thus, upon a triggering event, a taxpayer is not required to amend its income tax return for the year in which the dual consolidated loss was incurred, reporting the dual consolidated loss as a loss subject to the SRLY limitation. However, the Service recognizes that the amended return procedure of the temporary regulations permits dual consolidated losses to be used, on a SRLY basis, to offset subsequently earned income of the dual resident corporation. Therefore, the final regulations adopt recapture provisions intended to put the taxpayer in approximately the same tax position it would have been in had it filed an amended return upon a triggering event, without imposing on the taxpayer the burden of actually filing an amended return.

First, § 1.1503–2(g)(2)(vii)(A) contains a rule under which the recapture amount is presumed to equal the total amount of the dual consolidated loss. Upon a triggering event, the taxpayer is required to recapture this amount as income on its tax return for the year in which the triggering event occurs. In addition, § 1.1503–2(g)(2)(vii)(A)(*2*) requires the taxpayer to pay an interest charge on the additional amount of tax owed as a result of the recapture, computed as if the tax had accrued and been due and owing for the taxable year in which the losses, expenses, or deductions that make up the dual consolidated loss were used to offset the income of a domestic affiliate (or in the case of a separate unit, income not attributable to the separate unit).

Section 1.1503–2(g)(2)(vii)(B) provides rules under which the taxpayer may rebut the presumptive amount of recapture. The taxpayer may reduce the amount of recapture if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the dual consolidated loss would have been absorbed by subsequently earned income of the dual resident corporation had the dual consolidated loss been treated as a net operating loss subject to the limitation of § 1.1503–2(b) (and therefore had been treated as a SRLY loss for the taxable year in which it was incurred and for all subsequent years up to and including the year of recapture). Under this rule, if the triggering event also results in loss recapture under section 367(a)(3)(C) or section 904(f), the income recognized under those sections could reduce the amount of recapture. Under § 1.1503–2(g)(2)(vii)(D), recapture income is treated as ordinary income having the same source and falling within the same separate category under section 904 as the dual consolidated loss being recaptured.

Section 1.1503–2(g)(2)(vii)(C) provides that, once the recapture amount has been determined, the taxpayer generally may not compute its taxable income by offsetting the recapture amount with any current, carryover or carryback losses. However, the taxpayer may compute its taxable income for the year of recapture by offsetting the amount of recapture with any net operating loss carryover attributable to the dual consolidated loss being recaptured.

Section 1.1503–2(g)(2)(vii)(B)(*2*) provides that the taxpayer may reduce the interest charge by demonstrating, to the satisfaction of the Commissioner, that the net interest owed would have been less than that provided in § 1.1503–2(g)(2)(vii)(A)(*2*) had the taxpayer filed an amended return treating the dual consolidated loss as a loss subject to the limitation of § 1.1503–2(b) (and therefore as a SRLY loss for the year in which the loss was incurred and for all subsequent years up to and including the year of recapture).

Commentators have argued that an interest charge should not be imposed upon a triggering event since the tax on the recapture amount is not owed until the year of the triggering event. The statute, however, disallows the use of dual consolidated losses to offset the income of a domestic affiliate. It is only by electing to use a relief provision provided in the regulations that a taxpayer can use a dual consolidated loss to offset an affiliate's income. Thus, imposing an interest charge is appropriate because it most closely approximates the results that would occur if the taxpayer were required to file an amended return, treating the recaptured loss as a SRLY loss in the year it was incurred.

In order to approximate the results of filing an amended return further, § 1.1503–2(g)(2)(vii)(E) provides that, commencing in the taxable year following the year of recapture, the taxpayer shall be deemed to have a net operating loss subject to the limitation of § 1.1503–2(b) in an amount equal to the recapture amount. This loss may be utilized only on a carryforward basis. The allowable carryover period shall be determined by treating the loss as if it had been recognized in the taxable year in which the dual consolidated loss that is the basis of the recapture was incurred.

Section 1.1503–2(g)(2)(vii)(F) provides generally that, if a taxpayer fails to comply with the recapture provisions of paragraph (g)(2)(vii) upon the occurrence of a triggering event, the dual resident corporation or separate unit cannot elect to use the relief provision of § 1.1503–2(g)(2) for any dual consolidated loss incurred in the five

taxable years beginning with the year in which the recapture is required.

7. Effective Date

Section 1.1503–2(h) provides that the final regulations are effective for taxable years commencing on or after October 1, 1992. The temporary regulations have been finalized as § 1.1503–2A and apply to taxable years commencing after December 31, 1986, but before October 1, 1992. Eligible taxpayers, however, may elect to replace agreements filed under § 1.1503–2A(c)(3) or certifications filed under § 1.1503–2A(d)(3) of the temporary regulations with an agreement described in § 1.1503–2(g)(2) of the final regulations. In addition, taxpayers that are in compliance with the temporary regulations but have not filed for relief under § 1.1503–2A may elect to apply the provisions of § 1.1503–2 retroactively to dual consolidated losses incurred in all open years. If the taxpayer is a consolidated group, the election to replace existing agreements or certifications, or to otherwise apply the final regulations retroactively, must be made with respect to all dual resident corporations or separate units within the consolidated group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner. In the case of any taxpayer, the election must be made with respect to all dual consolidated losses for all open years.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

List of Subjects

26 CFR §§ 1.1501–1 through 1.1564–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX, TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. § 1.1503–2 is added to read as follows:

§ 1.1503–2 Dual consolidated loss.

(a) *Purpose and scope.* This section provides rules for the application of section 1503(d), concerning the determination and use of dual consolidated losses. Paragraph (b) of this section provides a general rule prohibiting a dual consolidated loss from offsetting the taxable income of a domestic affiliate. Paragraph (c) of this section provides definitions of the terms used in this section. Paragraph (d) of this section provides rules for calculating the amount of a dual consolidated loss and for adjusting the basis of stock of a dual resident corporation. Paragraph (e) of this section contains an anti-avoidance provision. Paragraph (f) of this section applies the rules of paragraph (d) of this section to the computation of foreign tax credit limitations. Paragraph (g) of this section provides certain exceptions to the limitation rule of paragraph (b) of this section. Finally, paragraph (h) of this section provides the effective date of the regulations and a provision for the retroactive application of the regulations to qualifying taxpayers.

(b) *In general*—(1) *Limitation on the use of a dual consolidated loss to offset income of a domestic affiliate.* Except as otherwise provided in this section, a dual consolidated loss of a dual resident corporation cannot offset the taxable income of any domestic affiliate in the taxable year in which the loss is recognized or in any other taxable year, regardless of whether the loss offsets income of another person under the income tax laws of a foreign country and regardless of whether the income that the loss may offset in the foreign country is, has been, or will be subject to tax in the United States. Pursuant to paragraph (c) (1) and (2) of this section, the same limitation shall apply to a dual consolidated loss of a separate unit of a domestic corporation as if the separate unit were a wholly owned subsidiary of such corporation.

(2) *Limitation on the use of a dual consolidated loss to offset income of a successor-in-interest.* A dual consolidated loss of a dual resident corporation also cannot be used to offset the taxable income of another corporation by means of a transaction in which the other corporation succeeds to the tax attributes of the dual resident corporation under section 381 of the Code. Similarly, a dual consolidated loss of a separate unit of a domestic corporation cannot be used to offset income of the domestic corporation following the termination, liquidation, sale, or other disposition of the separate unit. However, if a dual resident corporation transfers its assets to another corporation in a transaction subject to section 381, and the acquiring corporation is a dual resident corporation of the same foreign country of which the transferor dual resident corporation is a resident, or a domestic corporation that carries on the business activities of the transferor dual resident corporation as a separate unit, then income generated by the transferee dual resident corporation, or separate unit, may be offset by the carryover losses of the transferor dual resident corporation. In addition, if a domestic corporation transfers a separate unit to another domestic corporation in a transaction subject to section 381, the income generated by the separate unit following the transfer may be offset by the carryover losses of the separate unit.

(3) *Application of rules to multiple tiers of separate units.* If a separate unit of a domestic corporation is owned indirectly through another separate unit, the principles of paragraph (b) (1) and (2) of this section shall apply as if the upper-tier separate unit were a subsidiary of the domestic corporation and the lower-tier separate unit were a lower-tier subsidiary.

(4) *Examples.* The following examples illustrate the application of this paragraph (b).

Example 1. P, a domestic corporation, owns all of the outstanding stock of DRC, a domestic corporation. P and DRC file a consolidated U.S. income tax return. DRC is managed and controlled in Country W, a country that determines the tax residence of corporations according to their place of management and control. Therefore, DRC is a dual resident corporation and any net operating loss it incurs is a dual consolidated loss. In Years 1 through 3, DRC incurs dual consolidated losses. Under this paragraph (b), the dual consolidated losses may not be used to offset P's income on the group's consolidated U.S. income tax return. At the end of Year 3, DRC sells all of its assets and discontinues its business operations. DRC is then liquidated into P, pursuant to the provisions of section 332. Normally, under section 381, P would succeed to, and be permitted to utilize, DRC's net operating loss carryovers. However, this paragraph (b)

prohibits the dual consolidated losses of DRC from reducing P's income for U.S. tax purposes. Therefore, DRC's net operating loss carryovers will not be available to offset P's income.

Example 2. The facts are the same as in *Example 1*, except that DRC does not sell its assets and, following the liquidation of DRC, P continues to operate DRC's business as a separate unit (*e.g.*, a branch). DRC's loss carryovers are available to offset P's income generated by the assets previously owned by DRC and now held by the separate unit.

(c) *Definitions.* The following definitions shall apply for purposes of this section.

(1) *Domestic corporation.* The term "domestic corporation" has the meaning assigned to it by section 7701(a) (3) and (4). The term also includes any corporation otherwise treated as a domestic corporation by the Code, including, but not limited to, sections 269B, 953(d), and 1504 (d). For purposes of this section, any separate unit of a domestic corporation, as defined in paragraph (c) (3) and (4) of this section, shall be treated as a separate domestic corporation.

(2) *Dual resident corporation.* A dual resident corporation is a domestic corporation that is subject to the income tax of a foreign country on its worldwide income or on a residence basis. A corporation is taxed on a residence basis if it is taxed as a resident under the laws of the foreign country. An S corporation, as defined in section 1361, is not a dual resident corporation. For purposes of this section, any separate unit of a domestic corporation, as defined in paragraph (c) (3) and (4) of this section, shall be treated as a dual resident corporation. Unless otherwise indicated, any reference in this section to a dual resident corporation refers also to a separate unit.

(3) *Separate unit*—(i) The term "separate unit" shall mean any of the following:

(A) A foreign branch, as defined in § 1.367(a)-6T(g) (or a successor regulation), that is owned either directly by a domestic corporation or indirectly by a domestic corporation through ownership of a partnership or trust interest (regardless of whether the partnership or trust is a United States person);

(B) an interest in a partnership; or

(C) an interest in a trust.

(ii) If two or more foreign branches located in the same foreign country are owned by a single domestic corporation and the losses of each branch are made available to offset the income of the other branches under the tax laws of the foreign country, within the meaning of paragraph (c)(15)(ii) of this section, then the branches shall be treated as one separate unit.

(4) *Hybrid entity separate unit.* The term "separate unit" includes an interest in an entity that is not taxable as an association for U.S. income tax purposes but is subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis.

(5) *Dual consolidated loss*—(i) *In general.* The term "dual consolidated loss" means the net operating loss (as defined in section 172(c) and the regulations thereunder) of a domestic corporation incurred in a year in which the corporation is dual resident corporation. The dual consolidated loss shall be computed under paragraph (d)(1) of this section. The fact that a particular item taken into account in computing a dual resident corporation's net operating loss is not taken into account in computing income subject to a foreign country's income tax shall not cause such item to be excluded from the calculation of the dual consolidated loss.

(ii) *Exceptions.* A dual consolidated loss shall not include the following—

(A) A net operating loss incurred by a dual resident corporation in a foreign country whose income tax laws—

(*1*) Do not permit the dual resident corporation to use its losses, expenses or deductions to offset the income of any other person that is recognized in the same taxable year in which the losses, expenses or deductions are incurred; and

(*2*) Do not permit the losses, expenses or deductions of the dual resident corporation to be carried over or back to be used, by any means, to offset the income of any other person in other taxable years; or

(B) A net operating loss incurred during that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation. For purposes of determining the amount of the net operating loss incurred in that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation, in no event shall more than the aggregate of the equal daily portion of the net operating loss commensurate with the portion of the taxable year during which the domestic corporation was not a dual resident corporation be allocated to that portion of the taxable year in which the domestic corporation was not a dual resident corporation.

(iii) *Dual consolidated losses of separate units that are partnership interests, including interests in hybrid entities.* [Reserved]

(6) *Subject to tax.* For purposes of determining whether a domestic corporation is subject to the income tax of a foreign country on its income, the fact that the corporation has no actual income tax liability to the foreign country for a particular taxable year shall not be taken into account.

(7) *Foreign country.* For purposes of this section, possessions of the United States shall be considered foreign countries.

(8) *Consolidated group.* The term "consolidated group" means an affiliated group, as defined in section 1504(a), with which a dual resident corporation or domestic owner files a consolidated U.S. income tax return.

(9) *Domestic owner.* The term "domestic owner" means a domestic corporation that owns one or more separate units.

(10) *Affiliated dual resident corporation or affiliated domestic owner.* The term "affiliated dual resident corporation" or "affiliated domestic owner" means a dual resident corporation or domestic owner that is a member of a consolidated group.

(11) *Unaffiliated dual resident corporation or unaffiliated domestic owner.* The term "unaffiliated dual resident corporation" or "unaffiliated domestic owner" means a dual resident corporation or domestic owner that is an unaffiliated domestic corporation.

(12) *Successor-in-interest.* The term "successor-in-interest" means an acquiring corporation that succeeds to the tax attributes of an acquired corporation by means of a transaction subject to section 381.

(13) *Domestic affiliate.* The term "domestic affiliate" means any member of an affiliated group, without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations.

(14) *Unaffiliated domestic corporation.* The term "unaffiliated domestic corporation" means a domestic corporation that is not a member of an affiliated group.

(15) *Use of loss to offset income of a domestic affiliate or another person*—(i) A dual consolidated loss shall be deemed to offset income of a domestic affiliate in the year it is included in the computation of the consolidated taxable income of a consolidated group. The fact that no tax benefit results from the inclusion of the dual consolidated loss

in the computation of the group's consolidated taxable income in the taxable year shall not be taken into account.

(ii) Except as provided in paragraph (c)(15)(iii) of this section, a loss, expense, or deduction taken into account in computing a dual consolidated loss shall be deemed to offset income of another person under the income tax laws of a foreign country in the year it is made available for such offset. The fact that the other person does not have sufficient income in that year to benefit from such an offset shall not be taken into account. However, where the laws of a foreign country provide an election that would enable a dual resident corporation or separate unit to use its losses, expenses, or deductions to offset income of another person, the losses, expenses, or deductions shall be considered to offset such income only if the election is made.

(iii) The losses, expenses, or deductions taken into account in computing a dual resident corporation's or separate unit's dual consolidated loss shall not be deemed to offset income of another person under the income tax laws of a foreign country for purposes of this section, if under the laws of the foreign country the losses, expenses, or deductions of the dual resident corporation or separate unit are used to offset the income of another dual resident corporation or separate unit within the same consolidated group (or income of another separate unit that is owned by the unaffiliated domestic owner of the first separate unit). If the losses, expenses, or deductions of a dual resident corporation or separate unit are made available under the laws of a foreign country to offset the income of other dual resident corporations or separate units within the same consolidated group (or other separate units owned by the unaffiliated domestic owner of the first separate unit), as well as the income of another person, and the laws of the foreign country do not provide applicable rules for determining which person's income is offset by the losses, expenses, or deductions, then for purposes of this section, the losses, expenses or deductions shall be deemed to offset the income of the other dual resident corporations or separate units, to the extent of such income, before being considered to offset the income of the other person.

(iv) Except to the extent paragraph (g)(1) of this section applies, where the income tax laws of a foreign country deny the use of losses, expenses, or deductions of a dual resident corporation to offset the income of another person because the dual resident corporation is also subject to income taxation by another country on its worldwide income or on a residence basis, the dual resident corporation shall be treated as if it actually had offset its dual consolidated loss against the income of another person in such foreign country.

(16) *Examples.* The following examples illustrate this paragraph (c).

Example 1. X, a member of a consolidated group, conducts business through a branch in Country Y. Under Country Y's income tax laws, the branch is taxed as a permanent establishment and its losses may be used under the Country Y form of consolidation to offset the income of Z, a Country Y affiliate of X. In Year 1, the branch of X incurs an overall loss that would be treated as a net operating loss if the branch were a separate domestic corporation. Under paragraph (c)(3) of this section, the branch of X is treated as a separate domestic corporation and a dual resident corporation. Thus, under paragraph (c)(5), its loss constitutes a dual consolidated loss. Unless X qualifies for an exception under paragraph (g) of this section, paragraph (b) of this section precludes the use of the branch's loss to offset any income of X not derived from the branch operations or any income of a domestic affiliate of X.

Example 2. A and B are members of a consolidated group. FC is a Country X corporation that is wholly owned by B. A and B organize a partnership, P, under the laws of Country X. P conducts business in Country X and its business activity constitutes a foreign branch within the meaning of paragraph (c)(3)(i)(A) of this section. P also earns U.S. source income that is unconnected with the branch operations and, therefore, is not subject to tax by Country X. Under the laws of Country X, the branch can consolidate with FC. The interests in P held by A and B are each treated as a dual resident corporation. The branch is also treated as a separate dual resident corporation. Unless an exception under paragraph (g) of this section applies, any dual consolidated loss incurred by P's branch cannot offset the U.S. source income earned by P or any other income of A or B.

Example 3. X is classified as a partnership for U.S. income tax purposes. A, B, and C are the sole partners of X. A and B are domestic corporations and C is a Country Y corporation. For U.S. income tax purposes, each partner has an equal interest in each item of partnership profit or loss. Under Country Y's law, X is classified as a corporation and its income and losses may be used under the Country Y form of consolidation to offset the income of companies that are affiliates of X. Under paragraph (c)(3) and (4) of this section, the partnership interests held by A and B are treated as separate domestic corporations and as dual resident corporations. Unless an exception under paragraph (g) of this section applies, losses allocated to A and B can only be used to offset profits of X allocated to A and B, respectively.

Example 4. P, a domestic corporation, files a consolidated U.S. income tax return with its two wholly-owned domestic subsidiaries, DRC1 and DRC2. Each subsidiary is also treated as a Country Y resident for Country Y tax purposes. Thus, DRC1 and DRC2 are dual resident corporations. DRC1 owns FC, a Country Y corporation. Country Y's tax laws permit affiliated resident corporations to file a form of consolidated return. In Year 1, DRC1 incurs a $200 net operating loss for both U.S. and Country Y tax purposes, while DRC2 recognizes $200 of income under the tax laws of each country. FC also earns $200 of income for Country Y tax purposes. DRC1, DRC2, and FC file a Country Y consolidated return. However, Country Y has no applicable rules for determining which income is offset by DRC1's $200 loss. Under paragraph (c)(15)(iii) of this section, the loss shall be treated as offsetting DRC2's $200 of income. Because DRC1 and DRC2 are members of the same consolidated group, for purposes of this section, the offset of DRC1's loss against the income of DRC2 is not considered a use of the loss against the income of another person under the laws of a foreign country.

Example 5. DRC, a domestic corporation, files a consolidated U.S. income tax return with its parent, P. DRC is also subject to tax in Country Y on its worldwide income. Therefore, DRC is a dual resident corporation and any net operating loss incurred by DRC is a dual consolidated loss. Country Y's tax laws permit corporations that are subject to tax on their worldwide income to use the Country Y form of consolidation, thus enabling eligible corporations to use their losses to offset income of affiliates. However, to prevent corporations like DRC from offsetting losses against income of affiliates in Country Y and then again offsetting the losses against income of foreign affiliates under the tax laws of another country, Country Y prevents a corporation that is also subject to the income tax of another country on its worldwide income or on a residence basis from using the Country Y form of consolidation. There is no agreement, as described in paragraph (g)(1) of this section, between the United States and Country Y. Because of Country Y's statute, DRC will be treated as having actually offset its losses against the income of affiliates in Country Y under paragraph (c)(15)(iv) of this section. Therefore, DRC will not be able to file an agreement described in paragraph (g)(2) of this section and offset its losses against the income of P or any other domestic affiliate.

(d) *Special rules for accounting for dual consolidated losses*—(1) *Determination of amount of dual consolidated loss*—(i) *Dual resident corporation that is a member of a consolidated group.* For purposes of determining whether a dual resident corporation that is a member of a consolidated group has a dual consolidated loss for the taxable year, the dual resident corporation shall compute its taxable income (or loss) in accordance with the rules set forth in

the regulations under section 1502 governing the computation of consolidated taxable income, taking into account only the dual resident corporation's items of income, gain, deduction, and loss for the year. However, for purposes of this computation, the following items shall not be taken into account:

(A) Any net capital loss of the dual resident corporation; and

(b) Any carryover or carryback losses.

(ii) *Dual resident corporation that is a separate unit of a domestic corporation.* For purposes of determining whether a separate unit has a dual consolidated loss for the taxable year, the separate unit shall compute its taxable income (or loss) as if it were a separate domestic corporation and a dual resident corporation in accordance with the provisions of paragraph (d)(1)(i) of this section, using only those items of income, expense, deduction, and loss that are otherwise attributable to such separate unit.

(2) *Effect of a dual consolidated loss.* For any taxable year in which a dual resident corporation or separate unit has a dual consolidated loss to which paragraph (b) of this section applies, the following rules shall apply.

(i) If the dual resident corporation is a member of a consolidated group, the group shall compute its consolidated taxable income without taking into account the items of income, loss, or deduction taken into account in computing the dual consolidated loss. The dual consolidated loss may be carried over or back for use in other taxable years as a separate net operating loss carryover or carryback of the dual resident corporation arising in the year incurred. It shall be treated as a loss incurred by the dual resident corporation in a separate return limitation year and (without regard to whether the dual resident corporation is a common parent) shall be subject to all of the limitations of § 1.1502–21(c) (relating to limitations on net operating loss carryovers and carrybacks from separate return limitation years).

(ii) The unaffiliated domestic owner of a separate unit, or the consolidated group of an affiliated domestic owner, shall compute its taxable income without taking into account the items of income, loss or deduction taken into account in computing the separate unit's dual consolidated loss. The dual consolidated loss shall be treated as a loss incurred by a separate corporation and its use shall be subject to all of the limitations of § 1.502–21(c), as if the separate unit were filing a consolidated return with the unaffiliated domestic owner or with the consolidated group of the affiliated domestic owner.

(3) *Basis adjustments for dual consolidated losses*—(i) *Dual resident corporation that is a member of an affiliated group.* When a dual resident corporation is a member of a consolidated group, each other member owning stock in the dual resident corporation shall adjust the basis of the stock in the following manner.

(A) *Positive adjustments.* Positive adjustments shall be made in accordance with the principles of § 1.1502–32(b)(1), except that there shall be no positive adjustment under § 1.1502–32(b)(1)(ii) for any amount of the dual consolidated loss that is not absorbed as a result of the application of paragraph (b) of this section. In addition, there shall be no positive adjustment for any amount included income pursuant to paragraph (g)(2)(vii) of this section.

(B) *Negative adjustments.* Negative adjustments shall be made in accordance with the principles of § 1.1502–32(b)(2), except that there shall be no negative adjustment under § 1.1502–32(b)(2)(ii) for the amount of the dual consolidated loss subject to paragraph (b) of this section that is absorbed in a carryover year.

(ii) *Dual resident corporation that is a separate unit arising from an interest in a partnership.* Where a separate unit is an interest in a partnership, the domestic owner shall adjust its basis in the separate unit in accordance with section 705, except that no increase in basis shall be permitted for any amount included as income pursuant to paragraph (g)(2)(vii) of this section.

(4) *Examples.* The following examples illustrate this paragraph (d).

Example 1. (i) P, S1, S2, and T are domestic corporations. P owns all of the stock of S1 and S2. S2 owns all of the stock of T. T is a resident of Country FC for Country FC income tax purposes. Therefore, T is a dual resident corporation. P, S1, S2, and T file a consolidated U.S. income tax return. X and Y are corporations that are not members of the consolidated group.

(ii) At the beginning of Year 1, P has a basis of $1000 in the stock of S2. S2 has a $500 basis in the stock of T.

(iii) In Year 1, T incurs interest expense in the amount of $100. In addition, T sells a noncapital asset, *u*, in which it has a basis of $10, to $1 for $50. T also sells a noncapital asset, *v*, in which it has a basis of $200, to $1 for $100. The sales of *u* and *v* are deferred intercompany transactions described in § 1.1502–13(a)(2). T also sells a capital asset, *z*, in which it has a basis of $180, to Y for $90. In Year 1, S1 earns $200 of separate taxable income, calculated in accordance with § 1.1502–12, as well as $90 of capital gain from a sale of an asset to X. P and S2 have no items of income, loss, or deduction for Year 1.

(iv) In Year 1, T has a dual consolidated loss of $100 (attributable to its interest expense). T's $90 capital loss is not included in the computation of the dual consolidated loss. Instead, T's capital loss is included in the computation of the consolidated group's capital gain net income under § 1.1502–22(a) and is used to offset S1's $90 capital gain.

(v) No elective agreement, as described in paragraph (g)(1) of this section, exists between the United States and Country FC. For Country FC tax purposes, T's $100 loss is offset against the income of a Country FC affiliate. Therefore, T is not eligible for the exception provided in paragraph (g)(2) of this section.

(vi) Because T has a dual consolidated loss for the year, the consolidated taxable income of the consolidated group is calculated without regard to T's items of income, loss or deduction taken into account in computing the dual consolidated loss. Therefore, the consolidated taxable income of the consolidated group is $200 (the sum of $200 of separate taxable income earned by S1 plus $90 of capital gain earned by S1 minus $90 of capital loss incurred by T). The $40 gain recognized by T upon the sale of item *u* to S1 and the $100 loss recognized by T upon the sale of item *v* to S1 are deferred pursuant to § 1.1502–13(c)(1).

(vii) S2 may not make the positive adjustment provided for in § 1.1502–32(b)(1)(ii) to its basis in the stock of T for the $100 dual consolidated loss incurred by T. In addition, no positive adjustment in the basis of the stock is required for T's $90 capital loss because the loss has been absorbed by the consolidated group. S2, however, must make the negative adjustment provided for in § 1.1502–32(b)(2)(i) for its allocable part of T's deficit in earnings and profits for the taxable year attributable to both T's $100 dual consolidated loss and T's $90 capital loss. Thus, as provided in § 1.1502–32(e)(1), S2 must make a $190 net negative adjustment to its basis in the stock of T, reducing its basis to $310. As provided in § 1.1502–33(c)(4)(ii)(a), S2's earnings and profits for Year 1 will reflect S2's decrease in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has a $190 deficit in earnings and profits for the year. As provided in § 1.1502–32(b)(2)(i), P must make a negative adjustment to its basis in the stock of S2 for its allocable part of S2's deficit in earnings and profits for the taxable year. Thus, P must make a $190 net negative adjustment to its basis in S2 stock, reducing its basis to $810.

Example 2. (i) The facts are the same as in *Example 1*, except that in Year 2, S1 sells items *u* and *v* to X for no gain or loss. The disposition of items *u* and *v* outside of the consolidated group restores the deferred loss and gain to T. T also incurs $100 of interest expense in Year 2. In addition, T sells a noncapital asset, *r*, in which it has a basis of $100, to Y for $300. P and S2 have no items of income, loss, or deduction for Year 2.

(ii) T has $40 of separate taxable income in Year 2, computed as follows:

($100)	interest expense
($100)	sale of item *v* to S1

$ 40	sale of item *u* to S1
$200	sale of item *r* to Y
$ 40	

Thus, T has no dual consolidated loss for the year.

(iii) Since T does not have a dual consolidated loss for the taxable year, the group's consolidated taxable income is calculated in accordance with the general rule of § 1.1502–11 and not in accordance with paragraph (d)(2) of this section. T is the only member of the consolidated group that has any income or loss for the taxable year. Thus, the consolidated taxable income of the group, computed without regard to T's dual consolidated loss carryover, is $40.

(iv) As provided by § 1.1502–21(c), the amount of the dual consolidated loss arising in Year 1 that is included in the group's consolidated net operating loss deduction for Year 2 is $40 (that is, the consolidated taxable income computed without regard to the consolidated net operating loss deduction minus such consolidated taxable income recomputed by excluding the items of income and deduction of T). Thus, the group has no consolidated taxable income for the year.

(v) S2 must make the positive adjustment provided for in § 1.502–32(b)(1)(i) to its basis in T stock for its allocable part of T's undistributed earnings and profits for the taxable year. S2 cannot make the negative adjustment provided for in § 1.1502–32(b)(2)(ii) for the dual consolidated loss of T incurred in Year 1 and absorbed in Year 2. Thus, as provided in § 1.1502–32(e)(2), S2 must make a $40 net positive adjustment to its basis in T stock, increasing its basis to $350. As provided in § 1.1502–33(c)(4)(ii)(a), S2's earnings and profits for Year 2 will reflect S2's increase in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has $40 of earnings and profits for the year. As provided in § 1.1502–32(b)(1)(i), P must make a positive adjustment to its basis in the stock of S2 for its allocable part of the undistributed earnings and profits of S2 for the taxable year. Thus, P must make a $40 net positive adjustment to its basis in S2 stock, increasing its basis to $850.

(e) *Special rule for use of dual consolidated loss to offset tainted income*—(1) *In general.* The dual consolidated loss of any dual resident corporation that ceases to be a dual resident corporation shall not be used to offset income of such corporation to the extent that such income is tainted income, as defined in paragraph (e)(2) of this section.

(2) *Tainted income defined.* Tainted income is any income derived from tainted assets, as defined in paragraph (e)(3) of this section, beginning on the date such assets are acquired by the dual resident corporation. In the absence of evidence establishing the actual amount of income that is attributable to the tainted assets, the portion of a corporation's income in a particular taxable year that is treated as tainted income shall be an amount equal to the corporation's taxable income for the year multiplied by a fraction, the numerator of which is the fair market value of the tainted asset at the end of the taxable year and the denominator of which is the fair market value of the total assets owned by the corporation at the end of the taxable year. Documentation submitted to establish the actual amount of income that is attributable to the tainted assets must be attached to the consolidated group's or unaffiliated dual resident corporation's timely filed tax return for the taxable year in which the income is recognized.

(3) *Tainted assets defined.* Tainted assets are any asset acquired by a dual resident corporation in a non-recognition transaction, as defined in section 7701(a)(45), or any assets otherwise transferred to the corporation as a contribution to capital, at any time during the three taxable years immediately preceding the taxable year in which the corporation ceases to be dual resident corporation or at any time thereafter. Tainted assets shall not include assets that were acquired by such dual resident corporation on or before December 31, 1986.

(4) *Exceptions.* Income derived from assets acquired by a dual resident corporation shall not be subject to the limitation described in paragraph (e)(1) of this section, if—

(i) For the taxable year in which the assets were acquired, the corporation did not have a dual consolidated loss (or a carry forward of a dual consolidated loss to such year); or

(ii) The assets were acquired as replacement property in the ordinary course of business.

(f) *Computation of foreign tax credit limitations.* If a dual resident corporation or separate unit is subject to paragraph (d)(2) of this section, the consolidated group or unaffiliated domestic owner shall compute its foreign tax credit limitation by applying the limitations of paragraph (d)(2). Thus, the dual consolidated loss is not taken into account until the year in which it is absorbed.

(g) *Exception*—(1) *Elective agreement in place between the United States and a foreign country.* Paragraph (b) of this section shall not apply to a dual consolidated loss to the extent the dual resident corporation, or domestic owner of a separate unit, elects to deduct the loss in the United States pursuant to an agreement entered into between the United States and a foreign country that puts into place an elective procedure through which losses offset income in only one country.

(2) *Elective relief provision*—(i) *In general.* Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of this paragraph (g)(2). In order to elect relief under this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in this paragraph (g)(2)(i). The agreement must be signed under penalties of perjury by the person who signs the return and must include the following items, in paragraphs labeled to correspond with the items set forth below:

(A) A statement that the document submitted is an election and an agreement under the provisions of § 1.1503–2(g)(2) of the Income Tax Regulations;

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located;

(C) An agreement by the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner to comply with all of the provisions of paragraphs (g)(2) (iii) through (vii) of § 1.1503–2;

(D) A statement of the amount of the dual consolidated loss covered by the agreement;

(E) A certification that no portion of the dual resident corporation's or separate unit's loss, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country; and

(F) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any

such foreign use of any portion of the dual consolidated loss.

(ii) *Consistency rule*—(A) If any loss, expense, or deduction taken into account in computing the dual consolidated loss of a dual resident corporation or separate unit is used under the laws of a foreign country to offset the income of another person, then the following other dual consolidated losses (if any) shall be treated as also having been used to offset income of another person under the laws of such foreign country, but only if the income tax laws of the foreign country permit any loss, expense, or deduction taken into account in computing the other dual consolidated loss to be used to offset the income of another person in the same taxable year;

(*1*) Any dual consolidated loss of a dual resident corporation that is a member of the same consolidated group of which the first dual resident corporation or domestic owner is a member, if any loss, expense, or deduction taken into account in computing such dual consolidated loss is recognized under the income tax laws of such country in the same taxable year; and

(*2*) Any dual consolidated loss of a separate unit that is owned by the same domestic owner that owns the first separate unit, or that is owned by any member of the same consolidated group of which the first dual resident corporation or domestic owner is a member, if any loss, expense, or deduction taken into account in computing such dual consolidated loss is recognized under the income tax laws of such country in the same taxable year.

(B) The following examples illustrate the application of this paragraph (g)(2)(ii).

Example 1. P, a domestic corporation, owns A and B, which are domestic corporations, and C, a Country X corporation. A is subject to the income tax laws of Country X on a residence basis and, thus, is a dual resident corporation. B conducts business in Country X through a branch, which is a separate unit under paragraph (c)(3) of this section. The income tax laws of Country X permit branches of foreign corporations to elect to file consolidated returns with Country X affiliates. In Year 1, A incurs a dual consolidated loss, which is used to offset the income of C under the Country X form of consolidation. The branch of B also incurs a net operating loss. However, B elects not to use the loss on a Country X consolidated return to offset the income of foreign affiliates. The use of A's loss to offset the income of C in Country X will cause the separate unit of B to be treated as if it too had used its dual consolidated loss to offset the income of an affiliate in Country X. Therefore, an election and agreement under this paragraph (g)(2) cannot be made with respect to the separate unit's dual consolidated loss.

Example 2. The facts are the same as in *Example 1*, except that the income tax laws of Country X do not permit branches of foreign corporations to file consolidated income tax returns with Country X affiliates. Therefore, an election and agreement described in this paragraph (g)(2) may be made for the dual consolidated loss incurred by the separate unit of B.

(iii) *Triggering events requiring the recapture of dual consolidated losses*—(A) The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must agree that, if there is a triggering event described in this paragraph (g)(2)(iii), and no exception applies under paragraph (g)(2)(iv) of this section, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will recapture and report as income the amount of the dual consolidated loss provided in paragraph (g)(2)(vii) of this section on its tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a use of the loss for foreign purposes, the taxable year that includes the last day of the foreign tax year during which such use occurs). In addition, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must pay any applicable interest charge required by paragraph (g)(2)(vii). For purposes of this section, any of the following events shall constitute a triggering event:

(*1*) In any taxable year up to an including the 15th taxable year following the year in which the dual consolidated loss that is the subject of the agreement filed under this paragraph (g)(2) was incurred, any portion of the losses, expenses, or deductions taken into account in computing the dual consolidated loss is used by any means to offset the income of any other person under the income tax laws of a foreign country;

(*2*) An affiliated dual resident corporation or affiliated domestic owner ceases to be a member of the consolidated group that filed the election. For purposes of this paragraph (g)(2)(iii)(A)(*2*), a dual resident corporation or domestic owner shall be considered to cease to be a member of the consolidated group if it is no longer a member of the group within the meaning of § 1.1502–1(b), or if the group ceases to exist because the common parent is no longer in existence or is no longer a common parent or the group no longer files on the basis of a consolidated return. Such disaffiliation, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the dual resident corporation's or separate unit's losses, expenses, or deductions cannot be used to offset income of another person under the laws of a foreign country at any time after the affiliated dual resident corporation or affiliated domestic owner ceases to be a member of the consolidated group;

(*3*) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group. Such affiliation of the dual resident corporation or domestic owner, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the losses, expenses, or deductions of the dual resident corporation or separate unit cannot be used to offset the income of another person under the laws of a foreign country at any time after the dual resident corporation or domestic owner becomes a member of the consolidated group.

(*4*) A dual resident corporation transfers assets in a transaction that results, under the laws of a foreign country, in a carryover of its losses, expenses, or deductions. For purposes of this paragraph (g)(2)(iii)(A)(*4*), a transfer, either in a single transaction or a series of transactions within a twelve-month period, of 50% or more of the dual resident corporation's assets (measured by the fair market value of the assets at the time of such transfer (or for multiple transactions, at the time of the first transfer)) shall be deemed a triggering event, unless the taxpayer demonstrates, to the satisfaction of the Commissioner, that the transfer of assets did not result in a carryover under foreign law of the dual resident corporation's losses, expenses, or deductions to the transferee of the assets;

(*5*) A domestic owner of a separate unit transfers assets of the separate unit in a transaction that results, under the laws of a foreign country, in a carryover of the separate unit's losses, expenses, or deductions. For purposes of this paragraph (g)(2)(iii)(A)(*5*), a transfer, either in a single transaction or a series of transactions over a twelve-month period, of 50% or more of the separate unit's assets (measured by the fair market value of the assets at the time of the transfer (or for multiple transfers, at the time of the first transfer)), shall be deemed a triggering event, unless the taxpayer demonstrates, to the satisfaction of the Commissioner, that the transfer of assets did not result in a

carryover under foreign law of the separate unit's losses, expenses, or deductions to the transferee of the assets;

(*6*) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a foreign corporation by means of a transaction (*e.g.*, a reorganization) that, for foreign tax purposes, is not treated as involving a transfer of assets (and carryover of losses) to a new entity. Such a transaction, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the dual resident corporation's or separate unit's losses, expenses, or deductions cannot be used to offset income of another person under the laws of the foreign country at any time after the unaffiliated dual resident corporation or unaffiliated domestic owner becomes a foreign corporation.

(*7*) A domestic owner of a separate unit, either in a single transaction or a series of transactions within a twelve-month period, sells, or otherwise disposes of, 50% or more of the interest in the separate unit (measured by voting power or value) owned by the domestic owner on the last day of the taxable year in which the dual consolidated loss was incurred. For purposes of this paragraph (g)(2)(A)(iii)(*7*), the domestic owner shall be deemed to have disposed of its entire interest in a hybrid entity separate unit if such hybrid entity becomes classified as a foreign corporation for U.S. tax purposes. The disposition of 50% or more of the interest in a separate unit, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the losses, expenses, or deductions of the separate unit cannot be used to offset income of another person under the laws of the foreign country at any time after the disposition of the interest in the separate unit; or

(*8*) The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner fails to file a certification required under paragraph (g)(2)(vi)(B) of this section.

(B) A taxpayer wishing to rebut the presumption of a triggering event described in paragraphs (g)(2)(iii)(A)(*2*) through (*7*) of this section, by demonstrating that the losses, expenses, or deductions of the dual resident corporation or separate unit cannot be carried over or otherwise used under the laws of the foreign country, must attach documents demonstrating such facts to its timely filed U.S. income tax return for the year in which the presumed triggering event occurs.

(C) The following example illustrates this paragraph (g)(2)(iii)

Example. DRC, a domestic corporation, is a member of CG, a consolidated group. DRC is a resident Country Y for Country Y income tax purposes. Therefore, DRC is a dual resident corporation. In Year 1, DRC incurs a dual consolidated loss of $100. CG files an agreement described in paragraph (g)(2) of this section and, thus, the $100 dual consolidated loss is included in the computation of CG's consolidated taxable income. In Year 6, all of the stock of DRC is sold to P, a domestic corporation that is a member of NG, another consolidated group. The sale of DRC to P is a triggering event under paragraph (g)(2)(iii)(A) of this section, requiring the recapture of the dual consolidated loss. However, the laws of Country Y provide for a five-year carryover period for losses. At the time of DRC's disaffiliation from CG, the losses, expenses and deductions that were included in the computation of the dual consolidated loss had expired for Country Y purposes. Therefore, upon adequate documentation that the losses, expenses, or deductions have expired for Country Y purposes, CG can rebut the presumption that a triggering event has occurred.

(iv) *Exceptions*—(A) *Acquisition by a member of the consolidated group.* The following events shall not constitute triggering events, requiring the recapture of the dual consolidated loss under paragraph (g)(2)(vii) of this section:

(*1*) An affiliated dual resident corporation or affiliated domestic owner ceases to be a member of a consolidated group solely by reason of a transaction in which a member of the same consolidated group succeeds to the tax attributes of the dual resident corporation or domestic owner under the provisions of section 381;

(*2*) Assets of an affiliated dual resident corporation or assets of a separate unit of an affiliated domestic owner are acquired by a member of its consolidated group in any other transaction; or

(*3*) An affiliated domestic owner of a separate unit transfers its interest in the separate unit to another member of its consolidated group.

(B) *Acquisition by an unaffiliated domestic corporation or a new consolidated group*—(*1*) If the requirements of paragraph (g)(2)(iv)(B)(*2*) of this section are met, the following events shall not constitute triggering events, requiring the recapture of the dual consolidated loss under paragraph (g)(2)(vii) of this section:

(*i*) An affiliated dual resident corporation or affiliated domestic owner becomes an unaffiliated domestic corporation or a member of a new consolidated group;

(*ii*) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group;

(*iii*) Assets of a dual resident corporation or a separate unit are acquired by an unaffiliated domestic corporation or a member of a new consolidated group; or

(*iv*) A domestic owner of a separate unit transfers its interest in the separate unit to an unaffiliated domestic corporation or to a member of a new consolidated group.

(*2*) If all of the following requirements are satisfied, the events listed in paragraph (g)(2)(iv)(B)(*1*) of this section shall not constitute triggering events requiring recapture under paragraph (g)(2)(vii) of this section.

(*i*) The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner that filed the agreement under this paragraph (g)(2) and the unaffiliated domestic corporation or new consolidated group must enter into a closing agreement with the Internal Revenue Service providing that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner and the unaffiliated domestic corporation or new consolidated group will be jointly and severally liable for the total amount of the recapture of dual consolidated loss and interest charge required in paragraph (g)(2)(vii) of this section, if there is a triggering event described in paragraph (g)(2)(iii) of this section;

(*ii*) The unaffiliated domestic corporation or new consolidated group must agree to treat any potential recapture amount under paragraph (g)(2)(vii) of this section as unrealized built-in gain for purposes of section 384(a), subject to any applicable exceptions thereunder;

(*iii*) The unaffiliated domestic corporation or new consolidated group must file an agreement described in paragraph (g)(2)(i) of this section with its timely filed income tax return for the taxable year in which the event described in paragraph (g)(2)(iv)(B)(*1*) of this section occurs. The agreement must be signed under penalties of perjury by the person who signs the tax return of the unaffiliated domestic corporation or new consolidated group.

(C) *Subsequent triggering events.* Any triggering event described in paragraph (g)(2)(iii) of this section that occurs subsequent to one of the transactions described in paragraph (g)(2)(iv) (A) or (B) of this section and does not fall within the exceptions provided in paragraph (g)(2)(iv) (A) or (B) of this section shall require recapture under paragraph (g)(2)(vii) of this section.

(v) *Ordering rules for determining the foreign use of losses.* If the laws of a foreign country provide for the use of losses of a dual resident corporation to offset the income of another person but do not provide applicable rules for determining the order in which such losses are used to offset the income of another person in a taxable year, then for purposes of this section, the following rules shall govern:

(A) If under the laws of the foreign country the dual resident corporation has losses from different taxable years, the dual resident corporation shall be deemed to use first the losses from the earliest taxable year from which a loss may be carried forward or back for foreign law purposes.

(B) Any net loss, or income, that the dual resident corporation has in a taxable year shall first be used to offset net income, or loss, recognized by affiliates of the dual resident corporation in the same taxable year before any carryover of the dual resident corporation's losses is considered to be used to offset any income from the taxable year.

(C) Where different losses, expenses, or deductions (*e.g.*, capital losses and ordinary losses) of a dual resident corporation incurred in the same taxable year are available to offset the income of another person, the different losses shall be deemed to offset such income on a pro rata basis.

Example. DRC, a domestic corporation, is taxed as a resident under the tax laws of Country Y. Therefore, DRC is a dual resident corporation. FA is a Country Y affiliate of DRC. Country Y's tax laws permit affiliated corporations to file a form of consolidated return. In Year 1, DRC incurs a capital loss of $80 which, for Country Y purposes, offsets completely $30 of capital gain recognized by FA. Neither corporation has any other taxable income or loss for the year. In Year 1 (and in other years), DRC recognizes the same amount of income for U.S. purposes as it does for Country Y purposes. Under paragraph (d)(1)(i) of this section, however, DRC's $80 capital loss is not a dual consolidated loss. In Year 2, DRC incurs a net operating loss of $100, while FA incurs a net operating loss of $50. DRC's $100 loss is a dual consolidated loss. Since the dual consolidated loss is not used to offset the income of another person under Country Y law, DRC is permitted to file an agreement described in this paragraph (g)(2). In Year 3, DRC has a net operating loss of $10 and FA has capital gains of $60. For Country Y purposes, DRC's $10 net operating loss is used to offset $10 of FA's $60 capital gain. DRC's $10 loss is a dual consolidated loss. Because the loss is used to offset FA's income, DRC will not be able to file an agreement under this paragraph (g)(2) with respect to the loss. Country Y permits FA's remaining $50 of Year 3 income to be offset by carryover losses. However, Country Y has no applicable rules for determining which carryover losses from Years 1 and 2 are used to offset such income. Under the ordering rules of paragraph (g)(2)(v)(A) of this section, none of DRC's $100 Year 2 loss will be deemed to offset FA's remaining $50 of Year 3 income. Instead, the $50 of capital loss carryover from Year 1 will be considered to offset the income.

(vi) *Reporting requirements*—(A) *In general.* The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must answer the applicable questions regarding dual consolidated losses on its U.S. income tax return filed for the year in which the dual consolidated loss is incurred and for each of the following fifteen taxable years.

(B) *Annual certification.* Except as provided in paragraph (g)(2)(vi)(C) of this section, until and unless Form 1120 (or the Schedules thereto) contains questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the fifteen taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. The annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. The certification must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(C) *Exception.* A consolidated group or unaffiliated domestic owner is not required to file annual certifications under paragraph (g)(2)(vi)(B) of this section with respect to a dual consolidated loss of any separate unit other than a hybrid entity separate unit.

(vii) *Recapture of loss and interest charge*—(A) *Presumptive rule*—(*1*) *Amount of recapture.* Except as otherwise provided in this paragraph (g)(2)(vii), upon the occurrence of a triggering event described in paragraph (g)(2)(iii) of this section, the taxpayer shall recapture and report as gross income the total amount of the dual consolidated loss to which the triggering event applies on its income tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a use of the loss for foreign tax purposes, the taxable year that includes the last day of the foreign tax year during which such use occurs).

(*2*) *Interest charge.* In connection with the recapture, the taxpayer shall pay an interest charge. Except as otherwise provided in this paragraph (g)(2)(vii), such interest shall be determined under the rules of section 6601(a) as if the additional tax owed as a result of the recapture had accrued and been due and owing for the taxable year in which the losses, expenses, or deductions taken into account in computing the dual consolidated loss gave rise to a tax benefit for U.S. income tax purposes. For purposes of this paragraph (g)(2)(vii)(A)(*2*), a tax benefit shall be considered to have arisen in a taxable year in which such losses, expenses or deductions reduced U.S. taxable income.

(B) *Rebuttal of presumptive rule*—(*1*) *Amount of recapture.* The amount of dual consolidated loss that must be recaptured under this paragraph (g)(2)(vii) may be reduced if the taxpayer demonstrates, to the satisfaction of the Commissioner, the offset permitted by this paragraph (g)(2)(vii)(B). The reduction in the amount of recapture is the amount by which the dual consolidated loss would have offset other taxable income reported on a timely filed U.S. income tax return for any taxable year up to and including the year of the triggering event if such loss had been subject to the restrictions of paragraph (b) of this section (and therefore had been subject to the separate return limitation year restrictions of § 1.1502–21(c)) commencing in the taxable year in which the loss was incurred. A taxpayer utilizing this rebuttal rule must attach to its timely filed U.S. income tax return a separate accounting showing that the income for each year that offsets the dual resident corporation's or separate unit's recapture amount is attributable only to the dual resident corporation or separate unit.

(*2*) *Interest charge.* The interest charge imposed under this paragraph (g)(2)(vii) may be appropriately reduced if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the net interest owed would have been

less than that provided in paragraph (g)(2)(vii)(A)(*2*) of this section if the taxpayer had filed an amended return for the year in which the loss was incurred, and for any other affected years up to and including the year of recapture, treating the dual consolidated loss as a loss subject to the restrictions of paragraph (b) of this section (and therefore subject to the separate return limitation year restrictions of § 1.1502–21(c)). A taxpayer utilizing this rebuttal rule must attach to its timely filed U.S. income tax return a computation demonstrating the reduction in the net interest owed as a result of treating the dual consolidated loss as a loss subject to the restrictions of paragraph (b) of this section.

(C) *Computation of taxable income in year of recapture*—(1) *Presumptive rule.* Except as otherwise provided in paragraph (g)(2)(vii)(C)(*2*), for purposes of computing the taxable income for the year of recapture, no current, carryover or carryback losses of the dual resident corporation or separate unit, of other members of the consolidated group, or of the domestic owner that are not attributable to the separate unit, may offset and absorb the recapture amount

(*2*) *Rebuttal of presumptive rule.* The recapture amount included in gross income may be offset and absorbed by that portion of the taxpayer's (consolidated or separate) net operating loss carryover that is attributable to the dual consolidated loss being recaptured, if the taxpayer demonstrates, to the satisfaction of the Commissioner, the amount of such portion of the carryover. A taxpayer utilizing this rebuttal rule must attach to its timely filed U.S. income tax return a computation demonstrating the amount of net operating loss carryover that, under this paragraph (g)(2)(vii)(C)(*2*), may absorb the recapture amount included in gross income.

(D) *Character and source of recapture income.* The amount recaptured under this paragraph (g)(2)(vii) shall be treated as ordinary income in the year of recapture. The amount recaptured shall be treated as income having the same source and falling within the same separate category for purposes of section 904 as the dual consolidated loss being recaptured.

(E) *Reconstituted net operating loss.* Commencing in the taxable year immediately following the year in which the dual consolidated loss is recaptured, the dual resident corporation or separate unit shall be treated as having a net operating loss in an amount equal to the amount actually recaptured under paragraph (g)(2)(vii) (A) or (B) of this section. This reconstituted net operating loss shall be subject to the restrictions of paragraph (b) of this section (and therefore, the separate return limitation year restrictions of § 1.1502–21(c)). The net operating loss shall be available only for carryover, under section 172(b), to taxable years following the taxable year of recapture. For purposes of determining the remaining carryover period, the loss shall be treated as if it had been recognized in the taxable year in which the dual consolidated loss that is the basis of the recapture amount was incurred.

(F) *Consequences of failing to comply with recapture provisions*—(*1*) *In general.* If the taxpayer fails to comply with the recapture provisions of this paragraph (g)(2)(vii) upon the occurrence of a triggering event, then the dual resident corporation or separate unit that incurred the dual consolidated loss (or a successor-in-interest) shall not be eligible for the relief provided in paragraph (g)(2) of this section with respect to any dual consolidated losses incurred in the five taxable years beginning with the taxable year in which recapture is required.

(*2*) *Exceptions.* In the case of a triggering event other than a use of the losses, expenses, or deductions taken into account in computing the dual consolidated loss to offset income of another person under the income tax laws of a foreign country, this rule shall not apply in the following circumstances:

(*i*) The failure to recapture is due to reasonable cause; or

(*ii*) A taxpayer seeking to rebut the presumption of a triggering event satisfies the filing requirements of paragraph (g)(2)(iii)(B) of this section.

(G) *Examples.* The following examples illustrate this paragraph (g)(2)(vii).

Example 1. P, a domestic corporation, files a consolidated return with DRC, a dual resident corporation. In Year 1, DRC incurs a dual consolidated loss of $100 and P earns $100. P files an agreement under this paragraph (g)(2). Therefore, the consolidated group is permitted to offset P's $100 of income with DRC's $100 loss. In Year 2, DRC earns $30, which is completely offset by a $30 net operating loss incurred by P. In Year 3, DRC earns income of $25 while P recognizes no income or loss. In addition, there is a triggering event in Year 3. Therefore, under the presumptive rule of paragraph (g)(2)(vii)(A) of this section, DRC must recapture $100. However, the $100 recapture amount may be reduced by $25 (the amount by which the dual consolidated loss would have offset other taxable income if it had been subject to the separate return limitation year restrictions from Year 1) upon adequate documentation of such offset under paragraph (g)(2)(vii)(B)(*1*) of this section. Commencing in Year 4, the $100 (or $75) recapture amount is treated as a loss incurred by DRC in a separate return limitation year, subject to the restrictions of § 1.1502–21(c). The carryover period of the loss, for purposes of section 172(b), will start from Year 1, when the dual consolidated loss was incurred.

Example 2. The facts are the same as in **Example 1**, except that in Year 2, DRC earns $75 and P earns $50. In Year 3, DRC earns $25 while P earns $30. A triggering event occurs in Year 3. The $100 presumptive amount of recapture can be reduced to zero by the $75 and $25 earned by DRC in Years 2 and 3, respectively, upon adequate documentation of such offset under paragraph (g)(2)(vii)(B)(*1*) of this section. Nevertheless, an interest charge will be owed. Under the presumptive rule of paragraph (g)(2)(vii)(A)(*2*) of this section, interest will be charged on the additional tax owed on the $100 of recapture income as if the tax had accrued in Year 1 (the year in which the dual consolidated loss reduced the income of P). However, the net interest will be reduced to the amount that would have been owed if the consolidated group had filed amended returns, treating the dual consolidated loss as a loss subject to the separate return limitation year restrictions of § 1.1502–21(c), upon adequate documentation of such reduction of interest under paragraph (g)(2)(vii)(B)(*2*) of this section.

Example 3. P, a domestic corporation, owns DRC, a domestic corporation that is subject to the income tax laws of Country Z on a residence basis. DRC owns FE, a Country Z corporation. In Year 1, DRC incurs a net operating loss for U.S. tax purposes. Under the tax laws of Country Z, the loss is not recognized until Year 3. The Year 1 net operating loss is a dual consolidated loss under paragraph (c)(5) of this section. The consolidated group elects relief under paragraph (g)(2) of this section by filing the appropriate agreement and uses the dual consolidated loss on its U.S. income tax return. In Year 3, the dual consolidated loss is used under the laws of Country Z to offset the income of FE, which is a triggering event under paragraph (g)(2)(iii) of this section. However, the consolidated group does not recapture the dual consolidated loss. The consolidated group's failure to comply with the recapture provisions of this paragraph (g)(2)(vii) prevents DRC from being eligible for the relief provided under paragraph (g)(2) of this section for any dual consolidated losses incurred in Years 3 through 7, inclusive.

(h) *Effective date*—(1) *In general.* These regulations are effective for taxable years beginning on or after October 1, 1992. Section 1.1503–2A is effective for taxable years beginning after December 31, 1986, and before October 1, 1992.

(2) *Taxpayers that have filed for relief under § 1.1503–2A*—(i) *In general.* Except as provided in paragraph (h)(ii)(b) of this section, taxpayers that have filed agreements described in § 1.1503–2A(c)(3) or certifications described in § 1.1503–2A(d)(3) shall continue to be subject to the provisions

of such agreements or certifications, including the amended return or recapture requirements applicable in the event of a triggering event, for the remaining term of such agreements or certifications.

(ii) *Special transition rule.* A taxpayer that has filed an agreement described in § 1.1503–2A(c)(3) or a certification described in § 1.1503–2A(d)(3) and that is in compliance with the provisions of the temporary regulations may elect to replace such agreement or certification with an agreement described in paragraph (g)(2)(i) of this section. However, a taxpayer making this election must replace all agreements and certifications filed under § 1.1503–2A. If the taxpayer is a consolidated group, the election must be made with respect to all dual resident corporations or separate units within the group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner. The taxpayer must file the replacement agreement with its timely filed income tax return for its first taxable year commencing on or after October 1, 1992, stating that such agreement is a replacement for the agreement filed under § 1.1503–2A(c)(3) or the certification filed under § 1.1503–2A(d)(3) and identifying the taxable year for which the original agreement or certification was filed. A single agreement described in paragraph (g)(2)(i) of this section may be filed to replace more than one agreement or certification filed under § 1.1503–2A; however, each dual consolidated loss must be separately identified. A taxpayer may also elect to apply § 1.1503–2 for all open years, with respect to agreements filed under § 1.1503–2A(c)(3) or certifications filed under § 1.1503–2A(d)(3), in cases where the agreement or certification is no longer in effect and the taxpayer has complied with the provisions of § 1.1503–2A. For example, a taxpayer may have had a triggering event under § 1.1503–2A that is not a triggering event under § 1.1503–2. If the taxpayer fully complied with the requirements of the agreement entered into under § 1.1503–2A(c)(3) and filed amended U.S. income tax returns within the time required under § 1.1503–2A(c)(3), the taxpayer may file amended U.S. income tax returns consistent with the position that the earlier triggering event is no longer a triggering event.

(3) *Taxpayers that are in compliance with § 1.1503–2A but have not filed for relief thereunder.* A taxpayer that is in compliance with the provisions of § 1.1503–2A but has not filed an agreement described in § 1.1503–2A(c)(3) or a certification described in § 1.1503–2A(d)(3) may elect to have the provisions of § 1.1503–2 apply for all open years. In particular, a taxpayer may elect to apply the provisions of § 1.1503–2 in a case where the dual consolidated loss has been subjected to the separate return limitation year restrictions of § 1.1502–21(c) but the losses, expenses, or deductions taken into account in computing the dual consolidated loss have not been used to offset the income of another person for foreign tax purposes. However, if a taxpayer is a consolidated group, the election must be made with respect to all dual resident corporations or separate units within the group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner.

Par. 3. A new undesignated center heading is added immediately following § 1.1502–51A to read as follows: "DUAL CONSOLIDATED LOSSES INCURRED IN TAXABLE YEARS BEGINNING BEFORE OCTOBER 1, 1992."

§ 1.1503–2T [Redesignated as 1.1503–2A]

Par. 4. § 1.1503–2T is redesignated as § 1.1503–2A, and the word "(temporary)" is removed from the section heading.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

PART 602—[AMENDED]

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by removing the entry for "1.1503–2T" and adding the following entry to the table:

"1.1503–2A ..... 1545–1083"

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: August 26, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 92–21539 Filed 9–4–92; 8:45 am]

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Office of the Secretary

31 CFR Part 10

Practice Before the Internal Revenue Service; Advertising and Solicitation

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations governing practice before the Internal Revenue Service (Treasury Department Circular Number 230). These regulations relate to the provisions of the regulations addressing advertising and solicitation by those eligible to practice before the Internal Revenue Service and is occasioned by judicial determinations impacting on the subject.

DATES: These regulations are effective on September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Rosenzweig, Office of Director of Practice, Internal Revenue Service, Washington DC 20224, (202) 376–1428.

SUPPLEMENTARY INFORMATION:

Background and Comments

The regulations governing practice before the Internal Revenue Service, 31 CFR part 10, reprinted as Treasury Department Circular No. 230 (Circular 230), traditionally have contained rules governing permissible advertising and solicitation by those eligible to engage in such practice. In the past two decades, the United States Supreme Court has issued decisions liberalizing permissible advertising and solicitation. Circular 230 was modified substantially in the area a number of years ago (44 FR 4940) to reflect the early liberalization. However, Supreme Court decisions since then require that further modifications be made. On April 22, 1991, the Treasury Department published in the **Federal Register** (56 FR 16289) a proposed rule to amend the regulations governing practice before the Internal Revenue Service. The proposed rule was designed to bring the current regulations contained in Circular 230 into line with recent Supreme Court decisions in the area of professional advertising and solicitation.

The notice of proposed rulemaking discussed three decisions in the area of advertising (by attorneys). Because of their relevance, they also are discussed herein. All three are based on the premise that attorney advertising is commercial speech protected by the First Amendment of the Constitution to

insure the flow of consumer information to the public.

The Supreme Court, in *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626 (1985), approved an attorney's advertisement of the availability of his services using an illustration of the Dalkon Shield along with statements advising readers that their legal rights may not have lapsed with respect to harm suffered as the result of use of the device. These advertising methods were held unobjectionable because they were not deceptive or misleading. However, the Court agreed that other statements made by the attorney were misleading. Among them were representations made in connection with an earlier advertisement in which the attorney offered a full refnd of his fee to persons accused of drunk driving if such persons hired him and were later convicted. This statement was held to be false or misleading because it referred to something the attorney could not do, namely, accept a criminal case on a contingent-fee basis. In addition, the Dalkon Shield advertisement was found deceptive in that it offered representation on a contingent-fee basis, but neglected to include information on client responsibility for costs. Since the general public is unfamiliar with the fee/costs distinction, the advertisement was considered misleading.

In *Shapero* v. *Kentucky Bar Ass'n*, 486 U.S. 466 (1988), the lawyer sent a letter to persons facing foreclosure actions urging them to contact him to find out what he could do to assist them. This was in violation of the Kentucky rules prohibiting attorneys from direct mailing tailored to the recipients' unique circumstances. The Supreme Court held the prohibition unconstitutional, finding that states may not categorically ban lawyers from soliciting business by sending a truthful, nondeceptive letter to persons known to face particular legal problems. However, the opinion suggested that states may retain some control over direct mail in the interest of preventing abuse. The Court wrote that such control means something "far less restrictive and more precise" than a total ban, but will include controls such as a requirement that attorneys wishing to engage in direct mailings submit a form of the letter to a state commission or requiring advertisements to be clearly marked as such. In addition, a distinction was made between targeted direct mail from in-person solicitation, the latter still being prohibited.

Peel v. *Attorney Registration and Disciplinary Commission of Illinois*, 110 S. Ct. 2281 (1990) is the most recent pronouncement on the subject. In *Peel*, the lawyer included as part of his letterhead the phrase "Certified Civil Trial Specialist By the National Board of Trial Advocacy." This was in violation of the Illinois Code of Professional Responsibility which prohibited attorneys from holding themselves out as "certified" or a "specialist" except as specifically permitted. The plurality opinion of the Court held that blanket prohibitions on truthful advertising related to lawful activities are unconstitutional. While the state may enact legislation governing misleading advertising, the mere fact that such advertising may have the potential to confuse is not sufficient grounds to deny first amendment protection.

Eight written comments on the proposed rule were received. After consideration of all comments regarding the proposed rule, it is hereby adopted with modifications as explained below.

Comments

1. Six of the comments expressed concerns about the proposal to prohibit the use for the term "certified" by enrolled agents. Such proposal stemmed in large part from concerns about confusion by taxpayers through the use of the term. In this connection, it should be read in the appropriate context, i.e. misleading in the narrow field of tax practice. The term "certified" by tax practitioners when used in either correspondence or advertisements relating to taxation is closely identified by the public with certified public accountants. This is a unique circumstance. While the authority of enrolled agents and certified public accountants to practice before the Internal Revenue Service may be the same, it is an important protection to the public that there be a distinction between the two categories of practitioners. However, the prohibition is intended to be limited to descriptive or acronymic designations dealing with tax practice. If the term "certified" is used in a descriptive phrase dealing with a bona fide attainment clearly not applicable to tax services per se, it would be permitted. The term "Certified Financial Planner" is an example of an attainment that is not in the prohibited area. Concern also has been expressed over the allowability of enrolled agents to employ the designation "EA" or "E.A." There has been nothing in the regulations prohibiting the use of abbreviations, so long as the abbreviations clearly represent an enrolled agent's status. Further, the initials are widely used and reflect the custom of the enrolled agent community. The designation is equally appropriate for enrolled actuaries. The final rule has been clarified in these respects.

2. Comments were received regarding the proposed requirement that all letters of solicitation need be marked as such, in capital letters, on the envelope and the top of each page. Commentators expressed concern that such requirement was onerous, lending an unprofessional appearance to the solicitation. In light of these comments, the rule will reflect a requirement that only the first page and envelopes of targeted solicitations be so marked. We view the references not only as being helpful to taxpayers so as not to alarm or unduly confuse them, but an honest and clear representation of the mailings. Since envelopes may not be kept with correspondence, the final rule requires the dual notice. Typeface, weight, color or point size requirements are not being set forth. Legibility will be the sole criterion to be used by this office in determining compliance. This requirement applies to targeted mailings, i.e. mailings to those whose unique circumstances are the basis for the solicitation. Examples of targeted mailings are those sent to taxpayers whose assets have been levied upon by the Internal Revenue Service or who have filed for bankruptcy. Examples of non-targeted mailings are ones soliciting referral work from peers and those sent to former and existing clients.

3. Concern has been expressed over the use of the term "unduly influencing" in the proposed rule. Such language has been used historically in Circular 230. The phrase "unduly influencing" continues to apply generally to the use of highly colored language or hyperbole employed to influence without imparting information. For example, advertisements that state or imply a guaranteed refund or "win" based upon the practitioner's past record would be considered unduly influencing.

4. Some commentators have expressed concern about restricting non-written solicitations to situations involving new business from an existing or former client in a related matter. Specifically, it has been pointed out that this restriction does not permit soliciting family members or making one's availability known to other practitioners. It is agreed that the proposal is too restrictive in this regard. The rule has been expanded to permit solicitation of family members. There has not been a limitation on the means by which a practitioner may make the availability of his or her professional services known within the practitioner community. Announcements and mailings directed to the practitioner

community seeking referrals are permitted.

Special Analysis

This rule relates solely to professional services in connection with Internal Revenue Service and Treasury Department proceedings and is not expected to have any significant economic consequences.

Therefore, it has been determined that this rule is not a major rule as defined in Executive Order 12291 and a regulatory impact analysis is not required. It is hereby certified that this rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Drafting Information

The author of these regulations is Mr. Scott M. Rosenzweig, attorney advisor in the Office of Director of Practice, Department of the Treasury. Other personnel in the Treasury Department participated in the development of the final rule, both as to substance and style.

List of Subjects in 31 CFR Part 10

Administrative practice and procedure, Lawyers, Accountants, Enrolled agents, Enrolled actuaries, appraisers, Reporting and recordkeeping requirements, Taxes.

Amendments to Regulations

Accordingly, part 10 of subtitle A, Title 31 of the Code of Federal Regulations is amended as follows:

PART 10—[AMENDED]

1. The authority for subtitle A, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 1026; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

2. In Part 10 remove the phrase "attorney(s), certified public accountant(s), (or) enrolled agent(s)" and add, in their place, the words "attorney, certified public accountant, enrolled agent, or enrolled actuary" in the following places:

Section 10.0;
Section 10.20 (a), (b);
Section 10.21;
Section 10.22 introductory text;
Section 10.23;
Section 10.24 introductory text;
Section 10.26 (a)(4);
Section 10.27;
Section 10.28;
Section 10.29;
Section 10.30 (c)(1) introductory text, (c)(2), (c)(3), (e);
Section 10.31;
Section 10.50;
Section 10.51 introductory text;
Section 10.52 (a);
Section 10.53;
Section 10.54;
Section 10.55 (a), (b).

3. Section 10.30, paragraph (a) is revised as follows:

§ 10.30 Solicitation.

(3) *Advertising and solicitation restrictions.*

(1) No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication containing (i) A false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or (ii) a misleading or deceptive statement or claim.

Enrolled agents, in describing their professional designation, may not utilize the term of art "certified" or indicate an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service, and "admitted to practice before the Internal Revenue Service." Enrolled agents and enrolled actuaries may abbreviate such designation to either EA or E.A.

(2) No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall make, directly or indirectly, an uninvited solicitation of employment in matters related to the Internal Revenue Service. Solicitation includes, but is not limited to, in-person contacts and telephone communications. This restriction does not apply to (i) Seeking new business from an existing or former client in a related matter; (ii) communications with family members; (iii) making the availability of professional services known to other practitioners, so long as the person or firm contacted is not a potential client; (iv) solicitation by mailings; or (v) non-coercive in-person solicitation by those eligible to practice before the Internal Revenue Service while acting as an employee, member, or officer of an exempt organization listed in sections 501(c)(3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

Any targeted direct mail solicitation, i.e. a mailing to those whose unique circumstances are the basis for the solicitation, distributed by or on behalf of an attorney, certified public accountant, enrolled agency, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall be clearly marked as such in capital letters on the envelope and at the top of the first page of such mailing. In addition, all such solicitations must clearly identify the source of the information used in choosing the recipient.

* * * * *

§ 10.30 [Amended]

4. In § 10.30, paragraph (b) is removed.

5. In § 10.30, paragraph (c) is redesignated as paragraph (b), and is amended by adding the following undesignated sentence after paragraph (b)(1)(iv):

"Any statement of fee information concerning matters in which costs may be incurred shall include a statement disclosing whether clients will be responsible for such costs."

6. In § 10.30, paragraph (d) is redesignated as paragraph (c), and is revised to read as follows:

§ 10.30 Solicitation.

* * * * *

(c) *Communications.* Communication, including fee information, may include professional lists, telephone directories, print media, mailings, radio and television, and any other method: *Provided,* that the method chosen does not cause the communication to become untruthful, deceptive, unduly influencing or otherwise in violation of these regulations. It shall be construed as a violation of these regulations for a practitioner to persist in attempting to contact a prospective client, if such client has made known to the practitioner a desire not to be solicited. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission. In the case of direct mail communications, the practitioner shall retain a copy of the actual mailing, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

* * * * *

§ 10.30 [Amended]

6. Section 10.30 (e) is redesignated as paragraph (d).

Dated: August 28, 1992.

Jeanne S. Archibald,

General Counsel, Department of the Treasury.

[FR Doc. 92-21532 Filed 9-8-92; 8:45 am]

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DEPARTMENT OF DEFENSE

32 CFR Part 220

RIN 0790-AD32

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule would amend the DoD regulation that implements 10 U.S.C. 1095. This statute generally provides for collection by the United States from third party payers of reasonable costs of healthcare services provided in facilities of the Uniformed Services to DoD beneficiaries who are also beneficiaries under the third party payer's plan. This final rule also implements recent legislative amendments that expanded their third party collection authority to cover outpatient services, automobile liability and no-fault insurance policies, and Medicare supplemental insurance plans. Active duty members are included in collections from automobile liability and no-fault insurance carriers. In addition the final rule revises methods for determining reasonable costs for inpatient care services.

EFFECTIVE DATE: This final rule is effective October 9, 1992.

ADDRESSES: Office of the Deputy Assistant Secretary of Defense (Health Services Operations), Attn: Operations and Management Support, room 3E343, The Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: CDR Steven D. Olsen, MSC, USN at (703) 693-2570.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted 10 U.S.C. 1095 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, section 2001(a)(1), to permit the Department of Defense to collect from third party payers reasonable inpatient hospital care costs incurred on behalf of most DoD health care beneficiaries. This legislation was based on the premise that private health care plans should not avoid payment for inpatient healthcare services provided to their beneficiaries solely because those beneficiaries also happen to be entitled to space available care in military facilities. To implement this statute, DoD issued a proposed rule October 8, 1986, and a final rule September 25, 1987.

After several years of experience, Congress indicated its disappointment regarding the relatively low level of collections being made under the program. As one step to address this, in 1989, Congress amended the statute to provide that funds collected, rather than being turned over to the general treasury, would be credited to the appropriations account supporting the facility that provided the care. Public Law 101-189, section 727. The intent of this amendment was to provide an incentive for facilities of the Uniformed Services to aggressively implement this program.

Improved implementation was also the objective of regulatory revisions promulgated by DoD in 1990. A proposed rule was issued January 16, 1990, 55 FR 1473, and a final rule, May 29, 1990, 55 FR 21742. The result was a significantly revised regulation setting forth DoD's interpretations of key statutory provisions and related requirements and procedures.

Two government reports in 1990 are also noteworthy as background. The DoD Inspector General released an exhaustive audit report calling for a much more active collection program. I.G Audit No. 9FR-0031. Draft versions of this report stimulated much of the 1990 rule making activity. On a related front, the General Accounting Office issued a report entitled, "Military Health Care: Recovery of Medical Care Costs from Liable Third Parties Can be Improved." This report addressed collections in tort liability cases, such as automobile accident cases, under the Federal Medical Care Recovery Act (FMCRA), and recommended expanding that authority to cover no-fault automobile insurance policies and to permit retention of collected funds at the facility that provided the care.

These two reports stimulated further Congressional action in 1990. In the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, section 713, Congress made three significant changes to 10 U.S.C. 1095. First, Congress expanded the collection authority to cover outpatient services. The original statute only covered inpatient hospital care. Second, based on the GAO report, Congress supplemented current legal authority to collect in tort liability cases with new authority to also collect from no-fault insurance carriers. Congress folded both the pre-existing tort liability case authority and the new no-fault authority under the framework of 10 U.S.C. 1095, thus allowing retention of funds collected at the facility in both types of cases. Third, reacting to one of the Inspector General's recommendations, Congress expanded 10 U.S.C. 1095 to cover Medicare supplemental insurance plans. Similar statutory changes (but not including the outpatient care provision) were made in the Department of Defense Appropriations Act for FY 1991, Public Law 101-511, section 8075.

The Senate Appropriations Committee explained its proposed provision, which was enacted, as one which:

> would allow the Department of Defense to collect from Medicare supplemental insurance policy carriers and from automobile liability and no-fault insurance carriers for treatment of eligible patients in military hospitals. As an incentive for military hospitals to make these collections, net proceeds would remain at the collecting medical facility.

S. Rept. 101-521, p. 48.

In making these statutory revisions, Congress clearly expressed its intent regarding the operation of the third party collection program. The Conference Committee Report on the Authorization Act said "the conferees are disappointed to note" the "major flaws" in the program identified by the Inspector General, which if not corrected, could result in a failure "to collect approximately $318 million from primary health insurance plans for fiscal years 1990 through 1994." The Conference Report concluded:

> The conferees expect that the Department of Defense will correct these deficiencies, and will aggressively implement the expanded authority provided in this section.

H. Conf. Rept. 101-923, p. 618.

This final rule is to implement the expanded authority. It is important to note that active duty members are excluded from third party collections except in cases involving automobile liability and no-fault insurance. In addition, the final rule revises current methods for calculating reasonable costs of inpatient hospital care services.

This final rule is based on the proposed rule issued December 23, 1991 (56 FR 66381). A 60-day comment period was provided. We received five public comments, four of which were from businesses in the insurance industry (two of those four on behalf of a particular company). These comments have been carefully considered, and a number of changes to the rule have been made. A discussion of the major comments received is included in the summary of the final rule which follows.

II. Provisions of the Final Rule

A. Outpatient Services

1. Expansion of Authority

The recent statutory amendment added outpatient services to the 10 U.S.C. 1095 collection program by replacing the previous references to "inpatient hospital care" with the new authority to collect for all "healthcare services." We are making a comparable revision to the regulation at various places. Specifically, this change is made in the heading for part 220, § § 220.1, 220.2, 220.8, and 220.9.

2. Per Visit Rate

Another revision to § 220.8 involves the calculation of reasonable costs for outpatient services. Congress addressed this by authorizing "all-inclusive per visit rates" as the basis for outpatient services collections 10 U.S.C. 1095(f)(2). Based on this authority, the Department of Defense is adopting this method for computing reasonable costs for most outpatient care. Thus, collections for most outpatient services will be based on a standard per visit fee, representing the average cost in facilities of the Uniformed Services of an outpatient visit. Multiple outpatient visits on the same day to different clinics will result in one charge for each clinic visit. Multiple visits on the same day to the same clinic will only have one charge. As a general rule, the standard per visit amount will be all-inclusive. No additional charge will be made for routine laboratory, radiology, pharmacy or other services provided in conjunction with an outpatient visit.

Although most outpatient services will be billed based on the standard per visit fee, there are several special rules for particular types of care. One special rule is that a separate charge for same day/ambulatory surgery will be published annually.

Another special rule, under § 220.8, applies when the provision of services is at the request of a provider outside of the Military Health Service System (MHSS) rather than in conjunction with an outpatient visit at a military medical treatment facility (MTF). In these cases, charges shall be made for certain high cost ($100 or more) ancillary services and procedures such as laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services. For example, patients seen by civilian practitioners under the CHAMPUS program often obtain prescribed laboratory and radiology tests as well as prescription drugs from a local MTF. (DoD Partnership Program providers acting in their MHSS role are not considered outside providers for this purpose.)

The per visit rate, described above, will not vary based on the precise medical procedures involved in the visit. The rate for certain outside provider requested high cost ancillary services, however, will be based on the cost of the type of service provided. The particular high cost services, drugs or procedures covered by the special rule will be published annually, along with the rate applicable to each service. These costs are accounted for separately from other costs, and thus are not part of the standard per visit or per diem charges.

Other special rules relate to PRIMUS and NAVCARE clinics and services purchased by a facility of the Uniformed Services from civilian providers.

The adoption of this method of computing costs of third party collection conforms to the method currently followed in cases in which private payment is required, including automobile accident cases under the Federal Medical Care Recovery Act. In addition, it will rely upon the same data and computation systems as were used to establish the per diem rates that have been used for inpatient hospital services collections under this program. Also, this method provides a simple, economical method for third party collections. As in the case of the per diem amounts, the applicable visit charge, the same day/ambulatory surgery charge, the PRIMUS and NAVCARE charge, and the rates for externally requested high cost ancillary services shall be updated and published annually. For treatment rendered in fiscal year 1992, the standard per visit amount is $77.

3. Effective Date

A new § 220.6(d) reflects the Congressional effective date for the expansion of the third party collection program to outpatient care. It does not apply to plans that have been in continuous effect without amendment or renewal since prior to the effective date of the statutory amendment (November 5, 1990), to the extent that such plans clearly exclude payment to the Federal government for care in military facilities.

4. Timetable for Actual Billings

In issuing this final rule, our purpose is to establish all regulatory requirements that will be needed to carry out this expansion to the program. However, with respect to outpatient services billings, we note that for some facilities of the Uniformed Services, a number of internal systems adjustments are not completed that are necessary to the operation of the program. Therefore, in some areas of the country, actual billings for outpatient services may not begin promptly. Activities are permitted to back bill for care provided between the effective date of this rule and the provision of internal systems to implement the program. Of course, any such back bills are subject to the third party plan's normal rules for timeliness of claims.

B. Medicare Supplemental Insurance Plans

1. Extension of Collection Authority

The current § 220.6(b) excludes Medicare supplemental insurance plans from 10 U.S.C. 1095. Based on the recent Congressional action, we are including such plans in the program by amending § 220.6 and the definition section (to be redesignated as § 220.12). In addition, we are adding a new § 220.10 concerning special rules applicable to Medicare supplemental insurance plans.

2. Services Covered

Because Medicare is excluded as a third party payer under this program, and because Medicare supplemental insurance plans generally define themselves relative to the primary Medicare coverage, there is a need for a special rule for third party collections from Medicare supplemental plans for care provided in facilities of the Uniformed Services. Congress provided the special rule. The House Armed Services Committee, which originated this provision, explained:

> In authorizing collection from Medicare supplemental policies, the committee intends that the right of the United States to collect would be comparable to the obligation that the third party payer would incur if the healthcare services were provided under Medicare.

H. Rept. 101–665, p. 214; see also H. Conf. Rept. 101–923, p. 618. Similarly, the Appropriations Act general provision states that in connection with Medicare supplemental policies:

> the facility of the uniformed services shall be treated as if it were a Medicare eligible provider and the services provided as if they were Medicare-covered services.

Public Law 101–511, section 8075.

The basic policy Congress put in place is that Medicare supplemental plans should be no better or worse off when their insured beneficiaries receive care

in a facility of the Uniformed Services than those plans are when their insured beneficiaries receive care from civilian providers. In this way, these plans do not enjoy a windfall when their insured beneficiaries receive care in a facility of the Uniformed Services. Our § 220.10(a) adopts a general policy consistent with this Congressional intent.

Most of the public comments we received related to the extension of collection authority to Medicare supplemental insurance plans and the special rules we proposed for accomplishing this. Some commenters took issue with the basic assertion of authority to collect from Medicare supplemental plans on the grounds that, by the terms of their specific insurance contracts, their sole liability is as a second payer to Medicare, and they cannot be liable when Medicare is not liable. Our interpretation of the statutory authority is inchanged. As indicated above, both statutory text and legislative history make clear that Medicare supplemental plans are covered by 10 U.S.C. 1095, notwithstanding that Medicare excludes payment for services provided by military facilities. Moreover, the argument that would render the statute subject to the terms of the insurance contract with respect to basic statutory applicability (as opposed to particular coverage features, and the like) would also nullify the specific statutory amendment that extended the collection program to Medicare supplemental plans.

Separate from the jurisdictional issue, several commenters argued that our proposed rule reflected a lack of understanding of many complexities concerning the Medicare program and the operations of Medicare supplemental plans. Among the specific problems cited were: that some supplemental plans do not cover the Medicare inpatient deductible; that our proposed rule could be interpreted as requiring the supplemental plan to pay the deductible twice in cases in which a beneficiary might have both a military facility and a civilian hospital inpatient admission within a single Medicare benefit period; that most supplemental plans do not cover the Medicare Part B deductible; that it would be very difficult to apply many Medicare and Medicare supplemental plan particular benefit exclusions and limitations under the DoD billing method based on all-inclusive per diem or per visit rates; and other complexities. In considering these comments, we also consulted with officials of the Health Care Financing Administration of the Department of Health and Human Services, the agency that administers the Medicare program and is responsible for Federal oversight of Medicare supplemental plans, and reviewed the National Association of Insurance Commissioners Model Regulation for Medicare supplemental insurance policies.

Based on this, we have made significant changes to the proposed rule. Under the final rule, we are deferring any efforts to collect from Medicare supplemental policies for covered services, with the exception of inpatient hospital deductible amounts.

With respect to the inpatient hospital deductibles, we have refined and clarified the rule, specifically, § 220.10(b). Of course, the obligation to pay the inpatient deductible amount which in 1992 is $652, only applies to policies which cover the inpatient deductible. In response to comments, we have added a provision to assure that the supplemental insurer will not be obliged to pay the facility of the Uniformed Services if the benefit is required to satisfy a patient's inpatient deductible in a civilian hospital arising from an admission within the same benefit period. If the benefit has already been paid to the facility of the Uniformed Services, it will be refunded to permit the benefit to be paid to the civilian hospital. This assures that double payment from the insurer will not occur and that beneficiaries will not be left without their insurance coverage for an out-of-pocket expense in connection with the inpatient deductible.

We will not now implement the statutory authority to collect with respect to supplemental plan coverage of inpatient services, other than the deductible coverage, or of Medicare Part B services. As provided in § 220.10(c), if we subsequently decide to begin such collections, this will only be initiated after we have established specific special payment amounts and collection procedures to accommodate the special complexities of Medicare supplemental plans. We have no immediate plans to proceed with this, but reserve the right to do so at later time.

3. Medicare Claim Not Required

In regard to claims procedures, another special rule is necessary to accomplish the outcome intended by Congress. The usual procedure for Medicare supplemental carriers is to accept claims only after the primary claim has been processed and paid by Medicare. In this way, the remaining liability, which becomes the responsibility of the supplemental policy, is apparent. However, a different process is required in 10 U.S.C. 1095 cases because there will be no claim to Medicare. Instead, the third party payer is statutorily required to accept the claim as involving Medicare covered services from an authorized provider.

More than one commenter took exception to our position that a Medicare claim is not required. One commenter said that without a Medicare adjudication, the Medicare supplemental insurer could not determine if the services were covered by the Medicare supplemental plan. Another commenter insisted that if a Medicare claim was not required, DoD would be legally required to establish a mirror image system of claims adjudication to simulate a Medicare claim adjudication.

We disagree. Although we acknowledge that our proposed rule failed to address a number of complicated operational issues, we reject the thesis that supplemental insurers have some sort of statutory entitlement to a particular adjudicatory process being completed by the government. In any event, by limiting collections under the final rule to the inpatient deductible amount, when it is covered by the supplemental policy, we have eliminated any argument that a complex set of benefit coverage or payment amount rules is needed.

On a related point, with respect to validating the medical necessity of a hospital admission for purposes of determining whether the supplemental plan should pay, the fact of the admission represents a federal government determination of the need for acute care services, which can be verified by the supplemental plan under our regulation (including §§ 220.4(c)(2) and 220.5).

4. Effective Date

Section 220.10(e) reflects the statutory effective date of the expansion of the 10 U.S.C. 1095 authority to cover Medicare supplemental plans. The provision is similar to that mentioned above in connection with outpatient services.

One commenter pointed out that the effective date provision contained in the National Defense Authorization Act for Fiscal Year 1991, section 713(e) did not specifically address the effective date of the extension of collection authority to Medicare supplemental plans. This is correct; however, it does not change the result. Absent a more specific effective date in a statute, a statutory change takes effect upon the date of enactment, which was November 5, 1990. We construe the effective date of this change consistent with explicit

Congressional policy regarding establishment of the third party collection program and other extensions of the authority. As a result, it does not apply to plans which have been in continuous effect since prior to the effective date, without amendment or renewal, and which exclude coverage of these services. This protects supplemental insurers from having the statutory change affect them until they have had, since the statute took effect, the opportunity to revise their policies to accommodate the new statute.

C. Automobile Liability and No-Fault Automobile Insurance Policies

1. Extension of Collection Authority

In the recent statutory amendments, Congress amended the definition of "third party payer" to include policies issued by "an automobile liability insurance or no-fault insurance carrier" 10 U.S.C. 1095(h)(1). We are making a comparable amendment in proposed § 220.12. Most of the normal rules and procedures of part 220 will apply to these types of cases. However, as with Medicare supplemental plans, some special rules are needed in connection with automobile liability and no-fault policies.

2. Active Duty Members Covered

The first special rule is that the third party collection authority in automobile cases applies to active duty members. The usual rule of 10 U.S.C. 1095 is that active duty members are excluded. This is likely based on the fact that active duty members typically do not have other health insurance. However, under the Federal Medical Care Recovery Act, automobile liability cases have long followed a different rule, which Congress has now adopted for automobile cases under the third party collection program. 10 U.S.C. 1095 (i)(1). Thus, under § 220.11(a), medical services provided in a facility of the Uniformed Services to an active duty member in cases in which a third party automobile liability insurance or no-fault insurance carrier is a responsible payer, the carrier has a duty to pay.

3. Relation to Federal Medical Care Recovery Act

Under the Federal Medical Care Recovery Act (FMCRA), Public Law 87-693 (42 U.S.C. 2651 et seq.), the United States has a right to collect in cases "creating a tort liability upon some third person." 42 U.S.C. 2651(a). In the recent amendments, Congress intended to expand collection authority to no-fault insurance cases and to bring both tort liability and no-fault cases under the framework of 10 U.S.C. 1095. However, in cases based on tort liability, Congress did not intend to reinvent a new body of law on determining tort liability. Tort liability is determined by state law. The House Armed Services Committee stated that the statutory amendment "would not affect the current tort liability recovery authority governed by the Medical Care Recovery Act." H. Rept. 101-665, p. 214. Similarly, the Appropriations Act general provision makes clear that in automobile insurance cases, "should tort liability be a basis for payment, the standards of the Federal Medical Care Recovery Act * * * shall apply." Public Law 101-511, section 8075.

Section 220.11(b) sets forth our interpretation that in tort liability cases, 10 U.S.C. 1095 and the FMCRA provide concurrent authority and that in such 10 U.S.C. 1095 cases, matters regarding the determination of tort liability shall be governed by the same substantive standards as would be applied under the FMCRA (i.e., state law). In addition, the Department of Justice FMCRA regulations, 28 CFR part 43, shall apply to these concurrent authority cases. The FMCRA, however, has no relevance to 10 U.S.C. 1095 collections involving no-fault insurance carriers. Finally, in both types of cases under 10 U.S.C. 1095, other matters and procedures, such as the amount billed, billing procedures, etc., are governed by part 220.

4. Effective Date

Section 220.11(c) reflects the effective date enacted by Congress for the extension of 10 U.S.C. 1095 collection authority to automobile liability insurance and no-fault insurance carriers. It is the same as that referenced above for Medicare supplemental policies and outpatient services.

D. Inpatient Services

1. Rate Structure

DoD has historically used a single rate for reimbursement for various healthcare services. The rate has taken the form of a single per diem charge, per visit charge or procedure charge and has been based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System (MEPRS). MEPRS is the standard expense reporting system for all fixed medical treatment facilities (MTFs) within the Department of Defense (DoD) and is the accepted source of healthcare information for Congress and offices and agencies of the Executive Branch. A single rate has the advantage of administrative simplicity and enables use by all MTFs including those with limited automated capabilities. Although a single rate based on the average cost of healthcare services results in some paying more than actual cost, others pay less and the assumption is that the over and under payments offset each other and collections approximate costs.

It is DoD's intent to transition to a multiple rate structure. The proposed multiple rates will result in charges that more closely approximate the actual costs of delivering specific categories of medical services, such as surgical care, obstetrical care, pediatric care, etc., while maintaining the simplicity still needed by most MTFs because of limited automated support. The movement to multiple rates is an interim step toward patient level rates based on a classification system such as Diagnosis Related Groups.

As with the single rate, data to support computation of multiple rates will be obtained from MEPRS data consolidated from all DoD MTFs. Cost data will be aggregated for each of the clinical services identified below and an average cost computed for each clinical service. This average cost, adjusted for certain personnel costs such as bonuses, incentive pays, permanent change of station costs, medical training costs, retirement benefit accrual costs, and recruiting costs, shall form the basis for the rates established for reimbursement for healthcare services under the provisions of the third party collection program. Patients treated in an intensive care unit any time during the 24 hour nursing period shall be charged the intensive care per diem charge in lieu of a charge for the clinical service to which the patient is currently assigned.

a. Medical Care Services. Includes Internal Medicine, Cardiology, Dermatology, Endocrinology, Gastroenterology, Hematology, Nephrology, Neurology, Oncology, Pulmonary and Upper Respiratory Disease, Rheumatology, Physical Medicine, Clinical Immunology, HIV III—Acquired Immune Deficiency Syndrome (AIDS), Infectious Disease, Allergy, and Medical Care Not Elsewhere Classified.

b. Surgical Care Services. Includes General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Oral Surgery, Otolaryngology, Pediatric Surgery, Plastic Surgery, Proctology, Urology, Peripheral Vascular, Trauma Service, Head and Neck Service and Surgical Care Not Elsewhere Classified.

c. Obstetrical and Gynecological Care.

d. Pediatric Care: Includes Pediatrics, Nursery, Adolescent Pediatrics and Pediatric Care Not Elsewhere Classified.

e. Orthopaedic Care: Includes Orthopaedics, Podiatry and Hand Surgery.

f. Psychiatric Care and Substance Abuse Rehabilitation.

g. Family Practice Care.

h. Burn Unit Care.

i. Medical Intensive Care/Coronary Care.

j. Surgical Intensive Care.

k. Neonatal Intensive Care.

l. Organ and Bone Marrow Transplants.

In accordance with current practice, the per diem rate for each of the above categories of care shall be subdivided into three categories: Hospital charges, Professional charges, and Ancillary charges.

2. Effective Date.

The effective date for implementation of a multiple rate schedule shall be the effective date of this rule, barring unforeseen difficulties in automation support. (In the event of such difficulties, the effective date may be postponed by a document in the **Federal Register**.

E. Other Issues

1. Recodified Provisions of Rule

The proposed rule restated a number of provisions of the current regulation, with conforming and technical amendments. One commenter objected to the references to a third party payer's obligation to pay, saying that it did not necessarily flow from the government's right to collect. We have made no change. We believe the context of the regulation adequately identifies those circumstances in which the third party payer does not have an obligation to pay in response to a request for payment.

A similar comment proposed revision to proposed § 220.8(1), which is a recodification, with conforming revisions, of the current § 220.8(c), concerning the provision which allows payers to limit payments to their prevailing payment rates, if lower than our charges, based on a showing by the payer of such rates. The suggestion was for us to restrict the government's authority not to accept a payer's evidence of lower rates. We have made no change. We believe the current provision allows all facts to be properly considered. A related suggestion was that utilization considerations be included in consideration of alternative determinations of cost. Again, we made no change. This is because utilization review procedures of the third party payer are permitted under other provisions of the regulation.

2. Effective Date

Several commenters protested the applicability of this regulation to services provided prior to the effective date of this final regulation. We have made no change. This is because the right of the government to collect is not established by this regulation; it was established by the statutory amendment. This regulation merely establishes certain implementation procedures and payment amounts. Third party payers have been on notice of the new collection authority. There is nothing exotic about this final regulation that would render the notice provided by the statute somehow inadequate. Moreover, the new collection authorities do not apply to plans which clearly exclude payment for these services and which have been in continuous force and effect without amendment or renewal since prior to the statutory effective date. And finally, we do not seek an exception to the normal claims filing period under any policy. If a claim from a facility of the Uniformed Services is untimely under the generally applicable requirements of a third party payer's plan, that is permissible grounds to deny payment. Thus, this final rule does not seek to impose impermissible retroactive obligations on any payer.

3. Former Public Health Service Hospitals

The proposed rule included a restatement of policy under the current regulation that reasonable costs under the former Public Health Service hospitals that are designated as Uniformed Services Treatment Facilities (USTFs) are determined on the basis of approximate government costs under CHAMPUS for similar services. One of the USTFs proposed changing this to allow them to charge third party payers the USTF's normal charges and rates. We have not made this change because 10 U.S.C. 1095 allows DoD to recover costs only, not what might be a civilian facilities normal charges. Government costs under CHAMPUS are a good, objectively verifiable approximation of the costs of providing services in the former Public Health Service hospitals.

4. Standard Billing Forms

DoD has elected to follow the generally accepted practice of standardizing the use of billing forms to prepare bills for both inpatient and outpatient medical care and services rendered to dependents and retirees. The MTF shall use the DD Form 2502, "Uniform Billing for Inpatient Hospital Costs" (UB82), to prepare bills for inpatient and outpatient care to third party payers until supplies of the form are depleted. Once depleted, the MTFs will utilize commercial forms such as the UB82 or the HCFA 1500. Data element usage shall be consistent with the standards defined by the National Uniform Billing Committee and the Uniform Claim Forms Task Force.

F. Definitions

Section 220.12 revises current § 220.10 in connection with the definition of several key terms used in part 220. We have revised the proposed rule by refining the definitions of "Medicare supplemental insurance plan" to conform with standards of the Health Care Financing Administration, HHS, and by adding a new definition of "Medicare eligible provider."

III. Regulatory Procedures

This final rule is not a major rule under Executive Order 12291. It will not have an impact of $100 million or other significant economic impacts. Similarly, the rule does not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. As stated above, for the most part, this rule simply incorporates into the third party collection program regulation the recently enacted statutory requirements and establishes basic procedures for their implementation.

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

For the reasons stated in the preamble, 32 CFR part 220 is amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. The heading for part 220 is revised as set forth above.

3. Section 220.1 is revised to read as follows:

§ 220.1 Purpose and applicability.

This part implements the provisions of 10 U.S.C. 1095. In general, 10 U.S.C. 1095 establishes the statutory obligation of third party payers to reimburse the United States the reasonable costs of healthcare services provided by facilities of the Uniformed Services to most Uniformed Services medical care beneficiaries who are also covered by a

third party payer's plan. This part establishes the Department of Defense interpretations and requirements applicable to all healthcare services subject to 10 U.S.C. 1095.

4. Section 220.2 is amended by revising paragraph (a) to read as follows:

§ 220.2 Statutory obligation of third party payer to pay.

(a) *Basic rule.* Pursuant to 10 U.S.C. 1095(a)(1), a third party payer has an obligation to pay the United States the reasonable costs of healthcare services provided in any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under the third party payer's plan. The obligation to pay is to the extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

* * * * *

5. Section 220.3 is amended by revising paragraph (b)(1) to read as follows:

§ 220.3 Exclusions impermissible.

* * * * *

(b) *General rules.* * * *

(1) Express exclusions or limitations in third party payer plans that are inconsistent with 10 U.S.C. 1095(b) are inoperative.

* * * * *

6. Section 220.6 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 220.6 Certain payers excluded.

* * * * *

(b) *Supplemental plans.* CHAMPUS (see 32 CFR part 199) supplemental plans and income supplemental plans are excluded from any obligation to pay under 10 U.S.C. 1095.

* * * * *

(d) *Third party payer plans prior to November 5, 1990, in connection with outpatient care.* The provisions of 10 U.S.C. 1095 and this section concerning outpatient services are not applicable to third party payer plans:

(1) That have been in continuous effect without amendment or renewal since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services or other authorized representative for the United States makes a determination, based on documentation provided by the third party payer, that the policy or plan clearly excludes payment for such services. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

* * * * *

7. Section 220.8 is revised to read as follows:

§ 220.8 Reasonable costs.

(a) *Per diem rates—In general.*

(1) As authorized by 10 U.S.C. 1095(f)(1), the computation of reasonable costs for purposes of collections for inpatient hospital care under 10 U.S.C. 1095 and this part shall be based on per diem rates. The per diem charge shall be equal to the inpatient full reimbursement rate, as provided in paragraphs (b) and (c) of this section. Per diem rates shall be updated and published annually. For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, per diem rates shall be subdivided into three categories:

(i) Hospital charges (which refers to routine service charges associated with the hospital stay).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

(iii) Ancillary charges (which refers to diagnostic and treatment services, other than professional services, provided by components of the hospital in connection with inpatient care.

(2) The October 1, 1992, date established in paragraphs (b) and (c) of this section for a change from unified per diem rates to clinical groups per diem rates may be postponed by a document published in the **Federal Register** at least 30 days prior to that date.

(b) *Unified per diem rates for care provided prior to October 1, 1992.* For inpatient hospital care provided prior to October 1, 1992, the computation of reasonable costs shall be based on the unified per diem full reimbursement rate for all clinical categories of hospital care. For purposes of this paragraph (and paragraph (c) of this section), charges for patients hospitalized before and after the October 1 start date shall be based on the determination method in effect for the respective periods of hospitalization.

(c) *Clinical groups per diem rates for care provided on or after October 1, 1992.* For inpatient hospital care provided on or after October 1, 1992, the computation of reasonable costs shall be based on the per diem full reimbursement rate applicable to the clinical category of services involved. Patients treated in an intensive care unit any time during the 24 hour nursing period shall be charged the intensive care per diem charge in lieu of a charge to the clinical service to which the patient is currently assigned. For this purpose, 12 clinical groups are established, as follows:

(1) Medical Care Services. This includes internal medicine, cardiology, dermatology, endocrinology, gastroenterology, hematology, nephrology, neurology, oncology, pulmonary and upper respiratory disease, rheumatology, physical medicine, clinical immunology, HIV III—Acquired Immune Deficiency Syndrome (AIDS), infectious disease, allergy, and medical care not elsewhere classified.

(2) Surgical Care Services. This includes general surgery, cardiovascular and thoracic surgery, neurosurgery, ophthalmology, oral surgery, otolaryngology, pediatric surgery, plastic surgery, proctology, urology, peripheral vascular, trauma service, head and neck service and surgical care not elsewhere classified.

(3) Obstetrical and Gynecological Care.

(4) Pediatric Care. This includes pediatrics, nursery, adolescent pediatrics and pediatric care not elsewhere classified.

(5) Orthopaedic Care. This includes orthopaedics, podiatry and hand surgery.

(6) Psychiatric Care and Substance Abuse Rehabilitation.

(7) Family Practice Care.

(8) Burn Unit Care.

(9) Medical Intensive Care/Coronary Care.

(10) Surgical Intensive Care.

(11) Neonatal Intensive Care.

(12) Organ and Bone Marrow Transplants.

(d) *Medical services and subsistence charges included.* Medical services charges pursuant to 10 U.S.C. 1078 or subsistence charges pursuant to 10 U.S.C. 1075 are included in the claim filed with the third party payer pursuant to 10 U.S.C. 1095. For any patient of a facility of the Uniformed Services who indicates that he or she is a beneficiary of a third party payer plan, the usual medical services or subsistence charge will not be collected from the patient to the extent that payment received from the payer exceeds the medical services or subsistence charge. Thus, except in cases covered by § 220.8(j), payment of the claim made pursuant to 10 U.S.C. 1095 which exceeds the medical services or subsistence charge, will satisfy all of the third party payer's obligation arising from the inpatient hospital care provided by the facility of the Uniformed Services on that occasion.

(e) *Per visit rates.* As authorized by 10 U.S.C. 1095(f)(2), the computation of reasonable costs for purposes of collections for most outpatient services shall be based on an all-inclusive per visit rate. The per visit charge shall be equal to the outpatient full reimbursement rate and includes all routine ancillary services. These rates shall be updated and published annually.

(f) *Same day/ambulatory surgery rate.* A separate charge will be calculated for cases that are same day/ambulatory surgeries.

(g) *Special rule for services ordered and paid for by a facility of the Uniformed Services but provided by another provider.* In cases where a facility of the Uniformed Services purchases ancillary services or procedures, from a source other than a Uniformed Services facility, the cost of the purchased services will be added to the per diem on per visit rate. Examples of ancillary services and other procedures covered by this special rule include (but are not limited to): laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services.

(h) *Special rule for certain high cost ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* If a Uniformed Services facility provides certain high cost ancillary services, prescription drugs or other procedures based on a request from a source other than a Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual per visit or per diem rate. Rather, a separate standard rate shall be established based on the cost of the particular high-cost service, drug or procedure provided. This special rule applies only to services, drugs or procedures having a cost of at least $100. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and published annually.

(i) *Special rule for PRIMUS and NAVCARE clinics.* The Uniformed Services maintain certain contract clinics called PRIMUS clinics by the Army and Air Force and NAVCARE clinics by the Navy. These are outpatient clinics, operated by independent contractors, which generally provide only primary care services. Services provided by these clinics are paid for by the Uniformed Service. As a financial matter, PRIMUS or NAVCARE clinics are considered operationally to be extensions of facilities of the Uniformed Services. A separate, uniform per visit charge, representing the average cost to the Department of Defense for a visit in all PRIMUS and NAVCARE clinics shall be the basis of the charge for these clinics. This rate shall be calculated and published annually.

(j) *Special rule for former Public Health Service facilities.* In connection with the former Public Health Service facilities described in § 220.12(c), the computation of reasonable costs for purposes of collections under 10 U.S.C. 1095 and this part may differ from such computations under § 220.8. Reasonable costs for such facilities shall be determined by the Department of Defense based on approximate government costs for similar services under CHAMPUS.

(k) *Special rule for Partnership Program providers.* In cases in which the professional provider services are provided under the Partnership Program (or similar program operated under the authority of 10 U.S.C. 1096), the professional charges component of the total per diem rate will be deleted, as applicable, from the claim from the facility of the Uniformed Services. The third party payer will receive a claim for professional services directly from the individual healthcare provider, who is not an employee or agent of the Department of Defense. Such claims are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program (see 32 CFR part 199). The same is true for professional services provided on an outpatient basis under the Partnership Program.

(l) *Alternative determination of reasonable costs.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the per diem or per visit rate (or other amount as determined under paragraphs (f) through (k) of this section) of the facility of the Uniformed Services may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for that aggregate category of services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

8. Section 220.9 is amended by revising paragraph (b) to read as follows:

§ 220.9 Rights and obligations of beneficiaries.

* * * * *

(b) *Availability of healthcare services unaffected.* The availability of healthcare services in any facility of the Uniformed Services will not be affected by the participation or nonparticipation of a Uniformed Services beneficiary in a health care plan of a third party payer. Whether or not a Uniformed Services beneficiary is covered by a third party payer's plan will not be considered in determining the availability of healthcare services in a facility of the Uniformed Services.

* * * * *

9. Section 220.10 is revised and §§ 220.11 and 220.12 are added to read as follows:

§ 220.10 Special rules for Medicare supplemental plans.

(a) *Statutory obligation of Medicare supplemental plans to pay.* The obligation of a Medicare supplemental plan to pay shall be determined as if the facility of the Uniformed Services were a medicare-eligible provider and the services provided as if they were Medicare-covered services. A Medicare supplemental plan is required to pay only to the extent that the plan would have incurred a payment obligation if the services had been furnished by a Medicare eligible provider.

(b) *Inpatient hospital care charges.* (1) Notwithstanding the provisions of § 220.8, charges to Medicare supplemental plans for inpatient hospital care services provided to beneficiaries of such plans shall not, for any admission, exceed the Medicare inpatient hospital deductible amount.

(2) Only one deductible charge shall be made per hospital admission (or Medicare benefit period), regardless of whether the admission is to a facility of the Uniformed Services or a Medicare certified civilian hospital. To ensure that a Medicare supplemental insurer is not charged the inpatient hospital deductible twice when an individual who is entitled to benefits under both DoD retiree benefits and Medicare, the following payment rules apply:

(i) If a dual beneficiary is first admitted to a Medicare-certified hospital and is later admitted to a facility of the Uniformed Services within

the same benefit period initiated by the admission to the Medicare-certified hospital, the facility of the Uniformed Services shall not charge the Medicare supplemental insurance plan an inpatient hospital deductible.

(ii) If a dual beneficiary is admitted first to a facility of the Uniformed Services and secondly to a Medicare-certified hospital within 60 days of discharge from the facility of the Uniformed Services, the facility of the Uniformed Services shall refund to the Medicare supplemental insurer any inpatient hospital deductible that the insurer paid to the facility of the Uniformed Services so that it may pay the deductible to the Medicare-certified hospital.

(c) *Charges for health care services other than the inpatient hospital deductible amount.* (1) The Assistant Secretary of Defense (Health Affairs) may establish special charge amounts for Medicare supplemental plans to collect reasonable costs for inpatient and outpatient copayments and other services covered by the Medicare supplemental plan. Any such schedule of charge amounts shall:

(1) Be based on percentage amounts of the per diem, per visit and other rates established by § 220.8 comparable to the percentage amounts of beneficiary financial responsibility under Medicare for the service involved;

(ii) Include adjustments, as appropriate, to identify major components of the all inclusive per diem or per visit rates for which Medicare has special rules;

(iii) Provide for offsets and/or refunds to ensure that Medicare supplemental insurers are not required to pay a limited benefit more than one time in cases in which beneficiaries receive similar services from both a facility of the uniformed services and a Medicare certified provider; and

(iv) Otherwise conform with the requirements of this section and this part.

(2) If collections are sought under paragraph (c) of this section, the effective date of such collections will be prospective from the date the Assistant Secretary of Defense (Health Affairs) provides notice of such collections, and will exempt policies in continuous effect without amendment or renewal since the date the Assistant Secretary of Defense (Health Affairs) provides notice of such collections.

(d) *Medicare claim not required.* Notwithstanding any requirement of the Medicare supplemental plan policy, a Medicare supplemental plan may not refuse payment to a claim made pursuant to this section on the grounds that no claim had previously been submitted by the provider or beneficiary for payment under the Medicare program.

(e) *Exclusion of Medicare supplemental plans prior to November 5, 1990.* This section is not applicable to Medicare supplemental plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the Medicare supplemental plan, that the plan agreement clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

§ 220.11 Special rules for automobile liability insurance and no-fault automobile insurance.

(a) *Active duty members covered.* In addition to Uniformed Services beneficiaries covered by other provisions of this part, this section also applies to active duty members of the Uniformed Services. As used in this section, "beneficiaries" includes active duty members.

(b) *Effect of concurrent applicability of the Federal Medical Care Recovery Act.*—(1) *In general.* In many cases covered by this section, the United States has a right to collect under both 10 U.S.C. 1095 and the Federal Medical Care Recovery Act (FMCRA), Pub. L. 87–693 (42 U.S.C. 2651 et seq.). In such cases, the authority is concurrent and the United States may pursue collection under both statutory authorities.

(2) *Cases involving tort liability.* In cases in which the right of the United States to collect from the automobile liability insurance carrier is premised on establishing some tort liability on some third person, matters regarding the determination of such tort liability shall be governed by the same substantive standards as would be applied under the FMCRA including reliance on state law for determinations regarding tort liability. In addition, the provisions of 28 CFR part 43 (Department of Justice regulations pertaining to the FMCRA) shall apply to claims made under the concurrent authority of the FMCRA and 10 U.S.C. 1095. All other matters and procedures concerning the right of the United States to collect shall, if a claim is made under the concurrent authority of the FMCRA and this section, be governed by 10 U.S.C. 1095 and this part.

(c) *Exclusion of automobile liability insurance and no-fault automobile insurance plans prior to November 5, 1990.* This section is not applicable to automobile liability insurance and no-fault automobile insurance plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the third party payer, that the policy or plan clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

§ 220.12 Definitions.

(a) *Automobile liability insurance.* Automobile liability insurance means insurance against legal liability for health and medical expenses resulting from personal injuries arising from operation of a motor vehicle. Automobile liability insurance includes:

(1) Circumstances in which liability benefits are paid to an injured party only when the insured party's tortious acts are the cause of the injuries; and

(2) Uninsured and underinsured coverage, in which there is a third party tortfeasor who caused the injuries (i.e., benefits are not paid on a no-fault basis), but the insured party is not the tortfeasor.

(b) *CHAMPUS supplemental plan.* A CHAMPUS supplemental plan is an insurance, medical service or health plan exclusively for the purpose of supplementing an eligible person's benefit under CHAMPUS. (For information concerning CHAMPUS, see 32 CFR part 199.) The term has the same meaning as set forth in the CHAMPUS regulation (32 CFR 199.2).

(c) *Facility of the Uniformed Services.* A facility of the Uniformed Services means any medical or dental treatment facility of the Uniformed Services (as that term is defined in 10 U.S.C. 101(43)). Contract facilities such as Navy NAVCARE clinics and Army and Air Force PRIMUS clinics that are funded by a facility of the Uniformed Services are considered to operate as an extension of the local military treatment facility and are included within the scope of this program. Facilities of the Uniformed Services also include several former Public Health Services facilities that are

deemed to be facilities of the Uniformed Services pursuant to section 911 of Pub. L. 97–99 (often referred to as "Uniformed Services Treatment Facilities" or "USTFs").

(d) *Healthcare services.* Healthcare services include inpatient, outpatient, and designated high-cost ancillary services.

(e) *Inpatient hospital care.* Treatment provided to an individual other than a transient patient, who is admitted (i.e., placed under treatment or observation) to a bed in a facility of the uniformed services that has authorized beds for inpatient medical or dental care.

(f) *Insurance, medical service or health plan.* Any plan or program (subject to the limitations of § 220.6) that provides compensation or coverage for expenses incurred by a beneficiary for health or medical services and supplies. It includes:

(1) Plans or programs offered by insurers, corporations, organized health care groups or other entities.

(2) Plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group; and

(3) Medicare supplemental insurance plans.

(g) *Medicare eligible provider.* Medicare participating (institutional) providers and physicians, suppliers and other individual providers eligible to participate in the Medicare program.

(h) *Medicare supplemental insurance plan.* A Medicare supplemental insurance plan is an insurance, medical service or health plan primarily for the purpose of supplementing an eligible person's benefit under Medicare. The term has the same meaning as "Medicare supplemental policy" in section 1882(g)(1) of the Social Security Act. In addition, consistent with 42 CFR 403.206(c), a Medicare supplemental insurance plan may consist of two policies issued in conjunction with one another, one by a nonprofit hospital association and the other by a medical association, in cases in which state law prohibits the inclusion of all benefits in a single policy.

(i) *No-fault insurance.* No-fault insurance means an insurance contract providing compensation for health and medical expenses relating to personal injury arising from the operation of a motor vehicle in which the compensation is not premised on who may have been responsible for causing such injury. No-fault insurance includes personal injury protection and medical payments benefits in cases involving personal injuries resulting from operation of a motor vehicle.

(j) *Third party payer.* A third party payer is an entity that provides an insurance, medical service or health plan by contract or agreement. It includes:

(1) State and local governments that provide such plans.

(2) Insurance underwriters and private employers (or employer groups) offering self-insured or partially self-insured and/or partially underwritten health insurance plans; and

(3) Automobile liability insurance and no-fault insurance carriers.

(k) *Third party payer plan.* A third party payer plan is any plan provided by a third party payer, but not an income supplemental plan or workers compensation plan.

(l) *Uniformed Services beneficiary.* For purposes of this part, a Uniformed Services beneficiary is any person who is covered by 10 U.S.C. 1074(b), 1076(a), or 1076(b). For purposes of § 220.11 (but not for other sections), a Uniformed Services beneficiary also includes active duty members of the Uniformed Services.

Dated: September 2, 1992

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–21503 Filed 9–8–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 135, 136, and 137

[CGD 91–035]

RIN 2115–AD90

Claims Under the Oil Pollution Act of 1990; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to interim rule.

SUMMARY: This document corrects the interim rule (CGD 91–035) published on Wednesday, August 12, 1992, (57 FR 36314) concerning the filing of claims under the Oil Pollution Act of 1990 (Pub. L. 101–380; August 18, 1990).

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. L.E. Burgess, National Pollution Funds Center, (703) 235–4796.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the interim rule contains some minor errors which require correction:

In the preamble the telephone number listed to call for further information on this rulemaking is incorrect. The correct number is (703) 235–4796.

Comments on this rulemaking are not due on, but on or before, December 10, 1992.

In § 136.101(b) the word "Commander's" should be deleted. The person in charge of the National Pollution Funds Center is now known as the Director, rather than the Commander.

Corrections of Publication

Accordingly, the publication on August 12, 1992, of the interim rule (CGD 91–035), which is the subject of FR Doc. 92–19080, is corrected as follows:

1. On page 36314, in the first column, in the **"DATES"** section, "received December 10, 1992" is corrected to read "received on or before December 10, 1992".

2. On page 36314, in the first column, in the **"FOR FURTHER INFORMATION CONTACT"** section, "(703) 235–4795" is corrected to read "(703) 235–4796".

3. On page 36314, in the second column, in the "Regulatory Information" section, "incurred cost" is corrected to read "incurred costs".

4. On page 36317, in the third column, in § 136.101(b), remove "Commander's".

5. On page 36317, in the third column, in § 136,103(a), "$136.305" is corrected to read "§ 136.305".

Dated: September 2, 1992.

Daniel F. Sheehan,

Director, National Pollution Funds Center.

[FR Doc. 92–21650 Filed 9–8–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7548]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identities communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management

measures. The communities' participation in the program authorizes the sale of flood insurance to owners to property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency program			
Ohio: Englewood, City of Montgomery County	390828	Aug. 13, 1992	Nov. 3, 1978.
New Hampshire: Freedom, Town of Carroll County	330013	Aug. 20, 1992	Aug. 13, 1976.
Louisiana: Campti, Town of Natchitoches Parish	220401	Aug. 28, 1992	
Reinstatements—Regular program			
South Dakota: Revillo, Town of Grant County	460031	June 30,1975, Emerg.; Oct. 1, 1986, Reg.; Aug. 15, 1989, Susp.; Aug. 13, 1992; Rein.	Oct. 1, 1986.
New Hampshire: Wentworth, Town of Grafton County	330078	Oct. 30, 1975, Emerg.; Apr. 18, 1983, Reg.; May 3, 1990, Susp.; Aug. 17, 1992, Rein.	Apr. 18, 1983.
Oklahoma:			
Binger, Town of Caddo County	400020	Sept. 16, 1975, Emerg.; Nov. 19, 1987, Reg.; July 2, 1992, Susp.; Aug. 28, 1992, Rein.	Sept. 27, 1991.
Fort Cobb, Town of Caddo County	400022	Nov. 1, 1974, Emerg.; Sept. 27, 1991, Reg.; July 2, 1992, Susp.; Aug. 28, 1992, Rein.	Sept. 27, 1991.
Pennsylvania: Porter, Township of Clinton County	420333	June 1, 1973, Emerg.; July 15, 1988, Reg.; July 15, 1988, Susp.; Aug. 31, 1992.	July 15. 1988.
Regular Conversions—Region I			
Massachusetts: Amesbury, Town of Essex County	250075	Aug. 3, 1992, Suspension withdrawn	Aug. 3, 1992.
Region II			
New Jersey:			
Fairfield, Township of Cumberland County	340168	do	Aug. 3, 1992.
Grenwhich, Township of Cumberland County	340169	do	Aug. 3, 1992.
Region III			
Pennsylvania: Butler, Township of Schuylkill County	421999	do	Aug. 3, 1992.
Region VI			
Louisiana St. Mary Parish Unincorporated Areas	220192	Aug. 3, 1992	Aug. 3, 1992.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region III			
New Jersey:			
Hopewell, Township of Cumberland County	340248	Aug. 18, 1992, Suspension withdrawn	Aug. 18, 1992.
Lawrence, Township of Cumberland County	340171	do	Aug. 18, 1992.
New York: Rutland, Town of Jefferson County	360350	do	Aug. 18, 1992.
Region III			
West Virginia:			
Lewis County, Unincorporated Areas	540085	do	Aug. 18, 1992.
Weston, City of Lewis County	540087	do	Aug. 18, 1992.
Pennsylvania: Ambler, Borough of Montgomery County	420947	do	Aug. 18, 1992.
Region IV			
Georgia: Kennesaw, City of Cobb County	130055	Aug. 3, 1992	Aug. 18, 1992.
Tennessee: Newport, City of Cocke County	475440	do	Aug. 18, 1992.
Region V			
Minnesota:			
Aitkin County, Unincorporated Areas	260417	do	Aug. 18, 1992.
Dayton, City of Hennepin County	270158	do	Aug. 18, 1992.
McLeod County, Unincorporated Areas	270616	do	Aug. 18, 1992.
Greemfield, City of Hennepin County	270673	do	Aug. 18, 1992.
Rockford, City of Hennepin/Wright Counties	270182	do	Aug. 18, 1992.
Watertown, City of Carver County	270056	do	Aug. 18, 1992.
Region IV			
Louisiana: Gonzales, City of Ascension Parish	220015	Aug. 18, 1992	Aug. 18, 1992.
Texas: Galveston County, Unincorporated Areas	485470	do	Aug. 18, 1992.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: September 2, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-21639 Filed 9-8-92; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; FCC 92-327]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; recommendation to Congress.

SUMMARY: The Commission is amending its rules to permit, but not require, local telephone companies to provide video dialtone. This rule is intended to advance the Commission's goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission has also recommended to Congress that it amend the Cable Act to permit telephone companies to provide video programming directly to subscribers in their telephone service areas, subject to appropriate safeguards.

EFFECTIVE DATE: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Donna N. Lampert, Daniel Gonzalez, or John S. Morabito, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Background

Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)); Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991) (56 FR 65445 (12/17/91), 56 FR 65464 (12/17/91)).

Summary of Second Report and Order and Recommendation to Congress

1. This is a summary of the Second Report and Order and Recommendation to Congress in Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Adopted July 16, 1992 and Released August 14, 1992. The full texts of Commission decisions are available for inspection and copying, Monday through Friday, 9 a.m.-4:30 p.m., in the FCC Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Second Report and Order and Recommendation to Congress may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

2. In the Second Report and Order, the Commission concluded that market and technological developments were creating significant potential for greater telephone company participation in the video marketplace through provision of advanced video capabilities and related services. The Commission envisioned that telephone companies could provide a wide range of new and existing services including basic common carrier video transmission services, video gateways and enhanced services related to provision of video programming. The Commission determined that allowing telephone company participation in the video marketplace by provision of advanced services and functions would advance the Commission's goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission modified § 63.54 of the Commission's rules to permit, but not require, local telephone companies to participate in the video marketplace through provision of video dialtone.

3. The Commission took the following steps to assure that its decision to allow telephone companies to provide video dialtone would achieve its public interest objectives. First, as a prerequisite to telephone company participation in the video marketplace, the Commission required that telephone companies provide a common carrier platform containing sufficient capacity to service multiple video programmers. The Commission determined that this requirement was necessary to assure that the platform provide multiple video programmers nondiscriminatory access to a common carrier transmission service enabling them to deliver, and consumers to receive, video programming and video programming services. The Commission required that telephone companies demonstrate in their section 214 applications for authority to provide video dialtone that the basic platform will have the ability to serve multiple programmers.

4. Second, the Commission amended § 63.54 of the rules to permit telephone company participation in the video marketplace beyond the "carrier-user" relationship, by provision of enhanced and nonregulated services related to provision of video programming, only with video programmers that are customers of, interconnect with, or share construction and/or operation of the common carrier platform. The Commission determined that this restriction was necessary to assure that, in exceeding the carrier-user relationship, telephone companies will provide both the basic platform to video programmers and use it as the basis for their own participation in the video marketplace.

5. Consistent with the Further Notice of Proposed Rulemaking, 56 FR 65464, in this proceeding the amended rules adopted by the Commission provide that telephone companies will not be permitted to select video programming by determining how programming is presented for sale to consumers, including making decisions concerning the bundling or "tiering," or the price, terms and conditions of video programming offered to consumers, or otherwise have a cognizable financial interest in, or exercise editioral control over, video programming provided directly to subscribers within their telephone service areas.

6. In the Second Report and Order, the Commission also amended § 63.54 to increase the permitted level of non-cognizable telephone company ownership in video programmers from 1 percent up to 5 percent. The Commission determined that allowing a slightly increased level of ownership would increase the ability and enhance the incentives of telephone companies to engage in activities with video programmers involving joint ownership and operation of facilities.

7. The Commission addressed whether its amendments to Section 63.54 were lawful under the Cable Act. The Commission determined that because a telephone company offering video dialtone, with its common carrier platform, will not be providing video programming directly to its subscribers in the manner of traditional cable operators, video dialtone is fully consistent with the statutory telephone company-cable television cross-ownership restrictions of the Cable Act, 47 U.S.C. 533(b). The Commission determined that Congress had not intended in the Cable Act to codify Notes 1 and 2 of the Commission's telephone company-cable television cross-ownership rule, and that the Commission could lawfully amend Notes 1 and 2 otherwise consistent with the statutory ban.

8. In other actions in the Second Report and Order, the Commission determined that video dialtone is fully consistent with the existing regulatory framework for telephone company provision of basic and enhanced non-video services; that existing safeguards against anticompetitive conduct by telephone companies for provision of basic and enhanced services will apply to telephone company provision of video dialtone and that the Commission will assess whether additional safeguards would serve the public interest in the context of specific video dialtone service proposals; that the decision to permit telephone companies to provide video dialtone establishes sufficient incentives to encourage local telephone companies to invest in infrastructure and deploy advanced networks and that it was not necessary to adopt or propose at this time additional financial or other special incentives as part of the video dialtone regulatory framework; and that it would be premature to adopt or propose specific changes to parts 32, 36, 64 or 69 of the Commission's rules.

9. The Commission also determined that allowing telephone companies merely to acquire existing cable facilities in the telephone companies' service areas for the purpose of providing video dialtone would not serve its goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission determined that it will not permit telephone companies to purchase existing cable systems for the purpose of providing video dialtone, but will continue to permit telephone companies to acquire existing cable physical plant for the purpose of providing common carrier channel service via those facilities.

10. Finally, the Commission recommended to Congress that it repeal the statutory telephone company-cable television cross-ownership ban to permit local telephone companies to provide video programming directly to subscribers in their telephone service areas. The Commission concluded that telephone company provision of video programming directly to subscribers, subject to appropriate safeguards, would further help assure the attainment of its public interest goals. The Commission will review the rules and regulatory framework of video dialtone beginning in three years.

Paperwork Reduction Act

11. In the Second Report and Order the Commission required telephone companies in their Section 214 applications for authority to provide video dialtone to explain how the common carrier platform will have sufficient capacity to serve multiple video programmers. Public reporting burden for this collection of information is estimated to average 50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060–0149), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0149), Washington, DC 20503. Implementation of this new collection of information requirement will be subject to approval by the Office of Management and Budget, 44 U.S.C. 3507.

Final Regulatory Flexibility Analysis Statement

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–12, the Commission considered whether this decision could disadvantage small non-vertically integrated cable systems,

wireless cable systems, and broadcasters because it could supplant these video distribution mechanisms. The Commission also considered whether this decision could threaten small businesses involved in the video rental market by eliminating the current video distribution chain. On the basis of the record, however, the Commission determined that the public interest in a competitive video marketplace, increased opportunities for development of an advanced infrastructure and the promotion of a diversity of video services, would be best served by permitting local telephone companies to offer video dialtone.

13. Copies of the final regulatory flexibility analysis are available for inspection and copying, Monday through Friday, 9 a.m.–4:30 p.m., in the FCC Dockets Reference Room (Room 239), 1919 M Street, NW., Washington, DC 20554. The final regulatory flexibility analysis may also be purchased, as part of the Second Report and Order, from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422 1114 21st Street, NW., Washington, DC 20036. *See* 5 U.S.C. 604(b).

Ordering Clause

14. *It is ordered* that, pursuant to sections 1, 4, 201–205, and 214 of the Communications Act, as amended, and sections 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. 151, 154, 214, and 533, the Second Report and Order is adopted amending Section 63.54 of the Commission's rules, 47 CFR 63.54.

15. *It is furthered ordered* that, the Secretary shall cause a copy of the Recommendation to Congress to be sent to the President of the Senate and the Speaker of the House of Representatives.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Reporting and recordkeeping requirements, Telephone, Video dialtone.

Final Rule Changes

PART 63—[AMENDED]

Part 63 of title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 63 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended 47 U.S.C. 214.

2. Section 63.54 is amended by removing Notes 1 and 2 of paragraph (b), revising paragraph (b), and adding paragraphs (c), (d) and (e), to read as follows:

§ 63.54 Facilities for provision of video programming by a telephone common carrier in its telephone service area.

* * * * *

(b) No telephone common carrier subject in whole or in part to the Communications Act of 1934 shall provide channels of communications or pole line conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such telephone common carrier, where such facilities or arrangements are to be used for, or in connection with, the provisions of video programming to the viewing public in the telephone service area of the telephone common carrier.

(c) As used above, the terms "control" and "affiliate" bar any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the carrier and the customer, except only the carrier-user relationship.

Note: Examples of situations in which a carrier and its customer will be deemed to be controlled or having a relationship include the following, among others: Where one is the debtor or creditor of the other (except with respect to charges for communication services); where they have a common officer, director, or other employee at the management level; where there is any element of ownership or other financial interest by one in the other; and where any party has a financial interest in both.

(d)(1) Except as provided in paragraph (d)(3) of this section, nothing in this section shall be construed to prohibit the provision of video dialtone services.

(2) Telephone companies may exceed the carrier-user relationship with a video programmer or programmers by providing services, and engaging in activities, not related to provision of video programming directly to subscribers by the telephone company. Telephone companies may exceed the carrier-user limitation with a video programmer or video programmers by providing services, and engaging in activities, related to the provision of video programming, provided that: the video programmer is a customer of, interconnects with, or shares the construction and/or operation of, the basic common carrier platform; and the telephone company does not: (i) Determine how video programming is presented for sale to consumers; including making decisions concerning the bundling or "tiering," or the price, terms, and conditions of programming offered to consumers, or (ii) Otherwise have a cognizable financial interest in, or exercise editorial control over, video programming provided directly to subscribers within their telephone service areas.

(3) Telephone companies are prohibited from acquiring cable facilities in their service areas and using such facilities to provide video dialtone services or to engage in activities related to the provision of video programming directly to subscribers as described in paragraph (d)(2) of this section. Telephone companies are not prohibited from acquiring such facilities for purposes of providing common carrier channel service via those facilities, subject to section 214 certification and compliance with the Commission's rules.

(e) In applying the provisions of this section:

(1) Only those ownership interests which amount to 5 percent or more shall be considered a cognizable ownership "affiliation" for purposes of this section. Such interests include partnership interests, direct ownership interests, and stock interests in a corporation where such stockholders are officers or directors or who directly or indirectly own 5 percent or more of the outstanding stock, whether voting or non-voting stock.

(2) Stock ownership by an investment company in a corporation, as defined in 15 U.S.C. 80a-3 (commonly called a mutual fund), need be considered only if it directly or indirectly owns 5 percent or more of the outstanding stock, whether voting or non-voting stock, or if officers or directors of the corporation are representatives of the investment company. Holdings by investment companies under common management shall be aggregated. If an investment company directly or indirectly owns stock in an intermediate company which in turn directly or indirectly owns 50 percent or more of the stock of the corporation, the investment company shall be considered to own the same percentage of the outstanding shares of such corporation as it owns of the intermediate company. *Provided, however,* that the holding of the investment company need not be considered where the intermediate company owns less than 50 percent of the stock, but officers or directors of the corporation who are representatives of the intermediate company shall be deemed to be representatives of the investment company.

(3) In cases where record and beneficial ownership of voting stock is not identical (*e.g.,* bank nominees holding stock as record owners for the

benefit of mutual funds, brokerage houses holding stock in street name for the benefit of customers, trusts holding stock as record owners for the benefit of designated parties), the party having the right to determine how the stock will be voted will be considered to own it for the purposes of this section.

(4) The word "control" as used in this section is not limited to ownership, but includes actual working control in whatever manner exercised.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21500 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 63

[CC Docket No. 87-266; FCC 92-326]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: In a Memorandum Opinion and Order on Reconsideration in Common Carrier Docket 87-266 the Commission affirmed and clarified its prior interpretive ruling in the First Report and Order that a local telephone company providing video dialtone is not subject to franchise requirements of the Cable Act.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Donna N. Lampert or John S. Morabito, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Background

Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)); Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991) (56 FR 65445 (12/17/91), 56 FR 65464 (12/17/91)).

Summary of Memorandum Opinion and Order on Reconsideration

1. This is a summary of the Memorandum Opinion and Order on Reconsideration in Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, adopted July 16, 1992 and released August 14, 1992. The full texts of Commission decisions are available for inspection and copying, Monday through Friday, 9 a.m.-4:30 p.m., in the FCC Dockets Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Memorandum Opinion and Order on Reconsideration may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

2. The Memorandum Opinion and Order on Reconsideration affirmed the conclusion of the First Report and Order that a local telephone company providing video dialtone does not need to obtain a cable television franchise. In the First Report and Order the Commission concluded that the Cable Act does not impose a franchise requirement on a local telephone company providing video dialtone because the telephone company would not be providing cable service, and would not, therefore, be a cable operator, as that term is defined in the Cable Act, subject to the Cable Act's franchise requirements. On reconsideration, the Commission found that its previous conclusion was consistent with both the language and legislative history of the Cable Act. The Commission concluded that Congress did not intend to require that an entity obtain a cable television franchise when it is not providing video programming directly to subscribers and that to impose such a requirement would conflict with practice in existence at the time the Cable Act was passed.

3. The Memorandum Opinion and Order on Reconsideration also granted in part GTE's petition for reconsideration to the extent of clarifying why telephone companies providing video dialtone service would not be providing "cable service," as defined in section 602(5) of the Cable Act, 47 U.S.C. 522(5), and why telephone companies' video dialtone service facilities would not comprise a "cable system" as defined in section 602(6) of the Cable Act, 47 U.S.C. 522(6).

4. Under section 602(5) of the Cable Act, cable service consists of the one-way transmission to subscribers of video programming, or other programming service, and subscribe interaction, if any, required for the selection of such video programming or other programming service. The Commission clarified that video dialtone does not constitute cable service because Congress intended "transmission" of video programming to include active participation by the telephone company in the selection and distribution of that video programming, activities that are foreclosed to telephone companies under video dialtone.

5. Section 602(6) of the Cable Act, 47 U.S.C. 552(6), defines a "cable system" to be a facility consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming. Exempted from this definition is a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act. The Cable Act creates an exception to the exemption for the telephone company facilities to the extent that such facilities are used in the transmission of video programming directly to subscribers.

6. The Commission concluded that under these statutory provisions, a telephone company facility used to provide video dialtone is not a cable system. The Commission explained that under existing regulatory requirements, the facilities used to provide video dialtone would be subject, in whole or in part, to title II, and that to the extent Congress expressed any intent regarding the existing regulations for common carrier, that intent was that the Cable Act not alter existing regulatory control by imposing cable television franchise requirements on common carriers. The Commission also explained that the exception to the common carrier exemption for facilities used in the transmission of video programming directly to subscribers applies only when a telephone company is acting like a cable operator by providing cable service. The Commission further concluded that video dialtone facilities typically would not constitute a "cable system" for the additional reason that they will not ordinarily include the necessary signal generation, reception and control equipment.

Ordering Clause

7. *It is ordered* that GTE's Petition for Reconsideration is granted to the extent discussed herein and is otherwise denied.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Telephone, Video dialtone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21507 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket 86-112, FCC 92-387]

Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, in this Second Report and Order, is modifying its rules to allow independently owned and operated noncommercial educational FM (NCE–FM) translators assigned to reserved frequencies (channels 201–220) and providing service in the fill-in areas of their primary stations to receive signals by terrestrial microwave or other terrestrial means. Currently, the Commission allows only NCE–FM translator stations assigned to reserved channels, and owned and operated by their primary stations, to rebroadcast signals that are relayed by any technical means. The Commission is also adopting rules to allow broadcast intercity relay microwave facilities to be used to deliver signals to NCE–FM translators owned by their primary stations, on a secondary basis; and, to independently owned and operated NCE–FM translators operating in the fill-in areas of their primary stations, also on a secondary basis. These rule modifications will benefit the public by expanding opportunities for providing quality noncommercial FM service to unserved and underserved areas.

EFFECTIVE DATE: October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in MM Docket No. 86–112, adopted August 19, 1992, and released August 28, 1992. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M St. NW., Washington, DC 20036.

Summary of the Second Report and Order

1. In the Report and Order in this proceeding, the Commission amended its rules so that NCE–FM translator stations assigned to reserved channels and owned and operated by their primary stations could receive signals for rebroadcast via any technical means the licensee deems suitable. Concurrently, the Commission adopted a Further Notice of Proposed Rule Making (Further Notice) that proposed to extend this rule change to all NCE–FM translators assigned to reserved channels. The Commission also proposed to allow broadcast intercity relay microwave facilities to be used to deliver signals to NCE–FM translators, on a secondary basis. Finally, the Commission solicited comment on whether to adopt procedures that would give local noncommercial broadcasters priority in acquiring NCE–FM translators located within their 1 mV/m contour, or extending their service to adjacent areas.

2. First, with respect to eliminating all alternative signal delivery restrictions to independently owned NCE–FM translators, we continue to believe that service to the public will be enhanced by permitting independently owned NCE–FM translators to receive signals by other means in addition to off-the-air. However, our concern for maintaining a balance between the public interest embodied in ensuring the development and expansion of local public radio service and increasing NCE–FM service by the use of translators persuades us to retreat from our original proposal to allow all independently owned NCE–FM translators to use all forms of alternative signal delivery and to adopt, instead, a more limited relaxation of the signal delivery rule. We have concluded that independently owned NCE–FM translators assigned to reserved frequencies and serving fill-in areas should be afforded the same alternative signal delivery authority as we allow for commercial FM translators providing fill-in service. Thus, independently owned NCE–FM translators assigned to reserved frequencies and serving fill-in areas will be permitted to receive signals by any terrestrial transmission facilities including, but not limited to, microwave, phone company circuits, and dedicated cable. We will also be favorably disposed toward requests for waivers of the prohibitions contained in this rule for "white areas"—those areas beyond the coverage contour of all full-time noncommercial aural services. This modest relaxation of the signal delivery rule for independently owned NCE–FM fill-in translators will afford licensees added flexibility while not posing any appreciable risk to eventual development of full-service educational stations or their continued support.

3. Second, with regard to the usage of broadcast auxiliary frequencies, we recognize that continued congestion exists in the broadcast auxiliary frequencies in larger markets, but that it is likely that broadcast channel space is available in more remote areas. We believe it is in the public interest to maximize the potential for service to such areas. We are also mindful of the need to maintain the balance between the public interest embodied in ensuring the development and expansion of local public radio service and in increasing NCE–FM service to areas unable to receive service due to distance or intervening terrain obstructions. We are, therefore, authorizing the use of broadcast auxiliary channels to feed NCE–FM translators on channels 201–220 for translators that are co-owned and operated by their primary stations, and for those independently owned NCE–FM translators operating in the fill-in areas of their primary stations, but on a secondary basis only.

4. Finally, we decline to adopt additional procedures granting NCE–FM broadcasters priority in acquiring NCE–FM translators within their service area or extending their service into adjacent areas. The Commission already has safeguards in place that protect the demand by local public broadcasters for translators to fill in their service areas. First, for mutually exclusive applications, the Commission gives highest priority to translator applicants proposing fill-in service of the commonly owned primary station. Second, in its Memorandum Opinion and Order addressing petitions for reconsideration of the Report and Order, the Commission established a transition period that affords local public broadcasters time to acquire NCE–FM translators. During this transition period, which expires on October 2, 1992, an applicant for NCE–FM translator seeking authorization to use alternative signal delivery has to make a showing that an alternative NCE–FM frequency is available that would potentially serve the same areas as the applicant's proposed contour. We believe that these two measures adequately resolve our concerns in this area.

5. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of the Rules

The Commission concludes that these rule changes will permit the expansion of noncommercial FM translator service to areas in which direct reception of radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers, while striking a balance between the public interest embodied in ensuring the

development and expansion of local public radio service.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

No issues were raised specifically in response to the initial regulatory flexibility analysis. All of the comments were directed to proposed extension of the alternative signal delivery rule to independently owned translators.

B. Assessment

We believe our initial assessment with regard to the use of broadcast auxiliary frequencies to be correct and that such usage will increase the potential for additional NCE–FM service to areas with reception problems. However, we have modified our original proposal to extend to independently owned NCE–FM translators operating within the coverage area of their primary stations, the permissible alternative signal delivery already afforded NCE–FM translators owned and operated by their primary stations.

C. Changes Made as a Result of Comments

We are authorizing independently owned and operated NCE–FM translators operating in fill-in areas of their primary stations to use terrestrial signal feed.

III. Significant Alternatives Considered and Rejected

We have considered and rejected alternatives and have concluded that the action taken herein balances the benefits of expanded NCE–FM service with the enhancement of local public radio service.

Ordering Clauses

6. Accordingly, *It Is Ordered* That under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, part 74 of the Commission's rules and regulations *Is Amended* as set forth below effective.

7. *It Is Further Ordered* That this proceeding *Is Terminated.*

List of Subjects in 47 CFR Part 74

Experimental, auxiliary, and special broadcast and other program distributional services, Radio broadcasting.

Part 74 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: Sects. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154 and 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

2. 47 CFR 75.501 is amended by revising paragraph (b) to read as follows:

§ 74.501 Classes of aural broadcast auxiliary stations.

* * * * *

(b) *Aural broadcast intercity relay (ICR) station.* A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, between FM radio broadcast stations and their co-owned FM booster stations, between noncommercial educational FM radio stations and their co-owned noncommercial educational FM translator stations assigned to reserved channels (Channels 201 to 220), between FM radio stations and FM translator stations operating within the coverage contour of their primary stations, or for such other purposes as authorized in § 74.531.

* * * * *

3. 47 CFR 74.531 is amended by revising paragraph (c) to read as follows:

§ 74.531 Permissible service.

* * * * *

(c) An aural broadcast intercity relay station is authorized to transmit aural program material between noncommercial educational FM radio stations and their co-owned noncommercial educational FM translator stations assigned to reserved channels (Channels 201 to 220) and between FM radio stations and FM translator stations operating within the coverage contour of their primary stations. This use shall not interfere with or otherwise preclude use of these broadcast auxiliary facilities by broadcast auxiliary stations transmitting aural programming between broadcast stations as provided in paragraph (b) of this section.

* * * * *

4. 47 CFR 74.532 is amended by revising paragraph (a) to read as follows:

§ 74.532 Licensing requirements.

(a) An aural broadcast STL or an aural broadcast intercity relay station will be licensed only to the licensee or licensees of broadcast stations, other than international broadcast stations, and for use with broadcast stations owned entirely by or under common control of the licensee or licensees. An aural broadcast intercity relay station also will be licensed for use by noncommercial educational FM translator stations assigned to reserved channels (Channels 201–220) and owned and operated by their primary station, by FM translator stations operating within the coverage contour of their primary stations, and by FM booster stations.

* * * * *

5. 47 CFR 74.1231 is amended by revising paragraph (b) introductory text to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FN translator station operating on a reserved channel (Channels 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. *Provided,* however, that an applicant for a noncommercial educational FM translator station operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–21466 Filed 9–8–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1003

[Ex Parte No. 55 (Sub-No. 90)]

List of Forms

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is discontinuing publication in the Code of Federal Regulations of the list of forms prescribed for use in Commission proceedings under subchapters A and B of chapter X. The list satisfies no legal requirement, and serves no useful purpose, because the information is available elsewhere in the rules. Its elimination will shorten and simplify agency regulations.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On May 27, 1992, the Commission issued a notice of proposed rulemaking, (57 FR 22204) in this proceeding which proposed the elimination of the list of current forms prescribed for use in the various Commission proceedings under subchapters A and B of the rules (General Rules and Regulations and Rules of Practice). We indicated in the proposed rule that this listing is redundant because each required form is reproduced in the related CFR section; that publication of such a list is not a legal requirement; and that its elimination will shorten and simplify our rules. We also suggested that if such a listing is shown to be needed, the regulations could provide that the Commission's Secretary will maintain it and make a copy available upon request.

Attorney Gordon MacDougall filed a comment opposing the elimination of the list. Mr. MacDougall finds the list useful, and suggests that its elimination will give Commission staff an advantage over practitioners in that staff will assertedly have knowledge not readily accessible to practitioners. He also believes that elimination of the list will encourage undesirable "ex parte" contacts between staff and practitioners, and that staff time could be better utilized.

We will adopt the rules proposed in our prior Notice of Proposed Rulemaking. Any opportunity to shorten and simplify our regulations should not be foregone lightly. While Mr. MacDougall finds the listing useful, he does not claim that its elimination would be a serious inconvenience to his practice. We also fail to understand how eliminating the list from the CFR will contribute to any kind of "knowledge gap" between the Commission's staff and practitioners. Staff attorneys and paralegals generally must rely upon the same research aids as outside practitioners. We also do not foresee any significant impact upon the number of inquiries received from practitioners and the public. As we noted in the prior notice, the prescribed forms are reproduced in the pertinent section of the regulations dealing with the proceeding or regulatory requirement involved. Thus, practitioners contemplating participation in a Commission proceeding will be aware of the proper forms to request upon familiarizing themselves with the regulations applicable to that type of proceeding. Finally, we will direct the Secretary of the Commission to maintain a current list of forms and provide copies to interested persons upon request.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will not have a substantial adverse impact upon a significant number of small entities.

List of Subjects in 49 CFR Part 1003

Brokers, Freight forwarders, Insurance, Motor carriers, Securities, Surety bonds.

Decided: August 31, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble, title 49, chapter X, part 1003 of the Code of Federal Regulations is amended as follows:

1. Part 1003 is revised to read as follows:

PART 1003—FORMS

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

§ 1003.1 General information.

(a) Printed forms are prescribed for various applications under the Interstate Commerce Act and the Commission's regulations contained in this chapter.

(b) All prescribed forms include instructions for their completion.

(c) Copies of all prescribed forms except insurance forms are available upon request from the Office of the Secretary, Publications Unit, Interstate Commerce Commission, Washington, DC 20423.

[FR Doc. 92–21662 Filed 9–8–92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 9201092009]

Pacific Coast Groundfish Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions; request for comments; corrections.

SUMMARY: NMFS corrects errors in the effective date of the notice of fishing restrictions that reduced the daily trip landing limit from 1,500 pounds to 500 pounds for sablefish caught with nontrawl gear off Washington, Oregon, and California in 1992.

EFFECTIVE DATES: FR Document 92–6977, published March 26, 1992, at 57 FR 10429 is effective from 0001 hours March 21, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140 or Rodney R. McInnis at (310) 980–4040.

SUPPLEMENTARY INFORMATION: In FR Doc. 92–6977 beginning on page 10429, in the issue of Thursday, March 26, 1992, make the following corrections:

(1) On page 10429, in the first column, under the "**DATES**" caption, on the first and second line, "March 20, 1992." should read "March 21, 1992.".

(2) On the same page, in the second column, under the "Secretarial Action" caption, in item (1), first line, "April 20, 1992," should read "March 21, 1992,".

Dated: September 2, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–21581 Filed 9–8–92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 681

[Docket No. 920517-2220]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: The 1992 final quota for crustaceans in the Northwestern Hawaiian Islands.

SUMMARY: NMFS announces that the final quota for lobsters taken in the Northwestern Hawaiian Islands (NWHI) crustacean fisheries in 1992 is 438,000 lobsters. This action is necessary to

inform the public of the quota, which is less than the interim final quota announced on May 22, 1992 (57 FR 21752). This action is intended to carry out the objectives of Amendment 7 under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

EFFECTIVE DATES: Effective September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 310–980–4034; or Alvin Z. Katekaru, Pacific Area Office, Southwest Region, NMFS, 808–955–8831.

SUPPLEMENTARY INFORMATION: The crustacean fisheries of the NWHI are managed by the Secretary of Commerce (Secretary) according to the FMP. The FMP was prepared by the Western Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the U.S. crustacean fishery in the western Pacific region at 50 CFR part 681. General regulations that also pertain to the U.S. fishery are implemented at 50 CFR part 620.

Under authority of the Magnuson Act, the Secretary approved Amendment 7 to the FMP (implemented by a final rule published at 57 FR 10437, March 26, 1992). This amendment establishes a seasonal closure, a limited entry program, and a process (including a formula) to set an annual harvest quota for the lobster fishery in the NWHI. The first year of fishing under the quota is 1992, and the fishing year began July 1, 1992.

The quota is announced in two steps. First, based on the previous years' fishery data, and research sampling and other data sources, if necessary, the Regional Director, Southwest Region, NMFS (Regional Director), determines an initial quota, which is announced in the **Federal Register** by the Assistant Administrator for Fisheries (§ 681.31(b)). The final quota for the year is then determined based on actual fishery results (catch and effort data) in July, the first month of fishing (§ 681.31(c)). These data are believed to reflect more accurately the condition of the stocks.

The Regional Director applied the formula in the FMP amendment to 1991 and early 1992 fishery catch and effort data to derive the initial quota for 1992 of 750,000 lobsters (spiny and slipper lobsters combined). The initial (interim final) quota was published in the **Federal Register** on May 22, 1992 (57 FR 21752). The Regional Director has now determined, based on actual catch and effort data provided by fishermen for July 1992, that the final quota for the 1992 season is 438,000 lobsters.

The decrease of the final quota from the initial quota is primarily attributed to continued poor recruitment of spiny lobster to Maro Reef. Spiny lobster recruitment to the NWHI varies considerably between banks, and appears to fluctuate in response to changes in oceanographic processes related to El Niño Southern Oscillation events. These events are cyclical, and the magnitude and temporal scale of their effect on lobster population dynamics remains unknown. Before the 1992 lobster season, there was some indication, based on a sea level and commercial catch correlation, that recruitment of spiny lobster to Maro Reef would improve in 1992. Maro Reef accounted for approximately 50 percent of the commercial landings in NWHI until recently. However, research catch and effort data for Maro Reef in June 1992 and commercial lobster catch and effort data in July 1992 indicated poor recruitment through mid-1992. The final quota reflects this current estimate of the condition of the stocks.

If the catch and effort rates experienced during the first month of fishing continue, the final quota is expected to be reached late in October or early in November 1992. NMFS will continue to monitor the progress of the fishery toward the quota. The specific dates on which the NWHI lobster fishery will be closed, and further landings of lobsters taken from the NWHI prohibited, will be published in the **Federal Register** not less than 7 days prior to the date of closure. All NWHI lobster fishery permit holders will be notified by NMFS of the specific dates of the closure and landing prohibition.

No comments were received on the interim final (initial) quota; however, as discussed above, additional data became available leading to the reduced final quota.

Classification

This action is taken under the FMP and 50 CFR part 681 and complies with E.O. 12291.

An environmental assessment (EA) was prepared for Amendment 7, which established the process and formula for setting the quota for the NWHI crustacean fisheries. The final quota set by this notice is within the range of alternatives considered in the EA. Therefore, this action is categorically excluded from the NEPA requirement to prepare an EA in accordance with section 6.02c.3.(f) of NOAA Administrative Order 216–6.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–21582 Filed 9–8–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-39-AD]

Airworthiness Directives; Beech Model 1900C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Model 1900C airplanes. The proposed action would require an inspection of the pneumatic deice lines and the deice distributor valve for fuel leakage, replacement of any fuel contaminated parts, and modification of the wet wing fuel barriers. The Federal Aviation Administration (FAA) has received reports of fuel leakage from the wet wing fuel barriers into the pneumatic deice system and deice boots, which could enter into the electrically-heated stall warning vane housing. The actions specified by the proposed AD are intended to prevent an airplane fire caused by this condition.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-39-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4145; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-39-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-39-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received three reports of fuel leakage in the pneumatic deice system of certain Beech Model 1900C airplanes. In one instance, the deice distributor valve was full of fuel and fuel was running from the vacuum ejector exhaust tube. The source of the fuel leaks was the structural bond joint between the pneumatic deice barrier and the leading edge. Once fuel had accumulated in the leading edge, the fuel deteriorated the rubber nipple on the deice boot to the point that a hole was created. When the deice system was in the vacuum mode, fuel was then drawn into the system and distributed to all leading edge boots by activation of the deice system.

The fuel leakage path described in the referenced incident could allow fuel to enter the electrically-heated stall vane cavity. The potential for fire exists in this scenario because fuel with auto-ignition temperatures as low as 446 degrees Fahrenheit (F) can come in contact with the stall warning heating element. Normal ground operation temperature of the heating element is limited to the 300 to 400 degrees F by the landing gear squat switch. If the squat switch functioned improperly, the heating element could reach temperatures of 800 to 900 degrees F, which greatly exceeds the 446-degree F fuel auto-ignition temperature.

Beech has issued Service Bulletin No. 2430, dated March 1992, which specifies procedures for (1) inspecting the pneumatic deice lines and deice distributor valve for fuel leakage; (2) and modifying the wet wing fuel barriers. This service bulletin proposes that the inspection be performed repetitively until the modification is accomplished. The FAA has determined that the modification and inspection should be accomplished simultaneously, which would eliminate the need for repetitive inspections.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent an airplane fire caused by fuel entering the electrically-heated stall warning vane housing.

Since the condition described is likely to exist or develop in other Beech Model 1900C airplanes of the same type design, the proposed AD would require an inspection of the pneumatic deice lines and the deice distributor valve for fuel leakage, replacement of any fuel contaminated parts, and modification of the wet wing fuel barriers. The proposed actions would be accomplished in accordance with the Accomplishment

Instructions section of the above-referenced service information.

The FAA estimates that 145 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 21 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $119 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $184,730.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 92–CE–39–AD.

Applicability: Model 1900C airplanes, serial numbers UC–1 through UC–174 and UD–1 through UD–6 (Model C–12J), certificated in any category.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent an airplane fire caused by fuel entering the electrically-heated stall warning vane housing, accomplish the following:

(a) Inspect the pneumatic deice lines and the deice distributor valve for fuel leakage in accordance with parts I and II of the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2430, dated March 1992. Prior to further flight, replace any fuel contaminated parts in accordance with Part II of the Accomplishment Instructions section of the referenced service information.

(b) Modify the wet wing fuel barriers in accordance with Parts III and IV of the Accomplishment Instructions section of Beech SB No. 2430, dated March 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri. Issued in Kansas City, Missouri, on September 2, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–21593 Filed 9–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–CE–44–AD]

Airworthiness Directives; Ayres Corporation S2D and S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Ayres Corporation (Ayres) S2D and S2R series airplanes. The proposed action would require repetitive inspections of the wing front spar for corrosion, and repair of any corroded areas. Investigation of an accident involving one of the affected airplanes revealed extensive corrosion of the upper and lower portions of the front spar. The actions specified by the proposed AD are intended to prevent wing structural damage that could progress to the point of failure.

DATES: Comments must be received on or before November 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–44–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883–1440. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810; Facsimile (316) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-44-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-44-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion:

Recent investigation of an accident involving an Ayres Model S2R-T34 airplane revealed extensive corrosion of the upper and lower portion of the front spar, in particular the attachment area of the steel spar caps to the aluminum spar web and the huckbolt fasteners. Two other Ayres S2D and S2R series airplanes were found to have similar corrosion during an annual maintenance inspection. If not detected and corrected, a corroded wing front spar could result in wing structural damage.

Ayres has issued Service Bulletin (SB) No. SB-AG-29, dated June 15, 1992, which specifies procedures for (1) inspecting the wing front spar for corrosion; and (2) repairing any corrosion-damaged area. This service information covers areas and procedures not normally accomplished through routine maintenance inspections.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent wing structural damage that could progress to the point of failure.

Since the condition described is likely to exist or develop in other Ayres S2D and S2R series airplanes of the same type design, the proposed AD would require repetitive inspections of the wing front spar for corrosion, and repair of any corroded areas. The proposed actions would be accomplished in accordance with the Accomplishment Instructions section of Ayres SB No. SB-AG-29, dated June 15, 1992.

The compliance time for this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service. In addition, the utilization rate of the affected airplanes varies throughout the fleet. For example, one operator may utilize the airplane 50 hours TIS in one week, while another operator may not operate the airplane 50 hours TIS in one month. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours time-in-service is utilized.

The FAA estimates that 1,700 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $180 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,054,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Ayres Corporation: Docket No. 92-CE-44-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Numbers
S2D	All serial numbers.
S2R	5000 through 5099, 1380R, and 1416R through 2583R.
S2R-R1340	R1340-001 through R1340-030 (with or without DC suffix).
S2R-R3S	R3S-001 through R3S-011 (with or without DC suffix).
S2R-R1820	R1820-001 through R1820-035 (with or without DC suffix).
S2R-T11	T11-001 through T11-005 (with or without DC suffix).
S2R-T15	T15-001 through T15-029 (with or without DC suffix) and T15-031 (with or without DC suffix); and T27-001 through T27-029 (with or without DC suffix) and T27-031 (with or without DC suffix).
S2R-T34	6000 through 6049, T34-001 through T34-178 (with or without DC suffix) and T34-180 (with or without DC suffix); and T41-001 through T41-178 (with or without DC suffix) and T41-180 (with or without DC suffix).
S2R-T45	T45-001 through T45-003 (with or without DC suffix).
S2R-T65 and	T65-001 through T65-010 (with or without DC suffix).
S2R-G6	G6-101 through G6-107 (with or without DC suffix).

Compliance: Required within the next 3 calendar months, unless already accomplished, and thereafter at intervals not to exceed 12 calendar months.

To prevent wing structural damage that could progress to the point of failure, accomplish the following:

(a) Inspect the wing front spar in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: I. Inspection of Front Spar" section of Ayres Service Bulletin (SB) No. SB-AG-29, dated June 15, 1992.

(b) If corrosion is found as a result of the inspection required in paragraph (a) above, prior to further flight, treat and repair the corrosion damage in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: II. Repairs" section of Ayres SB No. SB-AG-29, dated June 15, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent

level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 1, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-21594 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 270

RIN No. 1510-AA31

Availability of Records

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Management Service proposes to revise its regulations to provide more accurate information to the public concerning where to send requests for information and the fees that will be charged for services. This revision also includes editorial changes for clarity and address changes.

DATES: Comments must be submitted on or before October 9, 1992.

ADDRESSES: Comments should be sent to Director, Facilities Management Division, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Rita Franklin on (202) 874-8300.

SUPPLEMENTARY INFORMATION: The Department of the Treasury has statutory responsibilities, with respect to the general public, to implement uniformly and consistently the Freedom of Information Act (5 U.S.C. 552) and to provide maximum allowable disclosure of agency records upon request by any individual.

To fulfill these responsibilities, the Financial Management Service (FMS) is proposing this rule to clarify instructions for submitting requests for information and to consolidate FMS's fee schedule with the Department of Treasury regulations found at 31 CFR part 1 (52 FR 26305, July 14, 1987). The proposed rule also will clarify that some sections of the Treasury Financial Manual do not affect the public and therefore, may not be made available.

In addition, claims for the redemption of mutilated currency of the United States now shall be submitted to the Bureau of Engraving and Printing pursuant to 31 CFR part 100 (47 FR 32044, July 23, 1982, as amended at 56 FR 10170, Mar. 11, 1991). This rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, and a regulatory impact analysis is not required. As explained above, this revision merely updates and clarifies existing practices. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 270

Freedom of information.

For the reasons set forth in the preamble, title 31 part 270 of the Code of Federal Regulations, is proposed to be revised to read as set forth below:

PART 270—AVAILABILITY OF RECORDS

Sec.
270.1 Rules governing availability of information.
270.2 Materials available for inspection and copying.
270.3 Requests for identifiable records.
270.4 Fees for services.

Authority: 5 U.S.C. 552.

The records of the Financial Management Service required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as part 1 of title 31 of the Code of Federal Regulations, except as provided in these regulations.

§ 270.2 Materials available for inspection and copying.

(a) *Materials available.* The materials in the Financial Management Service which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying are the following:

(1) Final opinions, as well as orders, made in the adjudication of cases. These will include final dispositions of claims on Government checks which are of a precedential nature. Generally, however, the Financial Management Service does not issue orders in the adjudication of cases.

(2) Statements of policy and interpretations which have been adopted by the Service and are not published in the **Federal Register.**

(3) Administrative staff manuals and instructions to staff that affect a member of the public. These materials include sections of the Treasury Financial Manual and such Department Circulars applicable to Financial Management Service operations that have been determined by the agency to affect a member of the public, as have not been incorporated into that manual or published as parts of title 31 of the Code of Federal Regulations.

(4) Current indices for the foregoing materials.

(b) *Location.* The materials listed in paragraph (a) of this section issued on or after the effective date of these regulations are available for inspection and copying during office hours in the public reading room of the Treasury Department, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220. Materials issued prior thereto are available in the public reading room to the extent feasible. If not so available, they may be requested as identifiable records.

§ 270.3 Requests for identifiable records.

(a) *Procedure.* A written request for an identifiable record shall be addressed to: Freedom of Information Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

(b) *Determination of request.* Determination as to the disclosure of record request shall be made, subject to appeal to the Commissioner of the Financial Management Service, by the head of the division in which the record belongs and by the Disclosure Officer of the agency. The decision of the Commissioner shall constitute final agency action, unless the Commissioner refers the appeal to the Fiscal Assistant Secretary, in which case the decision of the Fiscal Assistant Secretary shall constitute final agency action.

§ 270.4 Fees for services.

Fees for services performed by the Financial Management Service will be imposed and collected as set forth in

part 1 of title 31 of the Code of Federal Regulations.

Russell D. Morris,

Commissioner.

[FR Doc. 92-21169 Filed 9-8-92; 8:45 am]

BILLING CODE 4810-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; FCC 92-327]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In a Second Further Notice of Proposed Rulemaking in Common Carrier Docket 87-266, the Commission requested comment on proposed rule changes that would amend the Commission's rules, to allow telephone companies to provide video programming directly to subscribers in areas of fewer than 10,000 persons.

DATES: Comments must be submitted on or before September 28, 1992. Reply Comments are due on or before October 28, 1992.

ADDRESSES: Comments and Reply Comments may be mailed to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna N. Lampert, Common Carrier Bureau, (202) 632-9342 or Greg Lipscomb, Common Carrier Bureau, (202) 634-4216.

SUPPLEMENTARY INFORMATION:

Background

Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company-Cable Television Cross-Ownership Rules §§ 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)); Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991) (56 FR 65445 (12/17/91), 56 FR 65464 (12/17/91)).

Summary of Second Further Notice of Proposed Rulemaking

1. This is a summary of the Second Further Notice of Proposed Rulemaking in Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Adopted July 16, 1992 and Released August 14, 1992. The full texts of Commission decisions are available for inspection and copying, Monday through Friday, 9 a.m.-4:30 p.m., in the FCC Dockets Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Second Further Notice of Proposed Rulemaking may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

2. In the Second Further Notice of Proposed Rulemaking, the Commission proposed to amend the rural exemption to the telephone company-cable television cross-ownership restrictions to permit telephone companies to provide video programming directly to subscribers in areas of fewer than 10,000 persons. The rural exemption is currently applicable to places of fewer than 2,500 persons not in an "urbanized area." The Cable Act specifically gives the Commission authority to define areas eligible for the rural exemption. The Notice tentatively concluded that changing the definition of "rural" to areas of less than 10,000 persons would advance one of the goals of the Cable Act, that is, to provide diverse video programming to rural America by expanding significantly the number of areas, now unserved, that would be eligible to receive cable service from telephone companies. The Commission observed that there are substantial areas of the United States that are without cable service or are underserved by cable.

3. The Commission requested comment on its proposal to expand the rural exemption. The Commission asked commenters to address the nature of rural areas, including the population of such areas, and how many homes are in areas with a population under 10,000. The Commission asked parties to comment on whether relative efficiencies that could be achieved by an increased definition of rural areas would encourage local telephone to expand cable service to the most remote homes. The Commission asked for comments on the effect a 10,000 population threshold would have on the deployment of advanced video technologies in those areas.

Paperwork Reduction Act

4. The proposals have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501-20, and found to impose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase burden hours imposed on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Initial Regulatory Flexibility Analysis Statement

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-12, this Second Further Notice of Proposed Rulemaking, Proposing to amend the Commission's rules to expand the definition of rural for purposes of the rural exemption, may directly affect entities that are small business entities, as defined in section 601(c) of the Regulatory Flexibility Act.

6. The Secretary shall send a copy of the Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. 601-12.

Ordering Clause

7. *It is ordered* that, pursuant to Sections 1, 4, 201-205, 215, 218, and 220 of the Communications Act of 1934, as amended, and Sections 601 and 613 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. 151, 154, 201-205, 215, 218, 220, 521, and 533; and 5 U.S.C. 553, a Second Further Notice of Proposed Rulemaking is hereby adopted to amend § 63.58 of the Commission's rules, 47 CFR 63.58.

8. *It is furthered ordered* that, the Secretary shall send a copy of this Second Further Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of subjects in 47 CFR Part 63

Cable television, Communications common carriers, Telephone, Video dialtone.

Proposed Rule Changes

Part 63 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended 47 U.S.C. 214.

2. Section 63.58 is amended by revising paragraphs (a)(1), removing paragraph (a)(2), redesignating existing paragraph (a)(3) as the new paragraph (a)(2), and revising the note in paragraph (b), to read as follows:

§ 63.58 Exemption.

(a) * * *

(1) Any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof;

* * * * *

(b) * * *

Note: The Census Bureau has defined some incorporated places of 2,500 inhabitants or more as "extended cities." Such cities consist of an urban part and a rural part. If the proposed service area includes a rural part of an extended city, but otherwise includes no territory described in paragraph (a)(1) or (2) of this section, an exemption shall apply.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21508 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-115; Notice 2]

RIN—2137 AB53

Gas Pipelines Operating Above 72 Percent of SMYS

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: RSPA's gas pipeline safety regulations allow certain steel pipelines put into service before the regulations were issued to be operated at pressures that result in a hoop stress higher than 72 percent of the specified minimum yield strength (SMYS) of the pipe. This is the highest hoop stress at which all other steel pipelines subject to the regulations may be operated. Because of accidents involving time-dependent defects on a few gas pipelines operating above 72 percent of SMYS and a National Transportation Safety Board (NTSB) recommendation that RSPA require reductions of hoop stress in those lines, RSPA published an advance notice of proposed rulemaking to invite public participation in determining an appropriate course of action. RSPA has concluded that NTSB's recommended hoop stress reductions would not contribute significantly to pipeline safety. The advance notice is, therefore, withdrawn.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5048, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

A RSPA regulation that limits the maximum allowable operating pressure (MAOP) of steel or plastic gas pipelines (49 CFR 192.619) contains a grandfather exception (§ 192.619(c)). This exception applies to pipelines in satisfactory condition that were put into service before the MAOP limitations were adopted. For these grandfathered lines, operators may set MAOP at the highest actual operating pressure the pipeline experienced during the 5 years before July 1, 1970, or, for offshore gathering lines, before July 1, 1976, if the operator finds the pipeline is in satisfactory condition considering its operating and maintenance history. (The grandfather exception has practical effect only for pipelines in Class 1 locations (essentially rural or offshore locations, as defined by § 192.5) because of the additional limits on MAOP that § 192.611 places on pipelines in more populated locations (Classes 2-4).)

In its proposed form, § 192.619 would have required operators to lower the pressure in many existing Class 1 pipelines. (35 FR 5486; April 2, 1970). DOT decided, however, that it lacked evidence that pressure reduction would materially increase the safety of these lines. Thus, it adopted the grandfather exception for them. (35 FR 13248; August 19, 1970). As a result, grandfathered lines may be operated with hoop stresses higher than § 192.619 permits for new pipelines in Class 1 locations. For new steel Class 1 pipelines, the maximum hoop stress allowed is 72 percent of SMYS.

In 1985 and 1986, NTSB investigated two corrosion-related accidents on two grandfathered lines near Beaumont and Lancaster, Kentucky. The pipelines were operated by the Texas Eastern Gas Pipeline Company at stresses above 72 percent of SMYS. In its report on the investigations (NTSB/PAR-87-1; February 18, 1989), NTSB recommended that RSPA repeal the provision that allows pipelines to be operated above 72 percent of SMYS. (Recommendation P-87-009). The primary basis for this recommendation was NTSB's judgment that it is not sound engineering practice to operate old pipelines at a hoop stress higher than Part 192 permits for new pipelines. A further rationale was NTSB's belief that if the MAOP of the pipelines had been lowered to no more than 72 percent of SMYS, the accidents probably would not have occurred until a later date, and in the Lancaster case, probably not before Texas Eastern had time to replace the damaged segment. (Texas Eastern had begun a rehabilitation program on the Lancaster line about a year before the corrosion-related accident occurred.)

In addition to the NTSB investigations, RSPA and the Kentucky Public Service Commission jointly formed a task force to inquire into the Lancaster and Beaumont accidents. This task force also examined two other contemporaneous accidents on Texas Eastern's pipelines in Kentucky that were operating above 72 percent of SMYS. One of these accidents was caused by a material defect; the other by construction errors. Because all the pipelines involved were grandfathered, the task force recommended that RSPA study the need to limit the operating hoop stress of grandfathered pipelines to 72 percent of SMYS. (See "Texas Eastern Gas Pipeline Company Operations and Maintenance Procedures Evaluation," dated November 1986.)

Heeding the task force's recommendation, RSPA researched the safety consideration s pertinent to the operation of pipelines above 72 percent of SMYS, and produced a report titled, "A Safety Evaluation of Gas Pipelines Operating Above 72 Percent of SMYS," dated August 1987. This report identified two operators as having the large majority of grandfathered lines that operate above 72 percent of SMYS: Texas Gas Transmission Corporation and Texas Eastern Gas Pipeline Company (now a subsidiary of the Panhandle Eastern Corporation).

According to the report, since 1970 the incident rate on Texas Gas's and Texas Eastern's grandfathered lines operating above 72 percent of SMYS ranged from 1/10 to 1/2 the incident rate on lines those companies operate below 72 percent of SMYS. Although the report does not explain this variation, testimony from company representatives at an advisory committee meeting (discussed below) sheds light on it.

Texas Eastern attributed the safety record of its grandfathered lines (about 4,200 miles) to two things: an aggressive inspection and maintenance program; and post-construction hydrostatic testing to at least 100 percent of SMYS. (In contrast, the minimum test level

required by Part 192 for new Class 1 steel pipelines operating at 72 percent of SMYS is 79.2 percent of SMYS.) Texas Eastern outlined its maintenance program as: (1) Intelligent pig inspection, (2) visual inspection and removal of anomalies detected by the pig, and (3) selective high pressure hydrostatic retesting to validate the pig inspection and ensure the integrity of replaced pipe.

Like Texas Eastern, Texas Gas attributed the safety record of its grandfathered lines (about 1,183 miles) to a strong maintenance program, which includes (1) reconditioning, (2) replacement of pipe where necessary, and (3) hydrostatic retesting.

The research report further states that the primary factors contributing to the failure of pipelines operating between 72 and 80 percent of SMYS are the number and size of defects present and their rate of growth. Because of the overriding importance of these factors, RSPA concluded that lowering operating hoop stress to 72 percent of SMYS, as NTSB recommended, would increase the time to failure only slightly, and would not prevent failures. RSPA concluded in the report that the margin between operating pressure and hydrostatic test pressure, rather than an operating hoop stress limit of 72 percent of SMYS, provides primary protection against leaks or ruptures caused by growth of time-dependent defects.

All grandfathered lines operating above 72 percent of SMYS that RSPA examined in its research project had been pressure tested to a level above 1.1 times their operating pressure. This test pressure is the minimum that Part 192 requires for new gas pipelines in Class 1 locations. So the grandfathered lines RSPA examined had been adequately tested by current standards.

RSPA presented the research report for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting on September 22, 1987. The TPSSC is RSPA's gas pipeline safety advisory committee, comprised of individuals who are experienced in the safety regulation of gas pipeline transportation or who are technically qualified to evaluate gas pipeline safety standards. No consensus was reached on the report, although there was much discussion about whether grandfathered lines should be subjected to additional integrity testing. This discussion came about because in the report RSPA recognized additional hydrostatic testing as a way to reduce the likelihood of failure in service from the growth of time-dependent defects. Then, on September 13, 1988, the TPSSC again took up the issue of grandfathered lines, this time voting 11 to 1 to disapprove a proposal to repeal the grandfather exception. The TPSSC's objections centered on the insufficiency of data showing that grandfathered lines are unsafe, the need to determine the cost of repeal, and the need to justify repeal in light of RSPA's research report.

Still RSPA remained concerned about the merits of NTSB's recommendation, particularly because it thought grandfathered lines operating above 72 percent of SMYS may provide somewhat less protection against external loads that could cause pipe failure, such as landslides or earthquakes, than similar lines operating at lower stress levels. Consequently, RSPA published an advance notice of proposed rulemaking (ANPRM) (54 FR 50780; Dec. 11, 1989) to request public comments on three alternative courses of action: (1) Repeal the grandfather exception with respect to pipelines operating above 72 percent of SMYS; (2) require integrity testing of pipelines operating above 72 percent of SMYS; or (3) leave the grandfather exception as is.

The TPSSC discussed the ANPRM at a meeting on April 4, 1990. Some members expressed doubt that the safety problem NTSB perceived really exists. Others indicated that older pipelines properly constructed, pressure tested, and maintained should not be considered inferior compared to newer systems. As a whole, the committee was not convinced from the information available that grandfathered lines present a risk to public safety for which further rulemaking action is warranted.

Discussion of comments in response to ANPRM. RSPA received letters from 25 persons commenting on the ANPRM. These commenters were distributed as follows:

Pipeline trade association—2 (AGA, INGAA)
State agency—3 (KY, DC, OR)
Federal agency—1 (DOI)
Pipeline operator—19

Only two commenters favored the first alternative of limiting the MAOP of grandfathered lines to 72 percent of SMYS. One of these commenters, the Kentucky Public Service Commission, argued that the grandfather exception was intended as a temporary measure to allow operators time to replace or reduce the pressure in their grandfathered lines. RSPA, however, has been unable to confirm from a search of the regulatory history that DOT intended the grandfather exception to be temporary. Clearly the plain language of the exception does not indicate that intent.

The second commenter, the Arco Pipe Line Company, said it does not operate gas pipelines above 50 percent of SMYS. Arco backed NTSB's contention that it is not sound engineering practice to allow old lines to operate indefinitely at higher hoop stress levels than those permitted for new lines.

To determine what constitutes sound engineering practice in the operation of pipelines, RSPA looks at available safety data and at engineering standards, literature, or expert testimony. In this proceeding, such information points in a direction contrary to NTSB's view. As noted above, our research disclosed that the grandfathered lines examined had a better safety record than non-grandfathered lines, probably because of sound maintenance practices and hydrostatic retesting. An even more significant research finding was that lowering operating hoop stress to 72 percent of SMYS would not have prevented failures due to the growth of time-dependent defects, and would have postponed failures only slightly. In addition, the TPSSC did not find that it is unsafe to operate older lines at stress levels higher than new ones. For further information, we considered the American Society of Mechanical Engineers' B31.8 Code, a set of voluntary standards for gas transmission and distribution piping systems that is widely recognized as representing acceptable safe practices in the industry. DOT relied heavily on the 1968 edition of this code as a basis for most of the standards in Part 192. The current edition of the B31.8 Code does not forbid the practice of operating old pipelines in Class 1 locations at hoop stress levels above the limit the code sets for new lines. In sum, the record in this proceeding does not support NTSB's view regarding sound engineering practice.

Neither commenter that favored repeal of the grandfather exception did so because of the need to provide greater protection against accidental overloading (such as from earthquakes, landslides, or the motion of heavy construction equipment), an idea RSPA had propounded in the ANPRM. The commenters that addressed the overload issue did not see it as a significant safety problem. Upon further analysis, RSPA agrees. First, pipeline failures due to overloading are rare. Second, grandfathered lines do not provide significantly less protection against overloads than other pipelines, judging by the average margin above 72 percent of SMYS at which the grandfathered lines RSPA has examined operate.

Finally, overloading that can cause a steel pipeline to fail is likely to be of such magnitude that operation at 72 percent of SMYS would not provide sufficient protection.

Four commenters favored the second alternative of maintaining the grandfather exception but requiring operators to take remedial action, such as hydrostatic testing, on lines that operate above 72 percent of SMYS. Of this group, a State agency and a distribution operator said hydrostatic testing should be required to remove as many latent defects as possible. Another State agency recommended increased monitoring by RSPA after the operators demonstrate the safety of their grandfathered lines. Finally, the Minerals Management Service (MMS) recommended limiting the MAOP of grandfathered lines to a line's test pressure divided by 1.25, which is the limit MMS imposes on offshore pipelines under its jurisdiction.

None of these commenters, however, presented information to explain why grandfathered lines operating above 72 percent of SMYS are in need of more remedial action to demonstrate or preserve their integrity than pipelines operating at 72 percent of SMYS or less. In fact, from a testing standpoint, the grandfathered lines operating above 72 percent of SMYS that RSPA examined in its research, which we believe comprised the large majority of the total mileage of all such lines, had a greater margin between test pressure and MAOP than Part 192 requires for new Class 1 pipelines operating at 72 percent of SMYS or less. For example, although Part 192 requires that new Class 1 pipelines operating at 72 percent of SMYS or less be tested to a least 1.1 times the pipeline's MAOP, the average test pressure of the four Texas Eastern grandfathered lines in Kentucky that were the subject of the task force investigation was 1.3 times the pipeline's MAOP.

Other than the four government agencies and two of the pipeline operators, the commenters unequivocally favored retention of the grandfather exception. The reason given most often was that RSPA's own research found that grandfathered lines operating above 72 percent of SMYS have a better safety record, based on fewer incidents per mile, than lines operating below that level.

This group of commenters also agreed with RSPA's research conclusions that reducing pipeline pressure to 72 percent of SMYS would not prevent accidents attributable to the growth of time-dependent defects in pipe, and would extend only slightly the time before such defects grow to failure. None of the commenters who favored the other alternatives disputed these points.

In view of this response by commenters, RSPA believes the research conclusions are persuasive in assessing the merits of NTSB's recommendation to repeal the grandfather exception. Besides arguing that repeal is necessary for sound engineering practice, an issue addressed above, NTSB speculated that operation of the Beaumont and Lancaster pipelines at 72 percent of SMYS might have extended the times to failure. In the Lancaster case, NTSB also said that such a postponement might have been long enough for Texas Eastern to complete its remedial program on the line. The implication of this reasoning for grandfathered lines is that pressure reduction to 72 percent of SMYS would provide operators time to detect and remove time-dependent defects before failures occur, assuming that grandfathered lines as a group deserve such remedial treatment. RSPA's research showed that any extension of the time to failure would be only slight. Also, experts agree that because of the many variables and uncertainties involved in the growth of time-dependent unidentified defects, the additional time before failure that might be expected from pressure reduction cannot be quantified. RSPA believes, therefore, that since the prolongation of time to failure would only be slight and could not be quantified, pressure reduction to 72 percent of SMYS could not reasonably be expected to provide enough time for operators to prevent failures through remedial actions, assuming remedial actions were taken because of an identified safety problem.

Another reason commenters gave frequently for not changing the grandfather exception was the alleged enormous impact that would be created, perhaps industry wide, if the MAOP of grandfathered lines had to be reduced to 72 percent of SMYS. The comments indicated that aside from the cross-country grandfathered lines that were the focus of the research report, there is a myriad of short segments of pipeline throughout the industry for which the MAOP has been established under § 192.619(c). One operator commented that it has 1,032 such segments, totaling 238 miles. According to the comments, numerous operators lack proof of the SMYS of such segments, and they would have to be tensile tested or replaced to conform to a pressure limitation of 72 percent of SMYS.

RSPA recognizes that repealing or modifying the grandfather exception would affect the operation of numerous short segments of existing pipeline in addition to the pipelines covered by the research report. No doubt we would have to weigh this impact against potential benefits should we decide to change the grandfather exception. However, the comments to the ANPRM did not suggest that these grandfathered short segments would benefit more from a change in the grandfather exception than the longer grandfathered lines examined in the research report. Indeed the potential benefits should not differ, considering that time-dependent defects are undoubtedly present in both groups of pipelines. Therefore, we have treated the two groups alike for purposes of this rulemaking proceeding.

Conclusions. The record shows that when DOT adopted the grandfather exception, it did not have information to justify requiring operators to lower the pressure in their grandfathered lines. We believe the same is true today with respect to pressure reduction to achieve a hoop stress no higher than 72 percent of SMYS. In fact, the prevailing information in this proceeding (primarily the research report, the TPSSC report, and the comments we received) indicates that restricting operation to 72 percent of SMYS would not contribute significantly to the safety of grandfathered lines. For example, operation at 72 percent of SMYS would not have prevented the Lancaster and Beaumont accidents discussed above, and would not have significantly increased the time to failure.

Neither does the information indicate that an acceptable level of safety for grandfathered lines operating above 72 percent of SMYS depends on taking remedial measures beyond what Part 192 requires for gas pipelines in general. Clearly Texas Eastern's and Texas Gas's enhanced testing and maintenance practices have resulted in better safety records on their grandfathered lines operating above 72 percent of SMYS than on their other lines. Nevertheless, we cannot conclude that the safety of grandfathered lines as a group demands such special treatment when they operate above 72 percent of SMYS. Operation above 72 percent of SMYS is neither the source of, nor a contributor to, the time-dependent defect problems at which the enhanced testing and maintenance are directed.

Consequently, RSPA hereby withdraws the ANPRM.

This action is consistent with the President's January 28, 1992, memorandum to agency heads on reducing the burden of government regulation. In addition to establishing a moratorium on issuing certain proposed

or final regulations, that memorandum called for agencies to review their existing regulations and eliminate those that are not cost-effective. As part of this review, we have considered § 192.619(c) and the ANPRM. We conclude that among the ANPRM alternatives, maintaining the grandfather exception is the clear choice to assure that expected benefits outweigh expected costs.

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53 and App. A of Part 106.

Issued in Washington, DC on September 3, 1992.

George W. Tenley, Jr.

Associate Administrator for Pipeline Safety.

[FR Doc. 92-21661 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1145

[Ex parte No. 394 (Sub-No. 10)]

Railroad Rates on Recyclables; Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking public comment on whether to exempt from regulation rail transportation of nonferrous recyclable commodities that appear to recover revenues that are lower than the variable costs of the transportation. If the proposed exemption is adopted, rates on exempted commodities would be deregulated, and would not be subject to the evidentiary requirements associated with the annual compliance proceedings that govern other recyclable commodities.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by September 29, 1992. We will issue a service list of the parties of record shortly thereafter. Comments and replies must be served on all parties on the service list. Comments are due October 29, 1992. Replies are due on November 30, 1992.

ADDRESSES: Send notices of intent and an original and 10 copies of pleadings referring to Ex parte No. 394 (Sub-No. 10) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: David Groves (202) 927-6395. Craig Keats (202) 927-6046. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: The provisions of 49 U.S.C. 19731(e) limit rail rates on recyclable commodities, other than iron and steel, to revenue-to-variable cost (R/VC) ratios that are prescribed annually by the Commission. The regulations implementing these statutory provisions, found at 49 CFR part 1145, are designed to ensure that rates on recyclables, in the aggregate, remain below the statutory rate cap, and to preclude railroads from increasing individual recyclables rates that are already above the cap. Under the regulations, each year the Commission conducts an annual compliance proceeding to determine, on a regional and a national basis, aggregate rate levels for specific recyclable commodity groups. As part of the compliance process, carriers can justify their own rates rather than relying on the group data; and shippers can present evidence to demonstrate that specific rates that they pay are above the permissible level.

The provisions of 49 U.S.C. 10505 authorize the Commission to exempt particular services from regulation where (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 1010a (RTP); and (2) the service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power. Over the past 12 years, we have exempted from regulation numerous commodities and services when we found that the existence of substantial competitive pressures would protect shippers and advance the goals of the RTP without involvement by the Commission.

In our decision in Ex Parte No. 394 (Sub-No. 9), *Cost Ratio For Recyclables–1992 Determination* (not printed), served May 6, 1992 (*1992 Determination*), we reported the results of our first annual recyclables compliance proceeding. We generally measured compliance on the basis of certain 5-digit Standard Transportation Commodity Code designations, although pursuant to our rules we also permitted shippers to make more detailed showings for specific movements of individual commodities. We found that rates for certain commodities, in the aggregate or on an individual basis when challenged by a shipper, were above the appropriate R/VC ratio level. We also found, however, certain commodity groups whose revenues, both in the aggregate and for carriers reporting individually, appeared to be less than their variable costs for movements in the East, West, and throughout the United States.[1]

It appears to us that the railroads are subject to substantial competition as to these commodity groups, and that for such commodity groups regulation is not necessary to advance the rail transportation policy or to protect shippers from abuses of market power. Accordingly, under the provisions of 49 U.S.C. 10505, we propose to exempt from regulation commodity groups whose revenues have been found to be below the variable costs associated with the service in all of the presentations made during the prior annual compliance proceeding. Commodity groups will not be exempted if, during the annual proceeding, a shipper has shown that any movement of a commodity in the group has moved at rates above the cap level.

We are aware of the special attention that Congress gave to recyclables in the Staggers Rail Act, but we do not view the statutory language indicating that the rate limitations in section 10731(e) apply "[n]otwithstanding any other provision of this title or any other law" as precluding an exemption in appropriate circumstances. In our view, that language was intended to clarify that the important recyclables provisions of the Act superseded other statutory provisions limiting the Commission's authority over maximum railroad rates, such as the market dominance provisions of section 10709. Where a commodity is subject to substantial competition, however, market forces themselves should advance the goals of the RTP and of section 10731(e). Thus it seems to us that while an exemption would relieve the railroads of certain burdens that they would otherwise face, it would not deprive shippers of the protection that Congress gave them in enacting section 10731(e). We solicit comments on this essentially legal question.

Particularly in light of the fact that each commodity group comprises various commodities with different R/VC characteristics, we also recognize the possibility that individual rates could be above the proper level even though a commodity group is in

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[1] As reflected in appendix A to our decision, on the basis of 1990 data, six 5-digit Standard Commodity Classification Code (STCC) commodity groups appeared to return less than their variable costs for all territories and carrier groupings sampled. The six are: STCC 20511, Bakery Products; STCC 22994, Packing or Wiping Cloths or Rags (Processed Textile Matter); STCC 30311, Reclaimed Rubber; STCC 34912, Steel shipping Containers; STCC 40261, Rubber or Plastic Scrap or Waste; and STCC 41115, Articles, Used, Returned for Repair or Reconditioning.

aggregate compliance. Under such circumstances, an exemption could arguably leave a shipper without a remedy that it would otherwise enjoy under section 10731(e). The R/V cap, however, generally falls some 40–60 percent above the carrier's R/VC break-even point. Our proposed exemption is limited to commodity groups whose aggregate experience reflects below-cost pricing for all carriers and territories sampled. We think that it is very unlikely that carriers would be able to maintain any rates that are above the cap as to such commodity groups. Moreover, we believe that shippers should be protected by our determination not to exempt any commodity group as to which a shipper has shown any movement above the statutory cap level. We solicit comments on this essentially practical question.

Finally, we note that there are other commodities (e.g., STCC 40241, Paper Waste or Scrap, and STCC 40212, Brass, Bronze, Copper or Alloy Scrap) whose rates as shown in Appendix A to our *1992 Determination* are just above the R/VC break even point. Although we are not in this decision proposing to exempt those commodities, we would be receptive to a petition for exemption, particularly if the principal shippers and carriers involved with the traffic are all amenable to one.

We preliminarily conclude that implementation of this proposal would not have a significant impact on a substantial number of small entities. The proposal would not likely change the rates paid by most shippers of recyclables, and the parties most affected by the slightly lessened regulatory burdens are primarily larger railroads.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

49 CFR Part 1145

Administrative practice and procedure, Freight, Railroads.

Decided: August 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald dissented.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble title 49, chapter X, parts 1039 and 1145 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904; 5 U.S.C. 553.

§ 1039.11 [Amended]

2. Section 1039.11(a) is proposed to be amended by adding the words "(except for those recyclable commodities exempted pursuant to the provisions of 49 CFR 1145.8)" after the words "by the Commission at 356 I.C.C. 445–447".

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

3. The authority citation for part 1145 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10731, and 10707a; 5 U.S.C. 553.

4. Part 1145 is proposed to be amended by adding a new § 1145.9, reading as follows:

§ 1145.9 [Amended]

Commodity groups whose revenues, both in the aggregate and for any carriers reporting individually, have been found in an annual compliance proceeding under these regulations to be below the variable costs of providing the service for all territories will not be subject to these regulations. Such commodity groups will be added to the list of miscellaneous commodities exempted in 49 CFR 1039.11, and will remain on that list unless and until they are removed from it in a revocation proceeding. Recyclable commodity groups will not be exempted if any individual movements of a commodity in the group have been shown by a shipper to exceed the statutory rate cap.

[FR Doc. 92–21663 Filed 9–8–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910779–1179]

RIN 0648–AE12

Threatened Fish and Wildlife; Threatened Marine Reptiles; Revisions To Enhance and Facilitate Compliance With Sea Turtle Conservation Requirements Applicable to Shrimp Trawlers; Restrictions Applicable to Shrimp Trawlers and Other Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: NMFAS published a proposed rule to amend the regulations protecting sea turtles on April 30, 1992, at 57 FR 18446. Under the Endangered Species Act (ESA) and regulations implemented thereunder, it is unlawful to take sea turtles. The incidental taking of turtles during scientific research and fishing is exempted from the prohibitions in certain specified circumstances. Shrimp trawlers in the southeastern Atlantic and Gulf of Mexico are so exempted if they employ specified measures (sea turtle conservation measures) to reduce the mortality of sea turtles incidentally taken. The intent of the proposed amendments was to strengthen the sea turtle conservation measures.

Written comments on the proposed rule were requested through July 29, 1992. In response to public interest in the proposed regulations and in order to receive input on impacts of Hurricane "Andrew" on the shrimp fishery in the Gulf of Mexico, NMFS is reopening the public comment period on the proposed rule from September 8, 1992 through October 23, 1992.

DATES: Comments on the proposed rule must be received on or before October 23, 1992.

ADDRESSES: Comments on the proposed rule and requests for copies of the combined Environmental Assessment and supplemental Regulatory Impact Review/Regulatory Flexibility Analysis

for the proposed rule, and comments on it, should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator, 301–713–2322, or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813–893–3366.

SUPPLEMENTARY INFORMATION: Based on information discussed in the preamble of the proposed rule, NMFS concluded that the measures shrimp trawlers were required to employ in order to reduce the mortality of sea turtles incidentally taken in the shrimp trawl fishery were inadequate to conserve sea turtles. Moreover, the proposed rule recognized there were problems with compliance and enforcement of the existing regulations.

An interim final rule filed with the Office of the Federal Register on September 1, 1992, implemented certain measures contained in the proposed rule, provided additional discussion of the issues presented in the proposed rule, and responded to comments received during the original public comment period for the proposed rule. The interim final rule also requested public comments on the implemented measures.

NMFS has not taken final action with respect to many measures proposed on April 30, 1992, because of the complexity of the issues, public interest, and possible impacts of Hurricane "Andrew" on the shrimp fishery of the Gulf of Mexico. Therefore, NMFS is reopening the public comment period on the proposed rule to receive information relative to the proposed measures and their expected impact on the shrimp fishery and the conservation of sea turtles. Comments on the proposed rule and the interim final rule will be considered prior to issuing a final rule.

(Authority: 16 U.S.C. 1531 *et seq.*)

Dated: September 2, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries.

[FR Doc. 92–21671 Filed 9–8–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Change of Meeting Time

The September 10, 1992 meeting, 2:30 p.m., of the Committee on Judicial Review of the Administrative Conference, notice of which appeared in the **Federal Register**, Friday, August 28, 1992, Vol. 57, No. 168, page 39175 has now been scheduled for 9 a.m.

Dated: September 3, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92-21686 Filed 9-8-92; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

[A-533-805]

Postponement of Preliminary Antidumping Duty Determination: Sulfur Dyes, Including Sulfur Vat Dyes, From India

AGENCY: Import Administration, Internaticnal Trade Administration, Commerce.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-1174.

POSTPONEMENT: On April 30, 1992, the Department of Commerce (the Department) initiated an antidumping duty investigation on sulfur dyes, including sulfur vat dyes, from India. The notice stated that we would issue our preliminary determination on or before September 17, 1992 (57 FR 19600, May 7, 1992).

On August 24, 1992, counsel for petitioner made a timely request for a thirty day postponement of the Department's preliminary determination in the above-referenced investigation. On August 26, 1992, counsel for Atul Products Limited, respondent in this investigation, submitted comments in opposition to petitioner's request. We determined that respondent's arguments did not provide compelling reason to deny petitioner's request. Therefore, pursuant to 19 CFR 353.15(c), we are postponing the date of the preliminary determination in this investigation until not later than October 19, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act).

This notice is published pursuant to section 733(c)(2) of the Act and 18 CFR 353.15(d).

Dated: September 1, 1992.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-21573 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on petroleum wax candles from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing no later than thirty days from September 9, 1992.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the Department of Commerce (the Department) published an antidumping duty order on petroleum wax candles from the People's Republic of China (51 FR 30686). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke this order.

Opportunity To Object

No later than thirty days from September 9, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke within thirty days from September 9, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: August 31, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21574 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 920772-2172]

RIN 0693-AB05

Proposed Revision of Federal Information Processing Standard (FIPS) 127-1, Database Language SQL

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments. The purpose of this notice is to announce the proposed revision of Federal Information Processing Standard (FIPS) 127-1, Database Language SQL.

SUMMARY: This proposed revision to FIPS 127-1, Database Language SQL, will adopt the draft proposed American National Standard: Database Language SQL (dpANS X3.135-199X). The American National Standards Institute is expected to approve this specification as an American National Standard later in 1992. This revision to FIPS 127-1 will provide a substantial, upward-compatible enhancement of Database Language SQL.

Prior to the submission of this proposed revision to FIPS 127-1 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the FIPS requirements for conformance to ANSI SQL from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B-64, Gaithersburg, MD 20899, telephone (301) 975-2816. For copies of the draft proposed American National Standard (dpANS X3.135-199X), contact the Global Engineering Documents, Inc., 2805 McGaw Avenue, Irvine, CA 92714, (1-800-854-7179).

DATES: Comments on this proposed revision must be received on or before December 8, 1992.

ADDRESSES: Written comments concerning the adoption of this proposed revision should be sent to: National Institute of Standards and Technology, ATTN: Proposed Revision of FIPS 127-1, Technology Building, room B-154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Gallagher, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3251.

John W. Lyons,

Director.

Dated: September 2, 1992.

Federal Information Processing Standards Publication 127-2

[Draft 4/14/92]

Announcing the Standard for Database Language SQL

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Database Language SQL (FIPS PUB 127-2).

2. *Category of Standard.* Software Standard, Database.

3. *Explanation.* This publication is a revision of FIPS PUB 127-1 and supersedes that document in its entirety. It provides a substantial, upward-compatible enhancement of Database Language SQL. It includes three levels of conformance: Entry SQL, Intermediate SQL, and Full SQL. Entry SQL is a minor enhancement over the minimum requirements of FIPS PUB 127-1, Intermediate SQL is a major enhancement over Entry SQL, and Full SQL is a major enhancement over Intermediate SQL. Implementations that support Entry SQL should conform to FIPS SQL. Section 13 identifies the minimum requirements for FIPS PUB 127-2 that differ from those of FIPS PUB 127-1.

This publication announces adoption of American National Standard Database Language SQL, ANSI X3.135-1992, as the Federal Information Processing Standard for Database Language SQL (FIPS SQL). The exact specification is in Section 10 of this standard.

ANSI SQL is a revision and replacement of two previous American National Standards, ANSI X3.135-1989 and ANSI X3.168-1989. It specifies the syntax and semantics of SQL language facilities for defining and accessing SQL databases. These facilities include:

—Schema definition, to declare the structures, integrity constraints, and access privileges of a database.
—Schema manipulation, to alter a schema definition.
—Data manipulation, to populate a database and access SQL-data.
—Transaction management, to define and manage SQL-transactions.
—Connection management, to establish and manage SQL-connections.
—Session management, to set the attributes of an SQL-session.
—Dynamic SQL, to provide facilities for dynamic construction and execution of SQL statements.
—Diagnostics management, to communicate constraint violations and warnings to applications.
—Information schema tables, to provide an SQL description of schema definitions.
—Programming language bindings, to declare database procedures that may be called from various programming languages.
—Embedded SQL, to define how SQL statements may be syntactically embedded into one of the following programming languages: Ada, C, COBOL, FORTRAN, MUMPS, Pascal, or PL/I. Embedded SQL was formerly defined in ANSI X3.168-1989.

ANSI SQL is specified in three levels: Entry SQL, Intermediate SQL, and Full SQL. Entry SQL is a minor enhancement of ANSI X3.135-1989 (see Section 13). Intermediate SQL adds provisions for schema manipulation, dynamic SQL, diagnostics management, long identifiers, multiple module support, cascade delete for referential integrity, multiple schemas per authorization identifier, DATE and TIME data types, domains, variable length character strings, support for national character sets, and substantial enhancements for data manipulation. The data manipulation enhancements in Intermediate SQL include: a CASE expression, CAST functions between data types, string operations, natural join, outer join, union join, row value expressions, and subqueries in value expressions, as well as table operations for union, intersection, and complement. Full SQL adds provisions for connection management, session management, pre-defined character translations and form-of-use conversions, a BIT string data

type, deferrable integrity constraints, derived tables in the FROM clause, subqueries in CHECK clauses, insensitive cursors, self-referencing data operations, assertions, and temporary tables. A list of optional FIPS SQL packages, comprising all of the features in Intermediate SQL and in Full SQL, is defined in Section 14 of this standard.

The purpose of FIPS SQL is to promote portability and interoperability of database application programs and exchange of programmers among different data processing environments. The standard is used by implementors as the reference authority in developing a FIPS conforming relational model database management system, with standard programming language interfaces to that database management system. The standard is used by application programmers to help write SQL conforming applications and by other computer professionals who need to know the precise syntactic and semantic rules of Database Language SQL.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (Computer Systems Laboratory)

6. *Cross Index*

a. American National Standard Database Language SQL, ANSI X3.135–1992 (revision of ANSI X3.135–1989 and replacement of ANSI X3.168–1989).

b. ISO/IEC 9075:1992, Database Language SQL (revision of ISO/IEC 9075:1989).

Note: Except for a different Foreword, Introduction, and Normative references, ANSI X3.135-1992 and ISO/IEC 9075:1992 are identical documents.

7. Related Documents

a. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

b. Federal ADP and Telecommunication Standards Index, U.S. General Services Administration, Information Resources Management Service, October 1991 (updated periodically).

c. NIST, Validated Products List: Programming Languages, Database Language SQL, Graphics, GOSIP, POSIX, Security; Judy B. Kailey, Editor, NISTIR 4739, 1992, issue No. 1, January 1992 (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

d. A revision to FIPS PUB 146–1, Government Open Systems Interconnection Profile (GOSIP), is planned for May 1993. To be issued in conjunction with IGOSS and will reference IGOSS.

e. IGOSS, Industry/Government Open Systems Specification, review draft planned August 1992, publication planned May 1993. This specification will reference "stable agreements" from the NIST OSI Implementor's Workshop as of December 1992. [Update this reference just before publication].

f. NIST SP 500-xxx, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version xx, Edition x, NIST Workshop for Implementors of Open Systems Interconnection, December 1992. [Update this reference just before publication].

g. ISO/IEC DIS 9579–1, Information technology—Open Systems Interconnection—Remote Database Access—Part 1: Generic model, service, and protocol, document ISO/IEC JTC1/SC21 N6375, August 1991.

h. ISO/IEC DIS 9579–2, Information technology—Open Systems Interconnection—Remote Database Access—Part 2: SQL specialization, document ISO/IEC JTC1/SC21 N6376, August 1991.

i. SQL Information Bulletin, Number 1, SQLIP–1, Interpretations of ANSI X3.135–1989, available from Global Engineering Documents, April 1991.

j. FIPS PUB 29–2, Interpretation Procedures for FIPS Software, 14 September 1987.

k. ISO 646, Information processing—ISO 7-bit coded character set for information interchange, 2nd edition, July 1983.

l. ANSI/ISO 4873, Information processing—ISO 8-bit code for information interchange—Structure and rules for implementation, 1986. Replaces ANSI X3.134.1, 8-bit ASCII.

m. ANSI/ISO 8859–1, Information processing—8-bit single-byte coded graphic character sets—Part 1: Latin alphabet No. 1, February 1987. Replaces ANSI X3.134.2.

n. ISO/IEC CD 11404, Information Technology—Programming Languages—Common Language Independent Data Types (CLID), document JTC1/SC22 N970, May 1991.

o. NIST SP 500-xxx, Future directions for Database Language SQL, planned Late 1992. [Update this reference just before publication].

p. FIPS PUB 124, Guideline on Functional Specifications for Database Management Systems, September 1986.

q. FIPS PUB 110, Guideline for Choosing a Data Management Approach, December 1984.

r. NBS SP 500–108, Guide on Data Models in the Selection and Use of Database Management Systems, January 1984.

8. Objectives. the FIPS for Database Language SQL permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's's information resources. The primary objectives are:

—To encourage more effective utilization and management of database application programmers by ensuring that skills acquired on one project are transportable to other projects, thereby reducing the cost of data base programmer retraining.

—To reduce overall software costs by making it easier and less expensive to maintain database definitions and database application programs and to transfer those definitions and programs among different computers and database management systems, including replacement database management systems.

—To promote communication and interoperability among data installations conforming to FIPS SQL and related GOSIP communications standards.

—To reduce the cost of software development by achieving increased database application programmer productivity through the understanding and use of database methods employing standard structures and operations, standard data types, standard constraints, and standard interfaces to programming languages.

—To protect the software assets of the Federal government by ensuring to the maximal feasible extent that Federal database management system standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard database management system specifications.

9. Applicability

9.1 Database Language SQL is one of the database language standards provided for use by all Federal departments and agencies. These database language standards should be used for all computer database applications and programs that are either developed or acquired for government use. FIPS SQL is particularly well suited for use in database applications that employ the relational data model. The relational data model is appropriate for applications requiring flexibility in the

data structures and access paths of the database. The relational data model is desirable where there is a substantial need for ad hoc data manipulation, and data restructuring, in addition to the need for access by static applications under production control.

9.2 A FIPS for database languages shall be used for database applications and programs when one or more of the following situations exist:

—It is anticipated that the life of the database application will be longer than the life of the presently utilized equipment or database management system, if any.

—The database application is under constant review for updating of the specifications, and changes may result frequently.

—The database application is being designed and developed centrally for a decentralized system that employs computers of different makes and models or database software acquired from a different vendor.

—The database application will or might be run under a database management system other than that for which the database application is initially written.

—The database application is to be understood and maintained by programmers other than the original ones.

—The database application is one part of a distributed application that requires exchange of data or interoperation of the various parts.

—The database application is or is likely to used by organizations outside the Federal government (e.g., Federal government contractors, State and local governments, and others).

9.3 Nonstandard language features shall be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. A needed language feature not provided by the FIPS database languages should, to the extent possible, be acquired as part of an otherwise FIPS database management system. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement database management system more difficult and costly.

9.4 Although this standard does not specifically address interactive database access through graphical user interfaces, the SQL statements specified by this standard are appropriate for such use. This standard may be used to define the semantics of database access through such interfaces.

9.5 Although this standard does not specifically address distributed database management systems or distributed database application, the connection management statements defined in this standard may be used, along with facilities for remote database access (ISO/IEC 9579) and distributed transaction processing (ISO/IEC 10026), to access SQL-data at remote nodes in a distributed system and to present a distributed database view to application programs.

9.6 Although this standard does not specifically address user-defined data types, class hierarchies, inheritance, polymorphism, or other features of object database management systems, such capabilities are upward compatible extensions of this standard and may be specified in a future revision of FIPS SQL. A NIST special publication, "Future directions for Database Language SQL", NIST SP 500-xxx, discusses potential future directions for FIPS SQL.

9.7 It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of a database management system employing a different data model than those provided by the FIPS database languages or the use of a database management system that functionally conforms to a FIPS database language but does not conform to all other aspects of the FIPS. The use of any facility should be considered in the context of system life, cost, data integrity, and the potential for data sharing.

9.8 Programmatic requirements may be more economically and efficiently satisfied by the use of automatic program generators or by database access through other high-level language information processing systems. However, if the final output of a program generator or high-level language system is language that accesses a relational database then that language shall conform to the conditions and specifications of SQL.

10. Specifications. FIPS SQL adopts all provisions of ANSI X3.135–1992, Database Language SQL, with the exceptions listed below, and as specified in the technical specifications section of this standard.

a. FIPS SQL requires conformance to Entry SQL. Conformance to Intermediate SQL or Full SQL are options that may be specified explicitly in SQL procurements. Other packages of optional specifications that may be specified by name, either as requirements or as desirable features, are listed in Section 14.

b. FIPS SQL does not include PL/I language bindings, since PL/I is not a FIPS programming language.

c. FIPS SQL does not recognize conformance solely by "direct invocation and processing of SQL language" as specified in Subclause 23.2 of ANSI X3.135–1992, because direct invocation does not mandate all of the facilities desired in a FIPS SQL conforming product. Conformance to FIPS SQL requires a Module or Embedded SQL binding style to one or more FIPS programming languages.

d. FIPS SQL requires that the "SQL Flagger" be implemented in Entry SQL in addition to Intermediate SQL and Full SQL. This is because FIPS SQL has always included a flagger requirement, even from its first specification in 1987. For conformance to Entry SQL, FIPS SQL requires "Entry SQL flagging" with the "Syntax only" extent of checking option as defined in Subclause 4.33 of ANSI X3.135–1992. The SQL Flagger is required for all language binding styles, including "Interactive Direct SQL" (see Section 16.5).

e. For conformance to Intermediate SQL and to Full SQL, FIPS SQL requires implementation of the following named character sets: SQL CHARACTER, ASCII GRAPHIC, LATIN1, ASCII FULL, and SQL TEXT. The form-of-use and default collation requirements for these character sets are defined in Section 16.7 of this standard.

f. For conformance to Intermediate SQL and to Full SQL, FIPS SQL requires implementation of the FIPS DOCUMENTATION schema, as specified in Section 15 of this standard.

11. Implementation. Implementation of this standard involves four areas of consideration: the effective date, acquisition of FIPS SQL implementations, interpretation of FIPS SQL, and validation of FIPS SQL implementations.

11.1 Effective Date. This publication is effective six (6) months after date of publication of final document in the *Federal Register* of its approval by the Secretary of Commerce. Prior to that date the requirements of FIPS PUB 127-1 apply to Federal SQL procurements. This delayed effective date is intended to give implementations that conform to FIPS PUB 127-1 time to make the modest enhancements necessary to enable conformance to Entry SQL (see Section 13). No further transition period is necessary.

11.2 Acquisition of SQL Implementations. Relational model database management systems acquired for Federal use shall implement FIPS SQL. Conformance to FIPS SQL shall be considered whether SQL implementations are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an

ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS SQL is contained in the U.S. General Services Administration publication *Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 1.

11.3 Interpretation of FIPS SQL. NIST provides for the resolution of questions regarding FIPS SQL specifications and requirements, and issues official interpretations as needed. Procedures for interpretations are specified in FIPS PUB 29-2. All questions about the interpretation of FIPS SQL should be addressed to: Director, Computer Systems Laboratory, ATTN: Database Language SQL Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2833.

11.4 Validation of SQL Implementations. Implementations of FIPS SQL shall be validated in accordance with NIST Computer Systems Laboratory (CSL) validation procedures for FIPS SQL. Recommended procurement terminology for validation of FIPS SQL is contained in the U.S. General Services Administration publication *Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 2. This publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. In determining which of the validation options should be required, the agency should consider the impact on system benchmark performance of using SQL implementations that have not been fully validated prior to benchmarking. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication *Validated Products List* for information about the validation status of SQL products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Report (VSR) or Certificate is applicable to the hardware/software environment of the SQL implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the SQL implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g. the same parameter settings to be used in a performance benchmark. An agency with a single-license procurement may review the *Validated Products List* to determine the applicability of existing VSRs or Certificates to the agency's hardware/software environment.

Implementations shall be evaluated using the NIST SQL Test Suite, a suite of automated validation tests for SQL implementations. The NIST SQL Test Suite was first released in August 1988 to help users and vendors determine compliance with FIPS SQL. Version 3.0 of the test suite was released in January 1992, to be used for validating conformance to FIPS PUB 127–1 after July 1, 1992. It is expected that Version 4.0 of the test suite will be available in early 1993, to be used for testing conformance to Entry SQL of FIPS PUB 127–2 after the effective date. The results of validation testing by the SQL Testing Service are published on a quarterly basis in the *Validated Products List*, available from the National Technical Information Service (NTIS).

Each release of the test suite has provided additional interfaces and test cases to increase the test suite's coverage of the SQL language. Version 3.0 of the NIST SQL Test Suite provides 11 test suite types (interfaces): Embedded (pre-processor) Ada, Embedded C, Embedded COBOL, Embedded FORTRAN, Embedded Pascal, module language Ada, module language C, module language COBOL, module language FORTRAN, module language Pascal, and Interactive SQL. Version 3.0 does not include tests for Embedded MUMPS or module language MUMPS because the MUMPS programming language interface is not defined in FIPS 127–1; such tests may be available in Version 4.0 for testing of FIPS 127–2. There are additional tests in Version 3.0 for the optional Integrity Enhancement Feature, default database sizing constructs, and the FIPS Flagger requirement of FIPS 127–1.

An SQL Test Suite license includes all of the tests described above, documentation, and automatic notifications of approved changes to the SQL Test Suite for a six month period. A license for SQL Test Suite Version 3.0 is a necessary requirement for an organization that wishes to be tested by the NIST SQL Testing Service between July 1, 1992 and June 30, 1993.

Current information about the NIST SQL Validation Service and validation procedures for FIPS SQL is available from: National Institute of Standards and Technology, Computer Systems Laboratory, Software Standards Validation Group, Building 225, Room A266, Gaithersburg, Maryland 20899, (301) 975–2490.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec.

552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 92-21628 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Florida Keys National Marine Sanctuary Advisory Council Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council, notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: September 24 and 25, 1992 from 9 a.m. until adjournment. The meeting location will be at the Hawks Cay Resort, Mile Marker 61, Route 1, Duck Key, Florida.

AGENDA: 1. Presentations related to zoning and water quality issues.

2. Discussion of management alternatives.

PUBLIC PARTICIPATION: The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: September 1, 1992.

Frank W. Maloney,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-21568 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-08-M

Gulf of Mexico Fishery Management Council; Correction Regarding Public Meeting Location; Correction Regarding Adjournment Time of Public Committee Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The location for the public meeting of the Gulf of Mexico Fishery Management Council (Council) and its Committees, to be held September 14-17, 1992, and the adjournment time for public meetings of the Council's Habitat Protection and Reef Fish Management Committees, originally published in the **Federal Register** at 57 FR 37955 on August 21, 1992, are corrected as noted below. All other information originally published on August 21, 1992, remains unchanged.

Location of public meetings as published at 57 FR 37955: Doubletree Hotel, 300 Canal Street, New Orleans, LA (telephone: 504-581-1300).

Corrected Location: The New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA (telephone: 504-469-5000).

Adjournment time for public meetings of the Habitat Protection Committee and the Reef Fish Management Committee as published at 57 FR 37955: 5 p.m.

Corrected Adjournment Time: 5:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21595 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's recently formed Bycatch Cap Committee (Committee) will convene a public meeting on September 11, 1992, at 8:30 a.m., at the National Marine Fisheries Service Montlake Facility auditorium, 2725 Montlake Boulevard, East, Seattle, WA. The Committee was appointed to review the issue of halibut bycatch caps, halibut mortality, the validity of data used in setting the caps and mortality rates, and the equity of caps.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21598 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Hawaii Bottomfish Advisory Panel (AP) and its Bottomfish Advisory Review Board will convene a joint public meeting on September 15, 1992, at the State of Hawaii Department of Land and Natural Resources Boardroom, 1151 Punchbowl Street, Honolulu, HI. The meeting will begin at 1 p.m.

The agenda for the joint meeting is as follows: (1) Limited entry for the Northwestern Hawaiian Islands Mau Zone and permit transferability issues); (2) data collection (logbooks, educating fishermen about the need for accurate state catch reports, recreational data, and enforcement issues); and (3) the AP's role, organization and other AP business.

FOR MORE INFORMATION CONTACT: Kitty M. Simonds, Executive Director, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 526-0824.

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21596 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Hawaii Pelagics Advisory Panel (AP) will convene a public meeting on September 14, 1992, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI. The meeting will begin at 8 a.m.

The following agenda items will be discussed: (1) The National Marine Fisheries Service 1991 longline annual report, limited entry issues (future of the longline moratorium, control date for the offshore handline fishery limiting access to other pelagic fisheries in Hawaii and limited entry permit transferability); (2) data collection and

reporting issues (logbooks, educating fishermen about the need for accurate state catch reports, recreational data, and enforcement issues); (3) bycatch issues, fish size restrictions, update on the vessel tracking initiative; and (4) the AP's role, organization and other AP business.

FOR MORE INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 526–0824).

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Services.

[FR Doc. 92–21597 Filed 9–8–92; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Performance Review Board

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Announcement of Membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

This notice announces the appointment of Assistant Commissioner for Finance and Planning Bradford R. Huther as Chairman. Mr. Huther replaces Douglas B. Comer who currently is Acting Assistant Secretary and Commissioner of Patents and Trademarks. It also announces the retirement of James E. Denny as Assistant Commissioner for Patents.

ADDRESS: Comments should be addressed to Personnel Officer, Patent and Trademark Office, Office of Personnel, One Crystal Park, suite 700, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Colleen Woodard at the above address on (703) 305–8062.

SUPPLEMENTARY INFORMATION: The new membership of the Patent and Trademark Office Performance Review Board is as follows:

Bradford R. Huther, Chairman
Assistant Commissioner for Finance and Planning
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Edward R. Kubasiewicz, Member
Counselor to the Assistant Secretary and Commissioner of Patents and Trademarks
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Jeffrey M. Samuels, Member
Assistant Commissioner for Trademarks
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Theresa A. Brelsford, Member
Assistant Commissioner for Public Services and Administration
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Thomas P. Giammo, Member
Assistant Commissioner for Information Systems
Patent and Trademark Office
Washington, DC 20231 Term—permanent
John F. Terapane, Jr., Member
Director, Patent Examining Group 120
Patent and Trademark Office
Washington, DC 20231
Term—expires September 30, 1994
J. David Sams, Member
Chairman, Trademark Trial and Appeal Board
Patent and Trademark Office
Washington, DC 20231
Term—expires September 30, 1994
Dr. Michael G. Hansen, (Outside) Member
Assistant Director, Office of Executive and Management Development
Human Resources Development Group
Office of Personnel Management
Washington, DC 20415
Term—expires September 30, 1994.

Dated: August 28, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92–21572 Filed 9–8–92; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Extension of the Scoping Comment Period for the Environmental Impact Statement for the Institute of Advanced Science and Technology at the University of Pennsylvania, Philadelphia, PA

The United Stares Air Force has extended the scoping comment period for the Environmental Impact Statement (EIS) on the University of Pennsylvania Institute for Advanced Science and Technology (IAST). The scoping comment period has been extended from September 11, 1992 to October 1, 1992 in order to provide additional opportunity for the public to provide input on issues to be considered in the EIS.

The IAST is a proposed program to construct new facilities at the University of Pennsylvania, Philadelphia, Pennsylvania.

Interested persons who seek further information concerning the IAST project or wish to provide comments on issues to be considered for inclusion in the EIS should contact: Lt Col Gary P. Baumgartel, AFCEE/ESE, Building 1155, Brooks AFB, Texas 78235–5000, (512) 536–3869.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–21630 Filed 9–8–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Technology Strategy Panel will meet on 26–27 Sep 1992 from 9 a.m. to 5 p.m. at the National Academy of Sciences Woods Hole Center, Woods Hole, MA.

The purpose of this meeting is to discuss and formulate a plan to make the TSP an effective and useful forum to croo-flow information to senior Air Force leaders. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner

Air Force Federal Register Liaison Officer.

[FR Doc. 92–21558 Filed 9–8–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions to the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 28 September 1992, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 am and terminate at 2:30 pm, 28 September 1992, in the Bo Coppedge Dining Room Alumni Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs and academic method of the Naval Academy.

For further information concerning this meeting contact: Lieutenant Commander Craig M. Diffie, U.S. Navy, Secretary to the Board of Visitors, Administration Building, United States

Naval Academy, Annapolis, Maryland, 21402-5000, telephone (410) 267-2402.

Dated: August 28, 1992.

Wayne T. Baucino,

Lieutenant, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-21570 Filed 9-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JD92-08947T Texas-68]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

September 2, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation underlying a portion of Limestone County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area lies within Railroad Commission District 5 and consists of portions of the following surveys:

Juan L. Chavert, A-4
Manuel C. Rejon, A-26

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21619 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08946T Texas-67]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 2, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation underlying a portion of Smith County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The 1790.415 acre area specifically includes all of the Thomas P. Payne Survey A-763 except 332 acres in the southeast corner and except 36 acres in the southwest portion; 200 acres in the northwest corner of the M.E. Barbee A-82; 138.56 acres in the southwest corner of the Francis Ariola Survey A-24; 202.25 acres in the south part of the W.J. Parchman Survey A-792.

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary

[FR Doc. 92-21620 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-27-000]

Alabama Tennessee Natural Gas Co.; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on October 16, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address revisions to the summary of proposal prepared by Alabama-Tennessee to comply with Order No. 636. The pipeline initially served all parties in the proceeding with the summary on July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208-1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21622 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-57-000]

Canyon Creek Compression Company; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 19, 1992, at 1:30 p.m. It will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposal for compliance with Order No. 636 circulated by Canyon Creek Compression Company under letter dated June 5, 1992, as supplemented on July 7, 1992, together with any further modifications circulated before or at the September 19 conference. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons may contact Jacqueline S. Holmes at (202) 208-1212.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21625 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-22-000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on August 31, 1992, pursuant to section 4 of the Natural Gas Act, § 154.38(d)(6) of the Commission's Regulations providing for the Annual Charge Adjustment, and section 14 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets of its FERC Gas Tariff.

First Revised Volume No. 1

Twenty-Second Revised Sheet No. 31
Alternate Twenty-Second Revised Sheet No. 31
Fourteenth Revised Sheet No. 32
Eighteenth Revised Sheet No. 34
Alternate Eighteenth Revised Sheet No. 34
Thirteenth Revised Sheet No. 35

Original Volume No. 2

Fifth Revised Sheet Nos. 250 and 290

Original Volume No. 2A

Fifth Revised Sheet Nos. 18, 28, 35, 48, and 87

CNG requests an effective date for these proposed tariff sheets of October 1, 1992. CNG states that the proposed tariff sheets reflect a new ACA unit rate of 0.22 cents per dekatherm.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions. Copies of the filing are also available during regular business hours at CNG's offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21617 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-227-000]

Eastern Shore Natural Gas Co.; Tariff Filing Restating Base Tariff Rates

September 2, 1992.

Take notice that on August 31, 1992 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing with the Commission the revised tariff sheets, listed below, in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on October 1, 1992:

First Revised Volume No. 1

Twenty-Fifth Revised Sheet No. 5
Twenty-Fifth Revised Sheet No. 6
Twenty-Fifth Revised Sheet No. 10
Twenty-Fifth Revised Sheet No. 11
Twenty-Fifth Revised Sheet No. 12
Twenty-Fifth Revised Sheet No. 13
Twenty-Fifth Revised Sheet No. 14
First Revised Sheet No. 255
First Revised Sheet No. 256
First Revised Sheet No. 258
Second Revised Sheet No. 259
First Revised Sheet No. 260
First Revised Sheet No. 261

According to Eastern Shore, the revised tariff sheets comprise the restatement of its Base Tariff Rates in compliance with § 154.303(e) of the Commission's Regulations. Eastern Shore's filing is accompanied by a cost of service study and supporting data to support the restated Base Tariff Rates.

Eastern Shore states that its existing Base Tariff Rates were established in a settlement of its last section 4 rate filing in Docket Nos. RP89-164-000; 001. According to Eastern Shore, the filing in Docket Nos. RP89-164-000; 001 was accepted, subject to refund, on May 31, 1989 and Eastern Shore moved the suspended rates into effect on November 1, 1989, thus establishing the date for the commencement of the thirty-six month period for the restatement of the Base Tariff Rates.

It is further stated that the cost of service study developed for this filing is fully consistent with the provisions of the settlement in Docket Nos. RP89-164-000; 001.

Eastern Shore further states that copies of its filing have been served on its jurisdictional customers and the regulatory commissions of the states of Delaware and Maryland.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21604 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-64-000 and RS92-88-000]

High Island Offshore System U-T Offshore System; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in these proceedings on September 29, 1992, at 10 a.m., in the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposals of High Island Offshore System and U-T Offshore System to comply with the Commission's Order Nos. 636 and 636-A. Parties, as defined by 18 CFR 385.102(c), and Commission Staff are invited to attend.

For additional information contact Thomas J. Burgess at (202) 208-2058.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21623 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-226-000]

Kern River Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that on August 31, 1992, Kern River Gas Transmission Company (Kern River) filed an original and six (6) copies of Revised Sheet Nos. 5 and 6 to Original Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

Kern River states that the revised tariff sheets increase Kern River's firm and interruptible Part 284 transportation rates primarily to reflect the costs of constructing and operating Kern River's pipeline system, which went into service on February 15, 1992. Kern River states further that it is proposing to implement the Straight Fixed-Variable (SFV) method of cost classification for all shippers except those shippers with whom Kern River has contractual commitments that prevent it from initiating unilateral changes in rate design.

Kern River states that a copy of its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21609 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-15-000]

Mid Louisiana Gas Co. Proposed Change of Rates

September 2, 1992.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on August 31, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheets and proposed effective date as set forth below:

Ninety-Third Revised Sheet No. 3a.	Sub. Ninety-Second Rev. Sheet No. 3a	October 1, 1992.
Eleventh Revised Sheet No. 3a.1.	Tenth Revised Sheet Sheet No. 3a.1	October 1, 1992.

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to reflect a revision to the unit rates for the collection of the Annual Charges imposed by Section 382 of the Commission's regulations.

This filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21607 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-25-000]

Mississippi River Transmission Corp., Proposed Change in FERC Gas Tariff

September 2, 1992.

Take notice that on August 31, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets:

Second Revised Volume No. 1

Eighty-Second Revised Sheet No. 4
Forty-First Revised Sheet No. 4.1
Tenth Revised Sheet No. 4D

Original Volume No. 1-A

Tenth Revised Sheet No. 2
Tenth Revised Sheet No. 3
Fifth Revised Sheet No. 4

MRT states that the purpose of the instant filing is to adjust the currently effective ACA charge in its jurisdictional sales and transportation rates to the new fiscal 1993 FERC approved surcharge of $.0022 per MMBtu effective October 1, 1992.

MRT states that a copy of the revised tariff sheets is being mailed to each of its jurisdictional customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21610 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-37-000]

Northwest Pipeline Corp. Proposed Change in FERC Gas Tariff

September 2, 1992.

Take notice that on August 28, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Twentieth Revised Sheet No. 10
Nineteenth Revised Sheet No. 11
Fourteenth Revised Sheet No. 13

First Revised Volume No. 1-A

Fifteenth Revised Sheet No. 201

Original Volume No. 2

Twenty-Ninth Revised Sheet No. 2.3
Twenty-Fifth Revised Sheet No. 2-B

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective October 1, 1992, to reflect (1) interest applicable to July, August, and September 1992, and 2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 4.05¢ per MMBtu for the three months commencing October 1, 1992. Northwest states that this instant filing, and the Commodity SSP Surcharge included herein, was prepared in a manner consistent with the provisions of Commission orders, issued in Docket Nos. TM91-8-37 and TM92-2-37, which relate to the level of billing determinants to be used in the calculation of the Commodity SSP Surcharge.

Northwest has challenged the Commission's orders requiring it to calculate its Commodity SSP Surcharge based upon billing determinants other than those approved in the settlement of Phase I of Docket No. RP88-47. Northwest reserves the right and gives notice that it will refile its Commodity SSP Surcharge rates for any affected periods, including the three months beginning October 1, 1992, should Northwest ultimately be successful in its court appeals.

The tariff sheets listed reflect the current PGA adjustment and the Commission approved revised ACA surcharge of .23¢ per MMBtu, effective October 1, 1992.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21605 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-224-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

September 2, 1992.

Take notice that on August 31, 1992, Northwest Pipeline Corporation (Northwest) tendered the following for filing and acceptance to be a part of its FERC Gas Tariff:

Second Revised Volume No. 1

Second Revised Sheet No. 101

First Revised Volume No. 1-A

Third Revised Sheet No. 202
Second Revised Sheet No. 320
Second Revised Sheet No. 401
Second Revised Sheet No. 419
second Revised Sheet No. 420
First Revised Sheet No. 421
First Revised Sheet No. 422
Original Sheet No. 422-A

Northwest states that the purpose of this filing is to propose modifications to (1) the tariff definition of "Gas Day" and (2) the nomination procedures of the "Operating Conditions" section of its Volume No. 1-A tariff and that the revised operating procedures are needed for the upcoming heating season.

Northwest has requested an effective date of October 1, 1992 for the tendered sheets. Northwest states that copies of the filing were served on Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21608 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-78-000]

Overthrust Pipeline Co.; Tariff Filing

September 2, 1992.

Take notice that on August 31, 1992, Overthrust Pipeline Company, pursuant to § 154.38(d)(6) and Part 382 of the Commission's Regulations, tendered for filing and acceptance Thirteenth Revised Sheet No. 6 and Second Revised Sheet No. 4 to Original Volume Nos. 1 and 1-A of its FERC Gas Tariff.

Overthrust states that this filing implements the annual charge unit rate of $0.0023 per Mcf in each of its transportation rate schedules. Overthrust requests an effective date of October 1, 1992, for the tendered tariff sheets.

Overthrust states that copies of the filing were served on Overthrust jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21164 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-73-000]

Ozark Gas Transmission System; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that Ozark Gas Transmission System ("Ozark") on August 31, 1992, tendered for filing the following revised tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 4

The proposed effective date is October 1, 1992.

Ozark states that it is amending its transportation rate schedule to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0023. Ozark states that this filing is submitted in compliance with § 154.38(d)(6)(iii) of the Commission's Regulations. Ozark also proposes to revise the fuel retention provision on that tariff sheet in compliance with the Commission's letter order of June 15, 1992 in Docket No. RP92-155-001.

Ozark states that copies of the filing were served upon Ozark's firm and interruptible shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21611 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-64-000]

Pacific Interstate Offshore Co.; Change in Rate

September 2, 1992.

Take notice that on August 31, 1992, Pacific Interstate Offshore Company ("PIOC") submitted for filing, to be part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

First Revised Volume No. 1

First Revised Sheet No. 4

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .23 cents per Mcf in its Rate Schedule G-10 as provided for by Order No. 472. PIOC requests an effective date of October 1, 1992.

PIOC states that copies of the filing have been served on PIOC's sole customer, the Southern California Gas Company, the Public Utilities Commission of the State of California and other interested parties.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesters parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21615 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-229-000]

Panhandle Eastern Pipe Line Company; Notice of Conference

September 2, 1992.

Take notice that a conference will be convened in this proceeding on Wednesday, September 16, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to discuss the stipulation of issues to be submitted to the Presiding Administrative Law Judge in the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21621 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-55-000]

Questar Pipeline Co.; Tariff Filing

September 2, 1992.

Take notice that on August 31, 1992, Questar Pipeline Company, pursuant to § 154.38(d)(6) and Part 382 of the Commission's Regulations, tendered for filing and acceptance the following tariff sheets of its FERC Gas Tariff:

Original Volume No. 1

Twenty-first Revised Sheet No. 12
Fifth Revised Sheet No. 12A

Original Volume No. 1-A

Eighth Revised Sheet No. 5
Third Revised Sheet No. 5A

Original Volume No. 2-A

Third Revised Sheet No. 4

Original Volume No. 3

Ninth Revised Sheet No. 8

Questar states that this filing incorporates into its sales, storage and transportation rates the annual charge unit rate of $0.0023 per Mcf adjusted to $0.00216 per Dth. Questar requests an effective date of October 1, 1992, for the tendered tariff sheets.

Questar states that copies of the filing has been provided to Questar's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21618 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM9 3-1-66-000]

Superior Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that on August 28, 1992, Superior Offshore Pipeline Company ("SOPCO") tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1.

FERC Gas Tariff, Original Volume No. 1

Seventh Revised Sheet No. 5 Superseding Sixth Revised Sheet No. 5.

This revised tariff sheet is being filed to amend SOPCO's initial FERC Annual Charge Adjustment ("ACA") related tariff sheet to reflect the change in the FERC ACA Unit Charge. SOPCO had received an Annual Charges Billing from the Commission for the fiscal year 1992 and has already remitted to the Commission SOPCO's portion of the Commission deficit. For the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission on SOPCO's Annual Charges Bill, SOPCO's ACA Unit Charge will change from $0.0023/MMBtu to $0.0022/MMBtu. SOPCO proposed that this change be made effective October 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 92-21613 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-85-000]

Trailblazer Pipeline Company; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 19, 1992, at 9 a.m. It will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposal for compliance with Order No. 636 circulated by Trailblazer Pipeline Company under letter dated June 8, 1992, as supplemented on July 7, 1992, together with any further modifications circulated before or at the September 19 conference. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested

persons may contact Jacqueline S. Holmes at (202) 208–1212.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21624 Filed 9–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–24–000]

Texas Gas Transmission Corp., Conference

September 2, 1992.

Take notice that on September 17 and September 18, 1992, a conference will be convened in the above-captioned docket to discuss Texas Gas Transmission Corporation's summary of its proposed plan for implementation of Order No. 636 and Order No. 636–A.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426 in Hearing Room Number One. The conference will begin at 1 p.m. on September 17, 1992. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Robert Szekely at (202) 208–0442 or Bill Zoller at (202) 208–1203.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21602 Filed 9–8–92; 8:45 am]

BILLING CODE 6717–01

[Docket No. RP92–225–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies each of the tariff sheets listed in appendix A of the filing.

Texas Eastern states that the tariff sheets listed in appendix A of the filing revise certain firm and interruptible transportation rate schedules for the purpose of incorporating into such rate schedules imbalance charges comparable to the currently effective imbalance charges under Texas Eastern's open-access Rate Schedules FT–1 and IT–1.

Texas Eastern states that the Commission has previously approved the imbalance charges reflected in Rate Schedules FT–1 and IT–1 under Texas Eastern's blanket, open-access transportation certificate. Under currently effective section 6 of Texas Eastern's Rate Schedules FT–1 and IT–1, Texas Eastern and its shippers must enter into an agreement in writing, regarding the resolution of transportation imbalances, within forty-five (45) days after Texas Eastern notifies its shippers that imbalances exist, or imbalance charges will be imposed. With respect to the rate schedules affected by this filing, however, while there currently is an obligation to maintain a balance between receipts and deliveries, no expressly applicable imbalance charges are applied when such balancing obligation is not satisfied.

Texas Eastern states that on July 2, 1992, it filed tariff sheets in Docket No. RP92–200–000 ("July Filing"), which were rejected by Commission order issued in that docket on July 31, 1992 ("July 31 Order"), without prejudice to Texas Eastern filing revised tariff sheets consistent with the July 31 Order. The July 31 Order stated that if Texas Eastern desires to revise its Volume No. 1 and Volume No. 2 tariffs, then it should file such change in each applicable rate schedule. Accordingly, Texas Eastern states that, consistent with the Commission directive in the July 31 Order, the instant filing is comprised of tariff sheets that modify each rate schedule proposed to be affected by the imbalance charge. Texas Eastern states that its filing is expressly without prejudice to its right to seek rehearing of the Commission's July 31 Order.

Texas Eastern states that appendix A of the filing lists (i) the tariff sheets and rate schedules affected, and (ii) the appropriate article and sheet numbers for reference to the "Memphis Clause" of each Volume No. 2 rate schedule service agreement and each Volume No. 1 rate schedule in which Texas Eastern proposes to include the imbalance charges. It is pursuant to these contractual rights that Texas Eastern files the tariff sheets in this proceeding. The inclusion of the proposed imbalance charges into these affected rate schedules is a prospective change only. The inclusion of the proposed imbalance charges into these affected rate schedules is a prospective change only. The tariff changes will not affect the character or quality of the affected services. Moreover, the tariff changes will have no impact on the existing charges and/or the rates for the services to which they apply, unless shippers refuse to cooperate with Texas Eastern in resolving imbalances.

Texas Eastern states that it is taking all reasonable measures to control, reduce, and eliminate transportation imbalances, which have dramatically increased as a result of the pipelines' traditional merchant function being replaced by open-access transportation service initiated by the Commission's Order Nos. 436 and 500. The filing states that Texas Eastern's imbalance resolution program has and continues to achieve relative success in resolving transportation imbalances arising under Texas Eastern's Rate Schedules FT–1 and IT–1 but has been less successful in resolving imbalances under its other transportation rate schedules. Texas Eastern states that without express imbalance charges such as it is proposing in this filing, shippers apparently are not sufficiently motivated to resolve imbalances in accordance with their contractual obligations. The application of the imbalance charges set forth in Rate Schedules FT–1 and IT–1 to other Texas Eastern rate schedules, as proposed in the filing, is Texas Eastern's attempt to provide the motivation necessary to resolve these imbalances in a timely manner.

The proposed effective date of the tariff sheets listed on appendix A of the filing is October 1, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21606 Filed 9–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–11–000]

United Gas Pipe Line Co. Filing of Revised Tariff Sheets

September 2, 1992.

Take notice that on August 31, 1992, United Gas Pipe Line Company (United)

tendered for filing the following tariff sheets to be effective October 1, 1992:

Third Revised Volume No. 1

Second Revised Sheet No. 4, Second Revised Sheet No. 4A, Second Revised Sheet No. 4B, Second Revised Sheet No. 4D, Second Revised Sheet No. 4E, Second Revised Sheet No. 4F, Second Revised Sheet No. 4G, Second Revised Sheet No. 4H.

United states that the above referenced tariff sheets reflect a downward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1992 Annual Charges, pursuant to Order No. 472.

This revision authorizes United to collect $0.0023 per each jurisdictional Mcf ($0.0022 per MMBtu as converted on United's system) of natural gas sold or transported applicable to the 1992 Annual Charge assessed United by the Commission under Part 382 of the Commission's Regulations.

United also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 10, 1992.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21616 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that Williams Natural Gas Company (WNG) on August 28, 1992, tendered for filing Twelfth Revised Sheet No. 6, Thirteenth Revised Sheet No. 6A, and Twelfth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1.

WNG states that pursuant to Article 21 of the General Terms and Conditions of such Tariff, it proposes to decrease its rates effective October 1, 1992, to reflect a decrease in the FERC Annual Charge Adjustment from $.0024 to $.0023 per Dth for the fiscal year beginning October 1, 1992, per the Commission's Annual Charges Billing issued July 27, 1992.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21612 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-49-000]

Williston Basin Interstate Pipeline Co.; Federal Energy Regulatory Commission Annual Charge Adjustment Filing

September 2, 1992.

Williston Basin Interstate Pipeline Company (Williston Basin), on August 31, 1992, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

4th Rev Alt 43rd Revised Sheet No. 10.

Original Volume No. 1-A

4th Rev Alt 36th Revised Sheet No. 11, 4th Rev Alt 41st Revised Sheet No. 12.

Original Volume No. 1-B

4th Rev Alt 31st Revised Sheet No. 10, 4th Rev Alt 31st Revised Sheet No. 11.

Original Volume No. 2

4th Rev Alt 43rd Revised Sheet No. 10, 4th Rev Alt 37th Revised Sheet No. 11B.

The proposed effective date of the tariff sheets is October 1, 1992.

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges (18 CFR part 382) and the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1, section 30; Original volume No. 1-A, section 27; and Original Volume No. 1-B, Section 25. The filing incorporates the Commission approved ACA surcharge of .230 cents per Mcf (.217 cents per dkt on the Williston Basin system), a decrease of .01 cents per Mcf from the current amount as authorized by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21603 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Fusion Energy Advisory Committee Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Fusion Energy Advisory Committee (FEAC).

DATE AND TIME: Tuesday, September 22, 1992—9:00 a.m.—5:30 p.m. Wednesday, September 23, 1992—8:30 a.m.—5 p.m.

PLACE: Ramada Renaissance Hotel, 13869 Park Center Road, Sully Road Exit, Dulles Airport, Herndon, VA 22071.

CONTACT: Deborah Lonsdale, U.S. Department of Energy, GTN, Office of Fusion Energy (ER-50), Office of Energy Research, Washington, DC 20585, Telephone: 301-903-4941.

PURPOSE OF THE COMMITTEE: To provide advice on a continuing basis to the Department of Energy on the complex scientific and technical issues that arise

in the planning, management, and implementation of its Fusion Energy Program.

Tentative Agenda

Tuesday, September 22, 1992

Report on Panel IV on Intermediate Confinement Experiments, Report on Panel V on Strategic Program Planning, Public Comment (10-minute Rule).

Wednesday, September 23, 1992

New Charge to FEAC, FEAC Deliberations, Public Comment (10-minute Rule).

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Deborah Lonsdale at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

TRANSCRIPTS: The transcript of the meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E-190, Forrestal Building 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 3, 1992.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 92-21670 Filed 9-8-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of August 7 through August 14, 1992

During the Week of August 7 through August 14, 1992, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 7 through August 14, 1992]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 10, 1992	COMPUSA, McLean, VA	LFA-0232	Appeal of an information request denial. If Granted: COMPUSA would receive access to information about DOE employees.
Aug. 11, 1992	Gulf/Teague Industries, Inc., Atlantic Beach, FL	RR300-197	Request for modification/rescission in the Gulf refund proceeding. If granted: The June 17, 1992 Dismissal Letter (Case No. FR300-12769) issued to Teague Industries, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week August 7 to August 14, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case number
Aug. 10, 1992	CTS International	RF272-93804
Aug. 10, 1992	Cherokee Brick and Tile Co.	RF272-93805
Aug. 10, 1992	Highland Butane	RF340-175
Aug. 11, 1992	Gilmer Independent School Dist.	RF272-93806
Aug. 11, 1992	Rand's, Inc.	RF272-93807
June 23, 1992	Riverview Consolidated School	RF272-93808
Aug. 07, 1992 thru Aug. 14, 1992	Texaco Refund Applications Received	RF321-19096 thru RF321-19109
Aug. 07, 1992 thru Aug. 14, 1992	Gulf Oil Refund Applications Received	RF300-20455 thru RF300-20461
Aug. 07, 1992 thru Aug. 14, 1992	Atlantic Richfield Applications Received	RF304-13244 thru RF304-13252

[FR Doc. 92-21668 Filed 9-8-92; 8:45am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Sam Rayburn Dam Power Rate; Order Approving Temporary Power Rate Extension on an Interim Basis

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of a Temporary Power Rate Extension—Sam Rayburn Dam Project.

SUMMARY: The Assistant Secretary, Conservation and Renewable Energy, acting under Amendment No. 2 to Delegation Order No. 0204-108, dated August 23, 1991, 56 FR 41835, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(b), has approved Rate Order No. SWPA-26 which extends the existing power rate for the Sam Rayburn Dam Project. This is a temporary interim rate action effective October 1, 1992, and extending for a period of six months through March 31, 1993.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Director,

Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

SUPPLEMENTARY INFORMATION: The existing rate for the Sam Rayburn Dam project is $1,810,368 per year. The rate was approved on a final basis by the Federal Energy Regulatory Commission on October 11, 1988, for a period ending September 30, 1991. The rate was extended on an interim basis by the Assistant Secretary, Conservation and Renewable Energy, on September 28, 1991, for a period of one year, effective October 1, 1991. 10 CFR 903.22(h) and 903.23(b) provide implementation authority for such interim extension to the Deputy Secretary. This authority has been redelegated to the Assistant Secretary, Conservation and Renewable Energy, by Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–26, on September 1, 1992, which extends the existing Sam Rayburn Dam Rate for six months beginning October 1, 1992.

Issued at Washington, DC, the 1 day of September, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92–21669 Filed 9–8–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[FRL–4203–1]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Policy Review Board will hold a meeting on September 16, 1992 at the Innisbrook Hotel in Tarpon Springs, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Policy Review Board (PRB) on the Gulf of Mexico Program will be held on September 16, 1992 at the Innisbrook Hotel in Tarpon Springs, Florida, starting at 8:30 a.m. and ending at 5 p.m. Agenda items will include reports to the committee on planning for the Gulf Symposium, the five-year strategy, "Year of the Gulf" activities, Gulf of Mexico action projects, public health action plan, coastal and shoreline erosion action plan, habit degradation action plan, and the activities of the Citizens Advisory Committee and the Technical Steering Committee. The meeting is open to the public.

Alan Fox,

Acting Assistant Administrator, Office of Water.

[FR Doc. 92–21654 Filed 9–8–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 1, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 3953–4814.

OMB Number: 3060–0149.

Title: Part 63—Section 214 Application and Supplemental Information Requirements (Sections 63.01 through 63.601)—(Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, CC Docket No. 87–266).

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting and semi-annually.

Estimated Annual Burden: 510 responses; 12.98 hours average burden per response; 6,620 hours total annual burden.

Needs and Uses: In the attached CC Docket No. 87–266, Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58, the Commission modified its rules to enable local telephone companies to participate in the video marketplace through video dialtone. The Commission concluded that allowing telephone company involvement in the video marketplace, consistent with statutory telephone company-cable television cross-ownership restrictions, will advance the FCC's goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission decided that it will permit, but not require, local telephone companies to provide video dialtone to the public consistent with the existing regulatory framework for non-video enhanced services and subject to additional requirements. These additional requirements provided that: local telephone companies wishing to offer video dialtone, must make available to multiple service providers, on a nondiscriminatory common carrier basis, a basic platform that will deliver video programming and potentially other services to end users; local telephone companies will be permitted to provide some additional enhanced and non-common carrier services to customers of the common carrier platform; the Commission will apply existing safeguards against anticompetitive conduct, and will assess whether additional safeguards would serve the public interest in the context of specific video dialtone service proposals and the Commission will review its rules and regulatory framework beginning in three years. In addition to the requirements of Part 63, telephone companies that wish to offer video dialtone must describe how their proposed construction and operation of the basic platform will serve multiple video programmers and expand as demand increases. This is necessary to ensure that telephone companies offer sufficient capacity to

serve multiple video programmers when the telephone company is constructing video dialtone facilities. The information will be used by the Common Carrier Bureau of the FCC when it evaluates filings pursuant to 47 U.S.C. 214. The information will help the Bureau decide whether to give the telephone company permission to build and operate a basic platform that will allow the Commission's video dialtone policy to be implemented. If the information were not collected, the Commission could not effectively determine if telephone companies offering video dialtone would have sufficient capacity to serve multiple video programmers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21559 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 31, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0024.

Title: Section 76.29, Special temporary authority rules in the cable television service.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 1 response, 3 hours average burden per response; 3 hours total annual burden.

Needs and Uses: The Commission has established procedures for parties to obtain variances of special relief from the provisions of the cable television rules. Section 76.29 permits additional flexibility as well as procedural specificity in applying for special deviations from the rules in situations requiring temporary and immediate action that would not be possible under the more extended pleading requirement of the general rules. The data is used by FCC staff to assure that a grant of special temporary authority will not cause interference to other stations.

OMB Number: 3060-0287.

Title: Section 78.69 (Cable Relay) Station Records.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 2,166 recordkeepers; 26 hours average burden per recordkeeper, 56,316 hours total annual burden.

Needs and Uses: Section 78.69 requires that licensees of cable relay stations maintain records of certain inspections, observations and repairs. The records provide a history of station operation used by FCC staff in field investigations to assure that proper operation of the station is being maintained.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21560 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Amboy Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Amboy Bancorporation, Old Bridge, New Jersey; to acquire Woodhaven at South Brunswick, L.P., Cranbury, New Jersey, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21645 Filed 9-8-92; 8:45 am]

BILLING CODE 6210-01-F

Brooke Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brooke Holdings, Inc., Jewell, Kansas; to acquire Brooke Corporation, Jewell, Kansas, which, in turn, has applied to become a bank holding company by acquiring Brooke State Bank, Jewell, Kansas.

In connection with this application, Brooke Corporation has applied to retain the insurance agency activities of its wholly-owned subsidiaries, Gypsum Valley Agency and Brooke Management, Inc., both of Jewell, Kansas. These activities are acting as agenct in the sale of general insurance in the Jewell, Kansas, community pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y, and the sale of general insurance for a small bank holding company pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

2. TeamBanc, Inc. Employees Stock Ownership Plan, Paola, Kansas, and TeamBanc, Inc., Paola, Kansas; to acquire 100 percent of the voting shares of Century BancShares, Inc., Parsons, Kansas, and thereby indirectly acquire First National Bank & Trust Company, Parsons, Kansas.

In connection with this application, Applicants also propose to acquire Century BancShares, Inc., Parsons, Kansas, and thereby engage in the sale of credit related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–21646 Filed 9–8–92; 8:45 am]

BILLING CODE 6210–01–F

Mansura Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 2, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Mansura Bancshares, Inc., Mansura, Louisiana; to acquire 9.69 percent of the voting shares of Union Bancshares, Inc., Marksville, Louisiana, and thereby indirectly acquire Union Bank, Marksville, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. H & H Holding Company, Alton, Illinois; to become a bank holding company by acquiring at least 86.9 percent of the voting shares of Greene County National Bank in Carrollton, Carrollton, Illinois, and 100 percent of the voting shares of Godfrey State Bank, Godfrey, Illinois.

Board of Governors of the Federal Reserve System, September 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–21647 Filed 9–8–92; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Record of Decision

ACTION: Notice.

The General Services Administration (GSA) in cooperation with the Department of the Treasury's Internal Revenue Service (IRS) announces its decision to purchase land at the Metroview site in Prince George's County, Maryland, to consolidate the IRS National Office.

The 30.22 acre Metroview site, is located between Harkins Road and Ellin Road approximately 230 feet northwest of the New Carrollton Metrorail/Amtrak Station.

The IRS National Office is currently housed in 13 leased and 3 Government-owned buildings throughout Washington, DC (11 locations) and Northern Virginia (5 locations); in addition, space procurements are underway for 4 additional locations. A large percentage of these leases will expire during the next 3 to 5 years. Originally acquired at favorable rates for 15 or 20-year terms, these leases would be replaced at rates reflecting the sharp rise in rental rates following steady economic growth in the Washington area. In fulfilling its role of satisfying Federal work space requirements in a cost-effective manner, GSA has noted with concern its steeply rising leasing costs, and has decided to consolidate the IRS National Office in a Government-owned facility.

The proposed building will contain approximately 1,200,000 gross square feet (gsf) of space with approximately 885,000 occupiable square feet (osf) of space. The building will house 4,444 employees and will provide up to 2,600 parking spaces. The Metroview site has potential for the construction of an

additional 300,000 gsf with approximately 221,000 osf of office space and 650 parking spaces. The building will include the typical Federal building amenities and support systems; Office space, cafeteria, fitness center, daycare facility, data processing area, and training/conference facilities.

GSA's decision to purchase land at the Metroview site is in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and GSA Order PBS P 1095.4B, GSA.

Alternative Considered

The Government received four proposals in response to its Solicitation for Offers. Each site evaluated in the Environmental Impact Statement (EIS) also satisfied the Government's site selection criteria and was considered as a potential IRS site.

The EIS evaluated potential environmental impacts which would result from the proposed project. These include, but were not limited to, short-term impacts during construction as well as long-term changes in traffic, socio-economic concerns and physical conditions in the areas.

The alternative sites considered were the following:

Metroview

This 30.22-acre site is located between Harkins Road and Ellin road, approximately 230 linear feet northwest of the New Carrollton Metrorail/Amtrak Station. The site is currently zoned M–X–T (mixed use development). The area consists primarily of residential and office industrial development. Office buildings and the Ardwick/Ardmore Industrial Park are within one mile of the site. There are no wetlands on the site. The site is outside the 100-year floodplain area. The site is expected to meet air quality standards in 1996. There exist adequate community and utility services. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

First Capital Realty

This 73.69-acre site is located approximately 1,200 feet south of Central Avenue between Addison Road and Rollins Avenue. The First Capital Realty site is currently zoned R–R (rural residential). The area is primarily residential in character. There is no existing commercial development and little industrial development within one mile of the site. There are wetlands areas within the northwest and southeast portions of the site. Portions of the site are subject to flooding. The site is expected to exceed air quality standard in 1996. There exist adequate community and utility services. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

Meridian

This 45-acre site is located adjacent to Central Avenue between Shady Glen Drive and the Addision Road Metrorail Station. The site is currently zoned M–X–T (mixed use development). The area is primarily residential in character. There is no existing commercial development and limited industrial development within one mile of the site. There are wetland areas along steeply eroded stream and bank areas. A ditch crossing the site east to west carries storm water. The site is expected to exceed air quality standards in 1996. There exist adequate community and utility services. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

Riverside

This 47.17-acre site is located between Kenilworth Avenue, Calvert Road, Baltimore Avenue, and East-West Highway. The site is currently zoned M–X–T (mixed use development). There are two well-defined office/industrial areas located within one mile of the site. Wetland areas along the northern boundary of the site are permitted to be filled. Flooding occurs in the north and northeastern portions of the site. The site is expected to exceed air quality standards in 1966. There exist adequate community services. The utilities infrastructure is currently under construction. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

No Action Alternative

The EIS also considered a No Action Alternative, i.e., no change in the current pattern of office space usage by the IRS National Office. This alternative was rejected because of GSA's goal of consolidating government agencies to make better use of space and increase government efficiency. Additionally, this action would necessitate the continued leasing of unsuitable space at high cost to the Government.

Preferred Alternative

The Metroview site was identified as both the "environmentally preferred alternative" and GSA's preferred alternative. The site was identified as the "environmentally preferred alternative" in the Draft Environmental Impact Statement distributed to the public on March 20, 1992, and in the Final Environmental Impact Statement distributed to the public on July 17, 1992. The site was identified as GSA's preferred alternative in the Site Acquisition Report issued by GSA in September 1992. The decision was based on other technical and economic factors included in GSA's site selection criteria.

Relevant GSA Site Selection Factors

During the technical evaluation of the sites, GSA considered other factors such as: (i) The site location (in Prince George's County, Maryland, not exceeding 2,000 convenient walkable feet from a Metrorail station); (ii) the existance of good marketable title to the site without defects or objection restrictions; (iii) the absence of hazardous and toxic materials on the site; and (iv) the site's development potential to support at least 1.2 million gsf of office space and related parking. GSA also evaluated the sites based on economic factors such as the cost for land and road infrastructure improvements.

Metroview Environmental Mitigation

All practicable means to avoid or minimize impacts to the Metroview site are being considered in the development of this project. As part of the action, GSA worked closely with the Prince George's County government and the Maryland-National Capital Park and Planning Commission to identify the necessary off-site road infrastructure improvements; GSA has obtained the developer's agreement to accomplish these improvements in a timely manner. The off-site infrastructure improvements will allow the site to operate at a level of service acceptable to Prince George's County.

Although an increase in carbon monoxide from vehicle exhaust will occur as a result of the projected increases in traffic in the area where the Metroview site is located, the site is expected to meet air quality standards in 1996.

GSA and IRS will implement a Transportation Management Plan (TMP) that will, at a minimum, include a market-based fee system designed to encourage high-occupancy vehicle use (carpool and vanpool), a carpool and vanpool incentive program, and reservation of approximately 90 percent of on-site parking for carpools and vanpools. The TMP may also include implementation of a "guaranteed ride

home program," preferential parking locations for high-occupancy vehicles, vehicle storage, showers and locker room facilities for bicycle commuters, and additional TMP elements designed to increase the use of public transportation. GSA and IRS will coordiante preparation of the TMP with Prince George's County and with the National Capital Planning Commission.

Further, the Metroview site is mostly a wooded site, with slopes of 10 to 15 percent. GSA included in the Request for Proposals a requirement that the design development respect and reinforce the natural features and characteristics of that site. The site's natural features will be preserved to the greatest extent possible.

GSA and the IRS believe that there are no outstanding environmental issues to be resolved with respect to the IRS National Office Consolidation in Prince George's County, Maryland. Questions regarding the EIS prepared for this action may be directed to Ms. Sonia I. Hersha, NCR Planning Staff (WPL), GSA National Capital Region, room 7618, 7th and D Streets, SW., Washington, DC 20407, telephone 202/708–5334.

Dated: September 2, 1992.

James C. Handley,

Regional Administrator, General Services Administration.

[FR Doc. 92–21641 Filed 9–8–92; 8:45am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Industry Exchange Meetings Concerning Avoidance of Illegal Animal Drug Residues through Proper Drug Use; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding three public meetings on the avoidance of illegal animal drug residue through proper drug use. These meetings are the last of a series of six meetings organized by FDA to help the agency prepare regulatory and educational initiatives directed at the on-farm use of animal drugs.

DATES: The industry exchange meetings will be held on Tuesday, September 22, 1992; Thursday, September 24, 1992; and Friday September 25, 1992, from 10 a.m. to 2 p.m.

ADDRESSES: The industry exchange meetings will be held at the following locations:

September 22, 1992: The Elks Lodge, 999 North M St., Tulare, CA 93275.

September 24, 1992: Holiday Inn, 1911 Interstate 40 and Ross St., Amarillo, TX 79102.

September 25, 1992: University of South Florida, University Center, 2d floor ballroom, 4202 Fowler Ave., Tampa, FL 33620.

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Food and Drug Administration (HFV–244), Center for Veterinary Medicine, 7500 Standish Pl., Rockville, MD 20855, 301–295–8769.

Those persons interested in attending these meetings should call the contact person listed above to preregister.

SUPPLEMENTARY INFORMATION: FDA has organized a series of six industry exchange meetings to discuss avoidance of illegal animal drug residues through proper drug use. These meetings will be held at six separate locations. The agency announced the first three meetings in the **Federal Register** of August 14, 1992 (57 FR 36653). This notice announces the last three meetings.

FDA is responsible for programs and regulatory activities associated with prevention of illegal drug residues in food derived from treated animals. Illegal drug residues in edible products can constitute a health hazard to persons consuming such food. The principal causes of illegal drug residues are the failure to observe proper withdrawal periods prior to slaughter or milk discard times, the failure to follow label dosage directions, the failure to use drugs properly, and negligence. Regardless of the reason, it is FDA's policy to hold responsible any individual in the production and marketing chain who can be shown to have caused (by an act of commission or omission) illegal residues in edible animal products. These individuals may be charged with violations of the Federal Food, Drug, and Cosmetic Act.

As a partial response to a task force report concerning residue avoidance, FDA will be developing specific guidance for its investigators concerning proper animal drug use by producers of livestock and poultry. This information will be used to determine when it is appropriate to take regulatory action against an individual associated with a violative residue in meat, milk, or eggs. Before preparation of this guidance, the agency is holding a series of meetings to obtain information from interested persons concerning proper animal drug use by livestock producers. Information is needed by the agency on the following subjects: drug use, drug storage, recordkeeping, and animal identification. The information obtained at these meetings will also support development of educational initiatives directed at the on-farm use of animal drugs.

Dated: September 2, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–21599 Filed 9–8–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92D–0323]

Suggested State Regulations for Control of Radiation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Volume I (Ionizing Radiation) of the publication entitled "Suggested State Regulations for Control of Radiation," 8th edition, (HHS publication FDA 91–8203). This edition has been prepared to reflect changes in Federal regulations and performance standards not contained in the previous edition. Copies have been distributed to the State and local radiation control agencies by the Conference of Radiation Control Program Directors, Inc.

ADDRESSES: The publication "Suggested State Regulations for Control of Radiation," 8th ed., vol. I (Ionizing Radiation) may be purchased from Superintendent of Documents, U.S. Government Printing Office (GPO), Washington DC 20402, 202–783–3238. Orders should reference GPO Stock No. 017–015–00240 and include payment of $37 for each copy of the document. Also, the document may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 92–121029 and include payment of $59 for each copy of the document. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm.

1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. The "Suggested State Regulations for Control of Radiation," 8th ed., vol. I (Ionizing Radiation) and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles P. Froom, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: The "Suggested State Regulations for Control of Radiation" was initially published in 1962 by the Council of State Governments with the advice and assistance of the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission) and the U.S. Public Health Service. The suggested regulations were updated and revised in 1964, 1966, 1970, 1974, 1978, 1982, 1984, and 1990. Since 1970, development and revision of the "Suggested State Regulations for Control of Radiation"has been accomplished by working groups of the Conference of Radiation Control Program Directors, Inc. (CRCPD), representing the State and local agencies, with the support and assistance of the Nuclear Regulatory Commission (NRC); the Center for Device and Radiological Health, FDA; and the Environmental Protection Agency (EPA).

The Atomic Energy Act of 1954, as amended in section 274 (42 U.S.C. 2021), authorizes NRC to cooperate with the States in formulating standards for protection against hazards of radiation. FDA, under the broad responsibility conferred by the Public Health Service Act (42 U.S.C. 241 and 243), advises and promotes cooperation between the States on matters relating to protecting the public against specified radiation hazards. The Radiation Control for Health and Safety Act of 1968 further provides for the establishment by FDA of an electronic product radiation control program designed to protect the public health and safety (21 U.S.C. 360ii and 360jj (previously 42 U.S.C. 263d and 263e)). In implementing this program, the agency is authorized to make such recommendations relating to such hazards and controls as it considers appropriate. Acting on these authorities and responsibilities, NRC and the FDA's Center for Devices and Radiological Health cooperated with CRCPD and EPA in the preparation of these model State regulations.

This edition and previous revisions of the "Suggested State Regulations for Control of Radiation" have been prepared to be consistent with Federal radiation control regulations issued by Federal agencies to carry out responsibilities vested in them by law. Changes in Federal regulations, radiation guidance, or recommended standards, and the experience and suggestions of the State radiation control agencies and others provide a basis for revision of the "Suggested State Regulations for Control of Radiation." This edition reflects amendments to the NRC regulations (10 CFR chapter I), and the electronic product radiation safety performance standards issued by FDA (21 CFR part 1020).

Purpose of Suggested State Regulations for Control of Radiation

The Suggested State Regulations are basically designed as guidance for developing and amending of State radiation control regulations to encourage uniform regulations among the States, to complement Federal regulations, and to help States maintain regulations compatible with, identical to, or as effective as, Federal regulations. Because of requirements placed on State regulatory agencies in promulgating regulations consistent with the standards of a number of Federal agencies, it is especially important that Federal and State agencies cooperate in their development. These model regulations can serve as a means of assisting the States in issuing regulations that are consistent with Federal radiation control standards to the extent required, for example:

1. The Atomic Energy Act of 1954, as amended by Pub. L. 86–373, specifies in section 274 (42 U.S.C. 2021), as a condition for a State to enter into an agreement with NRC to assume regulatory responsibility for byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass, that the State program be compatible with the NRC's program for regulation of such material, and that the State program be adequate to protect the public health and safety with respect to the materials covered by the agreement.

2. The Federal Food, Drug, and Cosmetic Act specifies in section 542 (previously, section 360F of the Public Health Service Act (42 U.S.C. 263n), as added by the Radiation Control for Health and Safety Act of 1968, Pub. L. 90–602), that no State or political subdivision of a State may either establish or continue in effect any standard that applies to the same aspect of performance of an electronic product for which a Federal standard is in effect and which is not identical to the Federal standard.

3. Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) indicates that, for a State plan to be approved, the State regulations must be at least as effective as the Federal standards issued under section 6 of this act which relate to the same issues.

These statutory requirements emphasize the importance of cooperation among the Federal agencies, and with the State representatives, to ensure consistency in radiation control regulations.

Scope and Content

The "Suggested State Regulations for Control of Radiation," includes a new part T—Transportation of Radioactive Material and a new section F.11 on Computed Tomography X-Ray Systems. Part G, retitled "Use of Radionuclides in the Healing Arts," has been extensively revised to incorporate the amendments to 10 CFR parts 30, 31, 32, and 35 on Medical Use of Byproduct Material. Part U—Licensing Requirements for Source Material Milling Facilities, was to be incorporated into "Suggested State Regulations for Control of Radiation," 8th ed. However, in the final stages of approval, legal questions regarding aspects of implementation of the original legislation created major difficulties in obtaining Federal concurrence on the final draft. It was determined necessary to proceed without inclusion of this part with the understanding that part U and the associated rationale would be added at a later date.

Earlier revisions of the "Suggested State Regulations for Control of Radiation" have added new parts including: Part H—Radiation Safety Requirements for Analytical X-Ray Equipment; Part I—Radiation Safety Requirements for Particle Accelerators; Part J—Notices, Instructions, and Reports to Workers; Inspections; Part M—Licensing Requirements for Land Disposal of Radioactive Waste; and Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies. Part J incorporates provisions of 10 CFR part 19 of NRC's regulations. These provisions are comparable to those of the Department of Labor for inspections pursuant to the Occupational Safety and Health Act of 1970, under 29 CFR part 1903. Volume I (Ionizing Radiation) of

the "Suggested State Regulations for Control of Radiation," 8th ed., consists of the following parts:

Part A—General Provisions.
Part B—Registration of Radiation Machine Facilities and Services.
Part C—Licensing of Radioactive Material.
Part D—Standards for Protection Against Radiation.
Part E—Radiation Safety Requirements for Industrial Radiographic Operations.
Part F—X Rays in the Healing Arts.
Part G—Use of Radionuclides in the Healing Arts.
Part H—Radiation Safety Requirements for Analytical X-Ray Equipment.
Part I—Radiation Safety Requirements for Particle Accelerators.
Part J—Notices, Instructions, and Reports to Workers; Inspections.
Part M—Licensing Requirements for Land Disposal of RadioactiveWaste.
Part T—Transportation of Radioactive Material.
Part U—Licensing Requirements for Source Material Milling Facilities (to be added).
Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies.

A rationale is included for each of the revised and new part(s) of the "Suggested State Regulations for Control of Radiation," 8th ed., with documentation on the basis for the amendments or new provisions. The amendments to Federal standards, which served as a basis for changes and additions to the "Suggested State Regulations for Control of Radiation," are referenced in the rationale to provide needed background information. Certain proposed changes were not included in the document at this time, but were recorded in the rationale for future consideration by the CRCPD and appropriate Federal agencies.

Use of Suggested State Regulations

The Suggested State Regulations provide a comprehensive set of ionizing radiation control regulations covering a number of sources, including performance requirements applicable to equipment, safe use of radiation sources, and requirements on the facility wherein the sources are used. Thus, they provide a comprehensive code of radiation control provisions to ensure, at the State level, protection of the public health from radiation. In addition, these model regulations can be used as a resource document by Federal agencies using radiation sources in instituting a total radiation safety program for Federal facilities. For those States that have or are entering into an agreement with NRC, the model regulations include provisions for the control of byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass; however, these materials when used within Federal agencies are under the direct control of NRC. This model can serve as a basis for meeting the requirements of section 19 of the Occupational Safety and Health Act of 1970 and Executive Order 12196 (Occupational Safety Second Health Programs for Federal Employees), as they relate to radiation control, enabling each Federal department and agency to establish an occupational safety and health program.

In essence, these suggested radiation control regulations can be used as: (1) An aid in revising current State codes, (2) an aid in developing comprehensive codes at the State level when no regulations are in force, (3) an aid to Federal installations, or (4) an aid to manufacturers to know what type of controls may exist at the State level. It is recommended that applicable Federal or State agency regulations also be consulted directly.

Review and Comments

Interested persons are invited to submit written comments and recommendations at any time regarding this document to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document. Each recommendation should be supported by appropriate rationale and background data that clearly establishes the scientific, technical, and public health bases for the recommendation. Such comments will be provided to the appropriate working groups and kept on file for consideration by those individuals given responsibility for review and development of their part of the "Suggested State Regulations for Control of Radiation."

Dated: August 31, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21600 Filed 9-8-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 57 FR 32803-08, July 23, 1992) is amended to reflect title changes for three organizations with the Bureau of Primary Health Care, Health Resources and Services Administration.

Under Section HB-20, Functions, change the following organizational titles within the *Bureau of Primary Health Care (HBC):*

1. Change the organizational title of the *Division of Primary Care Services (HBC4)* to read *Division of Community and Migrant Health (HBC4);*

2. Change the organizational title of the *Division of Health Services Scholarships (HBC7)* to read *Division of Scholarships and Loan Repayments (HBC7); and*

3. Change the organizational title of the *Division of Special Populations Program Development (HBCB)* to read *Division of Programs for Special Populations (HBCB).*

All authorities continue in effect in the retitled organizations that were in existence prior to the retitling.

This retitling is effective upon date of signature.

Dated: August 31, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-21575 Filed 9-8-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, October 16, 1992. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Divison of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: September 1, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21586 Filed 9–8–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 11, 1992, Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 11, 1992 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 11 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Susan E. Feinman, Scientific Review Administrator, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, room 809, Bethesda, Maryland 20892 (301/402–0944) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21791 Filed 9–8–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 17–18, 1992, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 17 from 9 a.m. to approximately 3 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 17, from approximately 3:00 to adjournment on September 18, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. B1C02, NIH, Bethesda, MD 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21790 Filed 9–8–92; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Privacy Act of 1974; Report of New Routine Uses

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish new routine uses of information maintained in the system of records entitled "Master Representative Payee File (MRPF), HHS/SSA/ORSI, 09–60–0222." We invite public comment on this publication.

DATES: The proposed routine uses will become effective as proposed, without further notice, on October 9, 1992, unless we receive comments on or before that date which would warrant our preventing the routine uses from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Sailor, Division of Benefit Continuity, Office of Retirement and Survivors Insurance, Social Security Administration, 3–A–21 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–7884.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Uses

On April 12, 1991, we published a notice of the MRPF in the **Federal Register** (FR) (56 FR 14941, April 12, 1991). The MRPF maintains information which we use to asssist us in appointing representative payees for Social Security claimants and beneficiaries who are incapable of handling their Social Security benefits. We are proposing to revise the notice of the system to include five new statements of routine use which allow the disclosures described below. In order to establish the routine uses, SSA must publish a notice of the routine uses in the FR. These routine uses which will appear as

numbers 11 through 15 in the MRPF are as follows:

11. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

In the administration of SSA programs, we find that it is not always administratively feasible nor cost effective to do certain operations "in-house." In such instances, we may use the services of contractors or other Federal agencies pursuant to interagency reimbursable or nonreimbursable agreements to assist us in performing various SSA functions. This proposed routine use will permit us to disclose to contractors and other Federal agencies selected information from the MRPF about representative payees and payments to Social Security and Supplemental Security Income beneficiaries through representative payees in order to accomplish Social Security programmatic purposes. Decisions will be made during each procurement process or negotiation about the types and amount of information which must be disclosed to the contractor or Federal agency. Disclosures will be limited to the minimum information needed to complete the task.

12. Information may be disclosed to a third party such as a physician, social worker, or community service worker, who has, or is expected to have, information which is needed to evaluate one or both of the following:

a. The claimant's capability to manage or direct the management of his/her affairs.

b. Any case in which disclosure aids investigation of suspected misuse of benefits, abuse or fraud, or is necessary for program integrity, or quality appraisal activities.

We contemplate disclosing information from the MRPF under 12.a. only to the extent necessary to make decisions about the need for a representative payee. We will make disclosures of information under 12.b. only as needed to investigate reports of programmatic abuse or fraud and to otherwise ensure the integrity or improve the quality and efficiency of the representative payee selection and monitoring process.

13. Information pertaining to the identity of a payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identity of the beneficiary, may be disclosed to a third party where necessary to obtain information on employment, sources of income, criminal justice records, stability of residence and other information relating to the qualifications and suitability of representative payees or representative payee applicants to serve as representative payees or their use of the benefits paid to them under section 205(j) or section 1631(a) of the Social Security Act.

We contemplate disclosing information under this routine use from the MRPF when necessary to obtain the information we need to make sound representative payee appointments and to determine whether representative payees are fulfilling their fiduciary obligations to beneficiaries and otherwise are qualified and suitable to continue serving as representative payees. Information disclosed under this provision would be limited to the identity of the payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identity of the beneficiary as stated in this routine use.

Information pertaining to the address of a representative payee applicant or a selected representative payee may be disclosed to a claimant or other individual authorized to act on his/her behalf when this information is needed to pursue a claim for recovery of misapplied or misused benefits.

We contemplate disclosing information from the MRPF under this routine use only as necessary to help protect the claimant's property rights to benefits determined to have been misused or misapplied by a representative payee. Information disclosed under this provision would be limited to the current address of the representative payee applicant or selected representative payee (if such information is available in the MRPF).

15. Information may be disclosed to the Railroad Retirement Board (RRB) for the administration of RRB's representative payment program.

We contemplate disclosing information to RRB under this routine use only in situations in which a representative payee applicant has filed to serve on behalf of an RRB annuitant and there is information maintained in this system of records about the applicant's qualifications or past performance as a representative payee on behalf of Social Security Supplemental Security Income beneficiaries which should be considered by RRB in evaluating the suitability of an applicant to serve as representative payee for our RRB annuitant.

II. Compatibility of Proposed Routine Uses

We are proposing the routine uses discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for routine uses where the information will be used for a purpose which is compatible with the purpose for which we collected the information. As stated in § 401.310 of our regulation (20 CFR 401.310), we consider disclosures necessary to assist in administering SSA programs and disclosures to assist in administering similar programs of other agencies to be disclosures for compatible purposes.

The proposed routine uses described in item I. above will serve purposes directly relating to SSA programs and the RRB representative payment program to which records in the MRPF relate. Thus, all of the disclosures described in the proposed routine use statements meet the criteria in the Privacy Act for routine uses.

III. Effect of the Proposed Routine Use Disclosures on Individual Rights

As discussed in items I. and II. above, the proposed routine uses will permit SSA to disclose information, as necessary, to assist in the representative payee selection and monitoring process of SSA and the selection process of RRB. All of the disclosures will meet statutory and SSA's regulatory requirements for disclosure. Thus, we do not anticipate that the disclosures would have an unwarranted effect on the privacy or other rights of individuals.

Dated: August 26, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

09-60-0222

SYSTEM NAME:

Master Representative Payee File, HHS/SSA/ORSI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system database will be available by direct electronic access by Social Security field offices (FO). Addresses of FOs can be found by calling the number listed in local telephone directories under "United States Department of

Health and Human Services, Social Security Administration" or under "Social Security Administration."

The database is housed at the National Computer Center, Social Security Administration, 6201 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about persons whose certifications of payment of benefits as representative payees have been revoked or terminated on or after January 1, 1991; persons who have been convicted of a violation of section 208 or section 1632 of the Social Security Act (the Act); persons who are acting or have acted as representative payees, representative payee applicants who were not selected to serve as representative payees, and beneficiaries/applicants who are being served by representative payees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data in this system consist of:

• Names and SSNs (or employer identification numbers (EIN)) of representative payees whose certifications of payment of benefits have been revoked or terminated on or after January 1, 1991, because of misuse of benefits under title II or title XVI of the Act;

• Names and SSNs (or EINs) of all persons convicted of a violation of section 208 or 1632 of the Act;

• Names, addresses, and SSNs (or EINs) of representative payees who are receiving benefit payments pursuant to section 205(j) or section 1631(a)(2) of the Act;

• Names, addresses, and SSNs of individuals for whom representative payees are reported to be providing representative payee services under section 205(j) or section 1631(a)(2) of the Act;

• Names, addresses, and SSNs of representative payee applicants who were not selected as representative payees;

• Names, addresses, and SSNs of persons who were terminated as representative payees for reasons other than misuse of benefits paid to them on behalf of beneficiaries/recipients;

• Information on the representative payees' relationship to the beneficiaries/recipients they serve;

• Names, addresses, and EINs of organizations authorized to charge a fee for providing representative payee services;

• Codes which indicate the relationship (other than familial) between the beneficiaries/recipients and the individuals who have custody of the beneficiaries/recipients;

• Dates and reasons for payee terminations (e.g., performance not acceptable, death of payee, beneficiary in direct payment, etc.), and revocations;

• Codes indicating whether representative payee applicants were selected or not selected;

• Dates and reasons representative payee applicants were not selected to serve as payees and dates and reasons for changes of payees (e.g., beneficiary in direct payment, etc.);

• Amount of benefits misused;

• Identification number assigned to the claim on which the misuse occurred;

• Date of the determination of misuse; and

• Information about a felony conviction reported by the representative payee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a), 205(j) and 1631(a) of the Act.

PURPOSE(S):

Information maintained in this system will assist SSA in the representative payee selection process by enabling Social Security field offices to more carefully screen applicants and to determine their suitability to become representative payees. SSA also will use the data for management information and workload projection purposes and to prepare annual reports to Congress on representative payee activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below.

1. Information may be disclosed to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

Is a party to litigation or has an interest in such litigation. Disclosure will occur only if SSA determines that the use of such records before the tribunal is relevant and necessary to the litigation, would help in the effective representation of the governmental party, and, in each case, such disclosure is compatible with the purpose for which the records were collected.

2. Information pertaining to an individual may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject of the records.

3. Information may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies under 44 U.S.C. 2904 and 2906, when such disclosure is not prohibited by Federal law.

4. Information may be disclosed to the Department of Veterans Affairs (DVA) Regional Office in the Philippines for the administration of the Social Security Act in the Philippines through services and facilities of that agency.

5. Information may be disclosed to the Department of State for administration of the Social Security Act in foreign countries through services and facilities of that agency.

6. Information may be disclosed to the Department of Interior for administration of the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

7. Information may be disclosed to the American Institute in Taiwan for administration of the Social Security Act in Taiwan through services and facilities of that agency.

8. Information may be disclosed to DOJ for:

(a) Investigating the prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Secretary, and

(c) Investigating issues of fraud or violations of civil rights by officers or employees of SSA.

9. Information about an individual may be disclosed to the Office of the President for responding to an inquiry received from that individual or from a third party acting on that individual's behalf.

10. Information may be disclosed to DVA for the shared administration of that Department's and SSA's representative payee programs.

11. Information may be disclosed to contractors and other Federal Agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

12. Information may be disclosed to a third party such as a physician, social worker, or community service worker, who has, or is expected to have, information which is needed to evaluate one or both of the following:

a. The claimant's capability to manage or direct the management of his/her affairs.

b. Any case in which disclosure aids investigation of suspected misuse of benefits, abuse or fraud, or is necessary for program integrity, or quality appraisal activities.

13. Information pertaining to the identity of a payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identity of the beneficiary, may be disclosed to a third party where necessary to obtain information on employment, sources of income, criminal justice records, stability of residence and other information relating to the qualifications and suitability of representative payees or representative payee applicants to serve as representative payees or their use of the benefits paid to them under section 205(j) or section 1631(a) of the Act.

14. Information pertaining to the address of a representative payee applicant or a selected representative payee may be disclosed to a claimant or other individual authorized to act on his/her behalf when this information is needed to pursue a claim for recovery of misapplied or misused benefits.

15. Information may be disclosed to the Railroad Retirement Board (RRB) for the administration of RRB's representative payment program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in magnetic media (e.g., magnetic tape and disc).

RETRIEVABILITY:

Data will be retrieved from the system by the name, SSN or EIN, and the ZIP code (in a situation where the representative payee is an institution) of the representative payee, or the name or SSN of the beneficiary/recipient.

SAFEGUARDS:

Safeguards for automated data have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. Magnetic tapes are in secured storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The magnetic media are updated periodically. Out-of-date tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associated Commissioner, Office of Retirement and Survivors Insurance, 6401 Security Boulevard, Baltimore, MD 21235

NOTIFICATION PROCEDURE:

An individual can determine if this system contains data about him/her by writing to the system manager at the address shown above and providing his/her name, address and SSN or EIN. An individual requesting notification of data in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via telephone must furnish a minimum of his/her name, SSN or EIN, date of birth, and address in order to establish identity, plus any additional information which may be specified in this section. An individual requesting notification via mail must submit sufficient evidence (i.e., the individual's notarized signature or a signed statement that he/she is the individual to whom the record pertains and that he/she understands that there are criminal penalties for making a knowing and willful request for access to records concerning another individual under false pretenses) to establish identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures above. Also, a requester should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, an individual contesting records in the system should identify the record, specify the information he/she is contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data in this system will be obtained from representative payee applicants and representative payees, the HHS Office of Inspector General, and other SSA systems of records (e.g., Claims Folder System (09–60–0089), Master Beneficiary Record (09–60–0090), Supplemental Security Income Record (09–60–0103), Master Files of SSN Holders (09–60–0058), Recovery, Accounting for Overpayments (09–60–0094)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Billing Code: 4190–29

[FR Doc. 92–21571 Filed 9–8–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collections Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget (OMB) for approval under the provision of the Paperwork Reduction Action (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau of Indian Affairs' Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Office and to the Office of Management and Budget, Paperwork Reduction Project (1076–0017), Washington, DC 20503, Telephone 202–395–7340.

Title: Financial Assistance and Social Services Program, 25 CFR 20.

OMB Approval Number: 1076–0017.

Abstract: These forms request financial, demographic, and employment information on clientele for the purpose of determining eligibility to receive financial assistance. These forms allow the Bureau Social Worker to determine the degree of unmet need and arrange for a monthly payment.

Bureau Form Number: 5–6601, 5–6603, 5–6604, 5–6605.

Frequency: Annually.

Description of Respondents: Individuals whose needs have not been met and some form of subsistence is required.

Estimated Completion Time: 40 minutes.

Annual Response: 234,000.

Annual Burden Hours: 39,200.

Bureau Clearance Officer: Gail Sheridan (202) 208–2721.

Dated: July 30, 1992.

Ron Eden,

Director, Office of Tribal Services.

[FR Doc. 92-21631 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-920-4141-02; CACA 17570 and CACA 8713]

Revocation of the Brawley and the Westmorland Known Geothermal Resource Areas; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revocation.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, and Secretarial Orders 3071 and 3087, the following described lands in the Brawley and the Westmorland Known Geothermal Resource Areas are revoked in their entirety.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Tanina Scimemi, Bureau of Land Management, California State Office, Division of Mineral Resources, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4735.

Brawley Known Geothermal Resource Area

San Bernardino Meridian

T. 12 S., R. 14 E.,
Secs. 27 through 29 and 31 through 34.
T. 13 S., R. 14 E.,
Secs. 2 through 30 and 33 through 35.

The area described contains 28,865 acres more or less.

Westmorland Known Geothermal Resource Area

San Bernardino Meridian

T. 13 S., R. 13 E.,
Sec. 9, E½, also described as lots 1, 2, 11 through 15, 25 through 30, E½NE¼, NE¼SE¼;
Sec. 10, all;
Sec. 11, NW¼, S½, also described as lots 3 through 7, 14 through 29, N½NW¼, NE¼SW¼, NE¼SE¼;
Sec. 14, N½, SW¼, also described as lots 1 through 16, 19 through 26, NE¼NE¼, NE¼NW¼, NE¼SW¼;
Sec. 15, all;
Sec. 16, E½, also described as lots 1, 2, 14 through 18, 27 through 31, E½NE¼, NE¼SE¼;
Sec 22, N½, also described as lots 1 through 21.

The area described contains 3,200 acres more or less. The subject lands will be made available to the first qualified applicant under the regulation appearing in 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

Dated: August 25, 1992.

Robert M. Anderson,

Deputy State Director, Mineral Resources.

[FR Doc. 92-21307 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-020-00-4370-12: G2-419]

Oregon: Wild Horse Gathering Schedule; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Public Law 92-195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY 93.

EFFECTIVE DATE: September 29, 1992, 3 p.m. to 4:30 p.m.

ADDRESSES: The meeting will take place at the BLM Burns District Office in Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Donald R. Cain, Associate District Manager, Burns District, Bureau of Land Management, HC 74-12533 Hwy. 20 West, Hines, Oregon 97738—Telephone (503) 573-5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in Fiscal year 1993 will be discussed along with other aspects of the program and adoption process. Information concerning the gathering of all Oregon wild horse herds will be presented at the meeting. The total number of horses expected to be gathered will be between 350 and 800 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, HC 74-12533 Hwy. 20 West, Hines, Oregon 97738 by September 22, 1992. Written statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: August 24, 1992.

Donald R. Cain,

Acting District Manager.

[FR Doc. 92-21564 Filed 9-8-92; 8:45 am]

BILLING CODE 4310-84-M

[MT-060-02-4333-11]

Montana Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that effective immediately the use of off-road vehicles (ORVs) is limited on public lands within the Chain Buttes/Dunn Ridge area, in northern Petroleum County, Montana. This will be in effect during the bird and big game hunting season as established by the Montana Department of Fish, Wildlife and Parks in accordance with the authority and requirements of regulation 43 CFR 8364.1.

DATES: This designation will only be in effect during the bird and big game hunting season. The designation will terminate on December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Bureau of Land Management (BLM), Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The 92,810 acre area is administered by the BLM, Judith Resource Area, Lewistown District. This designation is the result of a cooperative effort among BLM, private landowners, U.S. Fish and Wildlife Service, Montana Department of Fish, Wildlife and Parks, and Montana Department of State Lands. The purpose of the designation is to prevent damage to soil, vegetative and scenic resources, to open additional private and state lands for hunting, and to reduce landowner/recreationist conflicts so as to provide a higher quality hunt.

The off-road vehicle limitation area is located in northern Petroleum County, Montana. It includes all public lands administered by the BLM north of the Crooked Creek and Dunn Ridge roads.

Hunting within the described block will be subject to the following restrictions:

1. No motorized vehicle use is allowed on closed roads with the exclusive exception of retrieving downed big game. Big game retrieval is allowed between 10 a.m. and 3 p.m. daily on

open or closed roads. Prior to or after these hours, motorized vehicles are not permitted on closed roads or off roads. No off road vehicle use will be allowed on any lands within this block management area.

2. Camps involving motorized travel must be within 100 yards of designated routes.

3. Camping is prohibited on Montana Department of State Lands property.

4. A recreational use license is required to hunt or fish on Montana Department of State Lands property.

5. Limitations and regulations as found in 43 CFR part 8340 apply.

Dated: August 31, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-21629 Filed 9-8-92; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Meeting: Klamath Fishery Management Council

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resource Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8 a.m. to 5 p.m. on Tuesday, September 29, 1992.

PLACE: The meeting will be held at the Brookings Inn, Highway 101 North, Brookings, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639) The Council will meet to review their final long range plan and discuss the need for a successor to the five year harvest allocation agreement. The council may adopt goals and a process to follow to begin writing a new five year agreement.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-21642 Filed 9-8-92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.—Motor Passenger & Water Carriers,* 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-20136, filed August 24, 1992. F. E. Kaiser—Continuance in Control—SGK, Inc., d/b/a Grayline of San Antonio. Applicant's representative: Jerry Prestridge, 500 West Sixteenth Street, Suite 101, Austin, TX 78767. F. E. Kaiser (Kaiser), a non-carrier individual, controls through stock ownership Kerrville Bus Company, Inc. (Kerrville) (MC-27530), and through stock ownership and partnership interest, Jefferson Partners, d/b/a Jefferson Lines (Jefferson) (MC-252540), motor common and contract carriers of passengers. Kaiser's control of Kerrville and Jefferson was approved in MC-F-20061. Kaiser owns all of the issued and outstanding capital stock of SGK, Inc., d/b/a Grayline of San Antonio (SGK) (MC-255435), a new carrier seeking its initial common carrier authority to transport passengers, in charter and special operations, between points in the United States. Upon issuance of authority to SGK, Kaiser will be in control of three carriers.

Decided: September 1, 1992.

By the Commission, the Motor Carrier Board.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21664 Filed 9-8-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,369]

Microflite Simulation International a/k/a AAI/Microflite Simulation International Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on March 27, 1991 applicable to all workers of Microflite Simulation International, Binghamton, New York. The notice was published in the **Federal Register** on April 12, 1991 (56 FR 14956).

New information received from the company shows that it was purchased by the AAI Corporation and the company has the new name of AAI/Microflite Simulation International. AAI Microflite has the same workforce and produces the same products as before the purchase. The review shows that AAI Microflite meets all the requirements for a successor-in-interest firm.

The amended notice applicable to TA-W-25,369 is hereby issued as follows:

"All workers of Microflite Simulation International, also known as (a/k/a) AAI/Microflite Simulation International, Binghamton, New York who become totally or partially separated from employment on or after January 25, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this August 24, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21638 Filed 9-8-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,449; Mountain Fir Lumber Co., Inc. Tygh, OR

TA-W-27,250; Flour City Architectural Metals, Minneapolis, MN

TA-W-27,500; Damron Products, Butler, PA

TA-W-27,272; Canton Drop Forge, Canton, OH

TA-W-27,420; Shepard Niles, Inc., Montour Falls, NY

TA-W-27,254; Devlieg-Bullard Service Group, Muskegon Heights, MI

TA-W-27,352; The Goodyear Tire & Rubber Co., Madisonville, KY

TA-W-27,430; Pope & Talbot, Ladysmith, WI

TA-W-27,431; Aberdeen Petroleum (USA), Inc., Denver, CO

TA-W-27,423; Pirelli Armstrong Tire Corp., Des Moines, IA

TA-W-27,406; Smith International, Inc., Ponca City, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,422; Secorp Industries, Partnership, Lafayette, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,417; Schitzer U.S., Inc., Rolla, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,403; Pennzoil Exploration & Production Co., Houston TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-27,451; Phillips 66 Co., Phillips Petroleum Co., Advanced Composites Center, Bartlesville, OK

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27,255; Triquint Semiconductor, Inc., Packaging Group, Beaverton, OR

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27,377; Dresser Industries, Guiberson Div., Wichita Falls Service Center, Wichita Falls, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, of threat thereof, and to the absolute decline in sales or production.

TA-W-27,379; Dresser Industries, Guiberson Div., Manufacturing Center, Dallas, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

TA-W-27,372; Tecumseh Products Co., Peerless Gear Div., Clinton, MI

A certification was issued covering all workers separated on or after March 30, 1991.

TA-W-27,433; ASARCO, Inc., Galena Unit, Wallace, ID

A certification was issued covering all workers separated on or after June 18, 1991.

TA-W-27,442; Frontier Exploration, Inc., Englewood Co

A certification was issued covering all workers separated on or after June 10, 1991.

TA-W-27,438, TA-W-27,439; Grace Petroleum Corp., Oklahoma City, OK and Jackson, MS

A certification was issued covering all workers separated on or after June 17, 1991.

TA-W-27,408; Cluett Peabody & Co., Inc., The Boulder Ridge Dr Facility, Atlanta, GA

A certification was issued covering all workers separated on or after July 29, 1992.

TA-W-27,440; Geotrace Technologies, Inc., Denver, CO & Operating out of The Following Locations: A; Houston, TX, B; Dallas, TX,

A certification was issued covering all workers separated on or after June 19, 1991.

TA-W-26,378; Glassboro Shirt Co., Glassboro, NJ

A certification was issued covering all workers separated on or after June 3, 1991.

TA-W-26,556; Roydon Wear, Inc., Soperton, GA

A certification was issued covering all workers separated on or after July 20, 1991.

TA-W-27,434; Pittsburgh Forgings, Coraopolis, PA

A certification was issued covering all workers separated on or after June 16, 1991.

TA-W-27,354; Flournoy Drilling Co., Alice, TX

A certification was issued covering all workers separated on or after May 29, 1991.

TA-W-27,400; Ballet Makers, Inc., Fairlawn, NJ

A certification was issued covering all workers separated on or after June 4, 1991.

TA-W-27,235; United Stars Industries, Inc., Beloit, WI

A certification was issued covering all workers separated on or after April 19, 1992.

I hereby certify that the aforementioned determinations were issued during the month of August 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 31, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21636 Filed 9-8-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Award

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to The Institute for Workplace Learning of the American Society for Training and Development of Alexandria, Virginia for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA)

DATES: It is anticipated that this grant award will be executed by September 25, 1992, and will be funded for twelve months. Submit comments by 4:45 p.m. (Eastern Time), on September 24, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: US Department of Labor, Employment and Training Administration, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Willie Harris; Reference FR-DAA-004.

SUPPLEMENTAL INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to The Institute for Workplace Learning of the American Society for Training and Development. The Grantee shall extract multicultural instruments for dissemination to the public sector. The compilation of multicultural programming tools will represent the state-of-the-art in the private sector and will be complied in a practitioners toolkit. This kit will be made available to JTPA staff members throughout the nation, thus providing a valuable resource for the JTPA system, as well as, providing JTPA practitioners with information they can share with employers in need of Technical Assistance.

Funds for this activity are authorized by the Job Training Partnership Act, as amended, Title IV—Federally Administered Programs. The proposed funding is approximately $92,000 for twelve months.

Signed at Washington, DC on August 27, 1992.

James C. DeLuca,

ETA Grant Officer.

[FR Doc. 92-21637 Filed 9-8-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 17, 1992; 10 a.m. to 5 p.m. September 18, 1992; 8:30 a.m. to 5 p.m.

Place: Holiday Inn, The Governor's House, Rhode Island Avenue at 17th Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Drs. John B. Scalzi and Ken P. Chong, Program Directors, Division of Mechanical and Structural Systems, room 1108, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Large Structural and Building Systems and Structural Systems and Construction Processes research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty arranging a suitable meeting time for all committee members.

Dated: September 3, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-21674 Filed 9-8-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Two-Year Trial Program for Conducting Open Enforcement Conferences; Availability of Toll-Free Phone Number

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; supplement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a supplement to its policy statement that establishes a two-year trial program for conducting open enforcement conferences. The purpose of this supplement is to inform the public of the toll-free phone number that may be used to get information on upcoming open enforcement conferences.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-504-2741).

SUPPLEMENTARY INFORMATION: On July 10, 1992 (57 FR 30762), the Commission published a policy statement on the implementation of a two-year trial program to allow selected enforcement conferences to be open to public observation. The policy statement explained that the NRC would announce open enforcement conferences to the public normally at least 10 working days in advance of the enforcement conference through the following mechanisms:

(1) Notices posted in the Public Document Room;

(2) Toll-free telephone messages; and

(3) Toll-free electronic bulletin board messages.

At the time the policy statement was published, the toll-free message systems were not available and a commercial phone number was provided pending establishment of the toll-free message systems. Although the toll-free electronic bulletin board message system is still unavailable, the public may call (800) 952-9674 to obtain a recording of upcoming open enforcement conferences. The NRC will issue another **Federal Register** notice after the toll-free electronic bulletin board message system is established.

Dated at Rockville, MD, this 2d day of September 1992.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 92-21634 Filed 9-8-92; 8:45 am]

BILLING CODE 7590-01-M

Intent To Establish a Local Public Document Room in the Vicinity of Hematite, Missouri, for records pertaining to the Combustion Engineering, Inc. Uranium Fuel Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to establish a local public document room in the vicinity of Hematite, Missouri, for

records pertaining to the Combustion Engineering, Inc. uranium fuel facility.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is intending to establish a local public document room (LPDR) in the vicinity of Hematite, Missouri, for records pertaining to the Combustion Engineering, Inc. uranium fuel facility.

DATES: Comment period expires October 9th, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301–492–4344 or Toll-Free 1–800–638–8081.

Among the factors the NRC will consider in selecting a location for the collection are:

(1) Whether the institution is an established document repository with a history of impartially serving the public;

(2) The physical facilities available, including shelf space, patron work space, and copying and micrographic equipment;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(5) The accessibility of the library to the handicapped;

(6) The proximity of the library to the Combustion Engineering, Inc. facility located in Hematite, Missouri;

Public comments are requested on libraries in the vicinity of the Hematite, Missouri, facility that might be considered for selection as the location for this NRC local public document room collection.

Dated at Bethesda, Maryland, this 3 day of September, 1992.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 92–21635 Filed 9–8–92; 8:45 am]

BILLING CODE 78590–01–M

[Docket No. 030–22060]

Nuclear Energy Services; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that, by letter dated August 14, 1992, Ernest C. Hadley, counsel for We the People, Inc., has requested on behalf of Arnold Gundersen (Petitioner) that the Commission take "prompt and decisive" enforcement action against Nuclear Energy Services (NES): for (1) procedural and license violations, (2) harassment of Mr. Arnold Gundersen for identifying and disclosing those violations, and (3) making material misstatements in connection with the NRC's inspection into these matters. The Petitioner also requests that the Commission immediately review the status of all pending investigations and the reasons for delay in imposing any enforcement actions against NES.

As a basis for this request, the Petitioner asserts that he was terminated from his position as senior vice president with NES after asserting to his management that certain violations had occurred, including that NES had no Radiation Safety Officer, had not posted its license, and had not posted notices to inform employees of their rights. He further asserts that when the Region I inspection report was submitted to NES which erroneously found that there was no merit to his assertions, NES knew, or should have know, that the report contained material misstatements of fact and failed to notify the NRC of such misstatements in violation of 10 CFR 50.9.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement. As provided by § 2.206, appropriate action will be taken on the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 31st day of August 1992.

For The Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 92–21632 Filed 9–8–92; 8:45 am]

BILLING CODE 7590–01–M

Westinghouse Electric Corp.; Receipt of Application for Design Certification

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from Westinghouse Electric Corporation dated June 26, 1992, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for the standard design certification of the AP600 Standard Plant Design. A motive relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The AP600 design is a 600 MWe pressurized water reactor plant design in which passive safety systems are used for the ultimate safety protection of the plant. All of the safety systems are designed to be passive, where natural forces, such as gravity, natural circulation, and stored energy (in the form of pressurized accumulators and batteries), are used as the motive forces of these systems. The AP600 has a number of unique features that distinguish it from both the current generation of LWRs and the evolutionary ALWRs. The AP600 application includes the entire power generation complex, except those elements and features considered site-specific, and is not a modular design in which major components are shared.

The application is incomplete in several important respects, and cannot, therefore, be accepted formally at this time for docketing as a rulemaking petition for design certification. However, the NRC staff plans some substantive review activities at this early stage to give Westinghouse early notice of issues and concerns. A docket number is being assigned to the application to facilitate public access to correspondence and review information. No formal review schedule has been established yet, although, assuming the missing material is supplied by December 15, 1992, and the NRC staff's review progresses favorably, the staff estimates that a final design approval for the design would be issued in June 1995.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW.,

Washington, DC. Previous correspondence on this application is filed under Project Number 676. The new docket established for this application is STN-52-003.

Dated at Rockville, Maryland this 28th day of August 1992.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Standardization Project Directorate, Associate Directorate for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21633 Filed 9-8-92; 8:45 am]

BILLING CODE 7590-01-M

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

SUMMARY: The Presidential Commission on the Assignment of Women in the Armed Forces will hold its next hearing September 10th through September 12th. Presentations will be made on: The 1992 Survey of Army Women; policies pertaining to the assignment of women in the military by representatives from the Air Force, Army, Navy, and Marines; American cultural values by theologians; and an initial briefing on public views about women in the military. Panels of the Commission's four Fact Finding Panels will meet to discuss women's roles in the Armed Forces.

LOCATION: Sheraton/Crystal City Hotel, Ballroom A&B, Eads Street at 18th, Arlington, Virginia 22202, (703) 486-1111.

DATES: Thursday, September 10th & Friday, September 11th, 8 a.m. to 5:30 p.m./General Session, Saturday, September 12th, 8 a.m. to 3:45 p.m./General Session, 3:45 p.m. to COB/panel meetings, (rooms to be announced).

NOTE: The next hearings of the Presidential Commission on the Assignment of Women in the Armed Forces are scheduled in Washington, DC, October 1-3, October 22-24, and November 2-3 or November 9-10. Please call the Commission office for further details.

STATUS: Open to Public.

CONTACT: Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin Kirk (202) 376-6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102-190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W. S. Orr,

Staff Director.

[FR Doc. 92-21732 Filed 9-8-92; 8:45 am]

BILLING CODE 6820-CD-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Repayment of Debt (ORSP).

(2) *Form(s) submitted:* G-421f.

(3) *OMB Number:* 3220-0169.

(4) *Expiration date of current OMB Clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 100.

(9) *Total annual responses:* 100.

(10) *Average time per response:* .08 hours.

(11) *Total annual reporting hours:* 8.

(12) *Collection description:* Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to retired or disabled railroad employees, their spouses and eligible survivors. When the Railroad Retirement Board (RRB) determines that an overpayment of RRA benefits has occurred, it initiates prompt action to notify the claimant of the overpayment and to recover the amount owned the RRB.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-21562 Filed 9-8-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31131; File No. SR-NASD-92-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Periodic Account Statements

September 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change [1] as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Rules of Fair Practice by adding a new section to Article III requiring members to send periodic account statements at least once every quarter to customers having securities positions, funds, or any change in their account from the time the previous statement was sent. Below is the text of the proposed rule change to Article III of the Rules of Fair Practice. Proposed new language is italicized.

Rules of Fair Practice

Article III

Customer Account Statements

Sec. _____

(a) Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account containing a description of any securities positions,

[1] On August 6, 1992, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 reports the results of a member vote on the proposed rule change, which was published for member vote in NASD Notice to Members 92-30 (June 1992). The results of the member vote are as follows: 1827 voting in favor, 329 opposed, and 18 not voting, out of 2174 ballots received.

money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer.

(b) For purposes of this section, the term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(c) For purposes of this section, the term "general securities member" shall refer to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraphs (a)(2) and (a)(3). Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(d) The Association, acting through its Operations Committee, may, pursuant to a written request for good cause shown, exempt any member from the provisions of this section.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD does not currently require members to send periodic account statements to customers. SEC Rule 15c3–2 requires broker-dealers to send statements to customers every three months notifying them that the free credit balances may be used by broker-dealers or paid on demand to the customers. The requirement of Rule 15c3–2, however, only applies if a customer has a free credit balance.

The NASD is aware that some broker-dealers send only the notice required by Rule 15c3–2 of the amount of the customer's free credit balance, but do not send account statements of all securities positions, money balances, and account activity since the last statement. As a result, these customers are not advised of the current status of their accounts, regardless of whether the status of the accounts may have changed.

The NASD believes that, in the interest of customer protection, customers should be more fully informed of the status of their accounts. The NASD is proposing to require that members send periodic account statements at least once every quarter to customers having securities positions, funds, or any change in their account during the period since the previous statement was sent. The proposed rule would require that the statement include a description of all securities positions, money balances, and account activity in the account during the period.

Subsection (a) of the proposed rule would require each general securities member to send a statement of account containing a description of all account activity to each customer not less than once every quarter. The requirement may be met by any account statements showing all account activity that are sent more frequently than quarterly.

Subsection (b) of the proposed rule defines the term "account activity" to include all types of activity that may occur in a securities account with respect to "securities or funds in the possession or control of the member." Thus, this limitation exempts account activity relating to funds or securities not in control of the member, such as direct participation program ("DPP") securities where, after the initial purchase through the distributing broker-dealer, the general partner communicates directly with investors.

Subsection (c) defines the phrase "general securities member" as a member that calculates its net capital under SEC Rule 15c3–1(a), except for paragraphs (a)(2) or (a)(3)—that is, a broker-dealer required to maintain at least $25,000 in net capital. Subsection (c) further defines "general securities member" to *exclude* members who do not carry customer accounts or hold customer funds or securities. Thus, members whose business is limited to the sale of variable contract insurance products, mutual funds and unit trusts, among other products, or who do not carry accounts or hold customer funds or securities, are exempt from the provisions of the rule. The member carrying the account or holding the funds or securities for such member will be responsible for complying with the rule.

The NASD believes that customers of members conducting a limited business are adequately informed and protected under various statutory and regulatory systems. The Investment Company Act of 1940, for example, currently requires issuers of variable contracts, mutual funds, and unit investment trusts to send semi-annual statements of portfolio and financial condition to contractholders and shareholders. Also, activity such as purchase, distribution, or redemption in connection with variable contracts, mutual funds, or unit trusts usually triggers a statement to the customer from the issuer, its agent, or a member firm.

Both subsections (b) and (c) exempt members from the periodic account statements requirement if the member does not carry customer accounts or hold customer funds or securities. The NASD does not believe members, whether limited or general broker-dealers, should bear the burden of reporting information on securities or funds not in their possession—information which they may not be able to obtain or independently confirm. In the case of DPPs and similar products, when a customer purchases DPP units through a member, the funds received from the customers are forwarded to the general partner (through an escrow account), admission to the partnership is confirmed directly to the purchaser by the general partner, and all subsequent communications are usually between the general partner and the investor.

Subsection (d) of the proposed rule permits the NASD's Operations Committee to exempt any member from the provisions of the rule upon a showing of good cause. This would permit the NASD under unusual circumstances to exempt a member if application of the rule would be unnecessarily burdensome given the type of business it conducts and the nature of the accounts, securities, or funds involved, and if the goal of customer protection and information could be met under alternative arrangements.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[2] which require that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and in general to protect investors and the public interest. The NASD believes

[2] 15 U.S.C. 78o–3

that requiring members to send periodic account statements to customers will serve the interests of customer protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21577 Filed 9–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31135; File No. SR–PTC–92–11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Participants Trust Company Relating to the Elimination of Pennies From the Face Amount of Certain GNMAs

September 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on August 21, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule filing is to eliminate "pennies" (*i.e.*, any amount after the decimal point) from the face value of GNMA I and II securities that are carried on deposit at PTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* The purpose of the rule filing is to eliminate pennies from the face value of GNMA I and II securities that are carried on deposit at PTC. In addition, the trading multiple will be changed from $5,000 for GNMA I's and II's to $1.00 so that any portion of a GNMA which is a multiple of 1 will be deliverable through PTC, provided the minimum $25,000 denomination is met.

Pennies

The Truncation Program. In accordance with discussions among PTC, GNMA and the MBS Operations Committee of the Public Securities Association ("PSA"), in order to aid the efficiency in trading the GNMA securities, pennies will be eliminated on PTC files from GNMA securities issued prior to October 1, 1988. GNMA securities issued subsequent to that time were and are issued without pennies. This change makes GNMAs, for depository purposes, similar to FNMAs and Freddie Macs, which are both issued without pennies.

PTC will perform a one-time elimination of pennies on PTC's records of Participant positions, including securities position reports, Repo In, Repo Out and CLF Positions, for the portion of each GNMA pool the Participant holds which was issued prior to October 1, 1988 (the "Affected Securities"). PTC will create a "dropped penny file" which will record, by pool number and Participant, the amount of pennies which were eliminated. After the initial elimination of pennies, Participants will be unable to enter data for the Affected Securities with pennies because that data entry field will be eliminated.

The act of eliminating pennies from the records of PTC will be only a change in PTC's record description of the GNMAs it holds on deposit for its Participants. The act will have no other financial or economic impact on PTC, but will have modest financial effect on Participants over the remaining life of the Affected Securities, as hereinafter described.

The "jumbo certificate" for Affected Securities held by PTC's custodian, Chemical Bank, at the time of the pennies elimination and for any Affected Securities deposited after the conversion, will continue to reflect the pennies (*i.e.* they will reflect the original face value of those securities).

Issuers will not be eliminating pennies on their records. Accordingly, issuers will pay monthly principal and interest ("P&I") to PTC (as the registered owner through its nominee, MBSCC & Co.) on the Affected Securities based on the face amount of the GNMAs with the pennies. PTC will not, however, directly pass that portion of the P&I attributable to pennies on to Participants.

[1] 15 U.S.C. 78s(b)(1)

Financial Impact of Penny Truncation. The actual financial effect on Participants of eliminating pennies will be negligible, and well within the industry practice for reconciling *de minimis* differences in deliveries, deposits and the like. The scale and scope of the financial impact of the pennies truncation can be illustrated, making certain assumptions as follows:

—*Assumptions:*

1. All 53 PTC Participants hold positions of equal amounts of Affected Securities.

2. Such Participant positions remain constant for the 12 year (assumed) remaining time to maturity of Affected Securities.

3. PTC maintains 53 Participants for the next 12 years.

—*Illustrations:*

Total face amount of Affected Securities.	$663 billion.
Total amortized amount of Affected Securities (58.3%).	$386.5 billion.
Estimated remaining time to maturity of Affected Securities.	12 years.
Number of GNMA pools affected.	148,681 pools.
Total face amount of *pennies* on Affected Securities.	$76,660
Amortized Value of *pennies* on Affected Securities (58.3%).	$44,692
Less estimated penny recapture at pool maturity.[2].	−$3,717
Net amount of pennies truncated by PTC.	$40,975
Net amount of truncated pennies per year (net pennies divided by 12).	$3,415
Net amount of truncated pennies per Participant per year (*i.e.* net amount of truncated pennies per year divided by 53 Participants).	$64

[2] The amount of the recapture upon redemption is subtracted because when an Affected Security is redeemed, consistent with the procedures for P&I payments, the issuer will remit to PTC the redemption amount calculated on the original face amount (including pennies). PTC will not deduct any amount from the redemption value, but rather, will pass along to Participants the amount received from the issuers.

Because PTC operates on a not-for-profit basis, it will, in effect, pass along the value of the truncated pennies in the form of a rebate to Participants or, alternatively, its fee structure will reflect the value. Accordingly, the scale and scope of the economic loss to Participants, on the basis of the assumptions described above, is the loss of the use of funds by Participants.

Assumed annual rate of return for truncated pennies: 4% year

Economic Loss Per Participant Per Year: $2.56

Of course, many Participants are themselves merely custodians. Therefore, their customers, rather than PTC's Participants will bear the ultimate loss of their pro rata share of PTC's Participants' $2.56 per year loss.

With regard to securities withdrawals, since PTC's custodian, Chemical Bank, will be holding the jumbo certificate based on the original face value (with pennies) when a Participant requests a withdrawal, Chemical Bank will issue two certificates. One will be issued to the Participant (or other registered owner) in the amount requested, minus any pennies. Another certificate will be issued for the balance including pennies, to MBSCC & Co., PTC's nominee name. PTC will request that the GNMA issuers refrain from paying PTC P&I on a balance which is only comprised of pennies.

Change in Multiple

In addition to eliminating pennies, PTC also proposes to change the multiple on GNMA I and II securities from $5,000 to $1.00. Currently, the portion of a GNMA pool not divisible by $5,000 is called a "tail" and cannot be delivered through PTC. By changing the multiple to $1.00 Participants can deliver any portion of a pool, including a "tail," provided the minimum $25,000 denomination is met.

Industry Support for Pennies Program

PTC is undertaking the proposal after extensive consultation with the PSA and GNMA. In addition, the proposal has been discussed during ten separate meetings of PTC's Operations Committee, the members of which represent PTC's participating banks and dealers, and has the full support of that Committee. The change is desirable to Participants, which, through the PSA, have expressed a need for the elimination of pennies due to the administrative difficulty pennies produce in their systems. Most significantly, we have been advised that the elimination of pennies will result in cost savings to the industry (*e.g.*, the key strokes and record surveillance to account for and reconcile penny amounts). In addition, pennies create a reconciliation problem because, we understand, many banks and dealers delete pennies from their records and, therefore, may have discrepancies with the records they receive from PTC. Also, input of face values including pennies to PTC for inclusion in PTC's records are prone to error.

PTC has thoroughly tested its processing system for the proposal and the system can successfully accommodate the elimination of pennies and change in the multiple.

(b) *Statutory Basis.*

Since the proposed rule change provides for the prompt and accurate clearance and settlement of securities transactions it is consistent with section 17A of the Act and the rules and regulations thereunder applicable to PTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

PTC has not solicited, and does not intend to solicit, any written comments on this proposed rule change. PTC has not received any unsolicited written comments from Participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

PTC has requested that the Commission approve the proposed rule change on an accelerated basis in order for it to be effective October 1, 1992. PTC intends to implement the change on November 1, 1992, and must notify Participants by October 1, 1992 in order to provide them sufficient time to prepare for the change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR-PTC-92-11 and should be submitted by September 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21580 Filed 9-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18922; International Series Rel. No. 447; 812-8040]

The Fontaine Trust and Richard Fontaine Associates, Inc.; Notice of Application

September 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Fontaine Trust (the "Trust"), and Richard Fontaine Associates, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting each of them to acquire equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenue from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies"), provided that such investments comply with the provisions of proposed amended rule 12d3-1 under the Act.

FILING DATE: The application was filed on August 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 210 W. Pennsylvania Avenue, suite 240, Towson, Maryland 21204.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act. The Trust currently consists of three series. The Adviser serves as investment adviser to each series of the Trust. Applicants request that any relief given by the Commission pursuant to this application also apply to any other registered investment companies or series thereof which in the future are advised by the Adviser or any of its affiliates.

2. Applicants wish to invest in equity and convertible debt securities of foreign securities companies. Applicants seek relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to invest in equity and convertible debt securities of foreign securities companies to the extent allowed by the proposed amendments to rule 12d3-1. See Investment Company Act Release No. 17096 (Aug. 3, 1989).

Applicants' Legal Conclusions

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter, or investment adviser. Rule 12d3-1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." While "margin security" status is generally available only to securities that are traded principally in the United States markets, the Board of Governors of the Federal Reserve System amended Regulation T in 1990 to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for inclusion on its "List of Marginable OTC Stocks," securities issued by many foreign securities companies are not "foreign margin stocks," and thus are not "margin securities" under Regulation T. See 12 C.F.R. 220.2 (i) and (q)(6). Accordingly, applicants seek an exemption from the "margin security" requirements of rule 12d3-1.

3. The proposed amendments to rule 12d3-1 provide that the "margin security" requirement would be excused if the acquiring company purchases equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the provisions of the proposed amendments to rule 12d3-1, [Investment Company Act Release No. IC 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)], and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21579 Filed 9-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18923; International Series Rel. No. 448; 812-7986]

Pioneer Fund, et al.; Application

September 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Pioneer Fund, Pioneer II, Pioneer Three, Pioneer Growth Trust and Pioneer Europe Fund, and each other registered investment company for which The Pioneer Group, Inc. (the "Adviser") or any affiliate or subsidiary may in the future serve as investment adviser or manager.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies"), provided that such investments comply with the provisions of proposed amended rule 12d3-1 under the Act.

FILING DATE: The application was filed on July 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 60 State Street, Boston, Massachusetts 92109.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from SEC's Public Reference Branch.

Applicant's Representations

1. Each applicant is a Massachusetts business trust and is an open-end management investment company registered under the Act. The Adviser serves as investment adviser to each applicant.

2. Applicants with to invest in securities of foreign securities companies. Applicants seek relief from section 12(d)(3) and rule 12d3-1 to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3-1. See Investment Company Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Legal Conclusions

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "at the time of acquisition, any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." In 1990, the Board of Governors began to designate foreign securities as margin securities and, to date, has designed specified securities of issuers located in only two countries, the United Kingdom and Japan. Thus, "margin securities" status is, generally speaking, available only to securities traded in United States, and to a limited extent, the United Kingdom and Japanese markets. Accordingly, applicants seek an exemption from the margin security requirements of rule 12d3-1.

3. The proposed amendments to rule 12d3-1 provide that the margin security requirement would be excused if the acquiring company purchases equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with relief requested:

Applicants will comply with the provisions of the proposed amendments to rule 12d3-1 [Investment Company Act Release No. IC 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)], and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21578 Filed 9-8-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Investment Advisory Council Meeting; Change of Date

Time and Date: 8:30 a.m.-5 p.m., Wednesday, September 23, 1992.

Place: The meeting will be held in the Administrator's Conference Room on the seventh floor of SBA Central Office at 409 3rd Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) Programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact Wm. H. Malloy III, Esq. room 6300, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-6510.

Dated: September 1, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21648 Filed 9-8-92; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 23-C, Revision 2]

Inspector General; Delegation of Authority and Line of Succession

Delegation of authority No. 23-C is hereby revised to effect a delegation of authority and to provide a line of succession from the Inspector General as follows:

I. Pursuant to authority vested in me by the Inspector General Act of 1978, as amended, in the event of the death,

disability, absence, resignation, or removal of the Inspector General, Small Business Administration, the officials designated below, in the order indicated, and in the absence of the specific designation of another official in writing by the Inspector General or the Acting Inspector General, are hereby authorized to and shall serve as Acting Inspector General and shall perform the duties and are delegated the full authority and power ascribed to the Inspector General by law and regulation as well as those authorities delegated to the Inspector General by the Administrator, Small Business Administration:

1. Deputy Inspector General.
2. Counsel to the Inspector General.
3. Assistant Inspector General for Auditing.
4. Assistant Inspector General for Investigations.
5. Assistant Inspector General for Management and Policy.

II. Anyone designated by the Inspector General as acting in one of the positions listed above remains in the line of succession; otherwise, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

IV. The authorities delegated herein may not be redelegated.

Dated: August 28, 1992.

James F. Hoobler,

Inspector General.

[FR Doc. 92-21649 Filed 9-8-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1689]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Department of State is requesting approval for the Affidavit of Identifying Witness. The Affidavit is executed by an identifying witness for a person applying for a passport who is unable to properly identify himself/herself. It is used by the Department of State in making a determination of the applicant's eligibility to be documented as a citizen of the United States. It may also be used as evidence in the prosecution of any individual who makes a false statement on the passport application. The following summarizes the information collection proposal submitted to OMB:

Type of request—Existing information collection without an OMB control number.

Originating office—Bureau of Consular Affairs.

Title of information collection—Affidavit of Identifying Witness.

Frequency—On occasion.

Form No.—DSP-71.

Respondents—Persons bearing witness to a passport applicant's identity.

Estimated number of respondents—60,000.

Average hours per response—5 minutes.

Total estimated burden hours—5,000.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395-7340.

Dated: August 27, 1992.

Clark M. Dittmer,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 92-21563 Filed 9-8-92; 8:45 am]

BILLING CODE 4710-43-M

[Public Notice 1697]

The Commission on Broadcasting to the Peoples Republic of China

ACTION: Notice of meeting.

SUMMARY: The Commission will hold a Press Conference.

DATE: September 14, 1992, 2:30 p.m.

ADDRESS: The National Press Club, Zenger Room, 529 14th Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marge Cook, Deputy Executive Director 703-235-9000.

Dated: September 4, 1992.

Majorie S. Cook,

Deputy Executive Director.

[FR Doc. 92-21826 Filed 9-8-92; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 23, 1992, at 9 a.m. Arrange for oral presentations by September 14, 1992.

ADDRESSES: The meeting will be held in the Conference Room, Helicopter Association International, 3d floor, 1619 Duke Street, Alexandria, VA 22314-3406.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8325.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Rotorcraft Subcommittee to be held on September 23, 1992, in the Conference Room, Helicopter Association International, 3d floor, 1619 Duke Street, Alexandria VA 22314-3406. The agenda will include:

- Report from the External Load Working Group.
- Report from the Occupant Restraint Working Group.
- Discussion of future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 14, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 16 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on August 31, 1992.

William J. Sullivan,

Executive Director, Rotorcraft Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-21659 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Morton County, North Dakota

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Morton County, North Dakota.

FOR FURTHER INFORMATION CONTACT: George A. Jensen, Division Administrator, Federal Highway Administration, 1471 Interstate Loop, Bismarck, ND 58501. Telephone number is (701) 250-4204 (FTS 783-4204).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal for improvements to ND Highway 1806. The proposed improvement would involve reconstruction of the existing highway from the Heart River Bridge, which is located at the south edge of the city of Mandan, southerly for about 2.2 miles. At that point a new roadway will be constructed that passes around the west side of Fort Lincoln State Park and will connect back to the existing highway just south of the park. The existing highway passes through Fort Lincoln State Park. The entire project is approximately 8 miles long.

Improvements to the corridor are considered necessary to eliminate existing geometric deficiencies and provide for the existing and projected traffic demand. Several alternate routes are under consideration for locating the highway around Fort Lincoln State Park. The "No Action" alternate is also under consideration.

Letters soliciting views and comments on the proposed project were sent to various federal, state, and local agencies. The project has been discussed at local meetings. The Draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternates and impacts of the proposed action. Public notice will be given for the time and place of the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

George A. Jensen,

Division Administrator, Federal Highway Administration, Bismarck.

[FR Doc. 92-21561 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS-AP)—No. 3186

Applicants: National Railroad Passenger Corporation, Mr. P. A. Cannito, Vice President—Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

New Orleans Union Passenger Terminal, Mr. G. E. Ellis, Chief Engineer, 1001 Loyola Avenue, New Orleans, Louisiana 70113.

The National Railroad Passenger Corporation and New Orleans Union Passenger Terminal jointly seek approval of the following proposed signal changes within the New Orleans Union Passenger Terminal area, near New Orleans, Louisiana:

1. The discontinuance and removal of KCS Junction Interlocking, Milepost 3.0, consisting of the removal of controlled signals 166 and 172, the conversion of power-operated switch 171 to hand operation equipped with an electric lock, and the conversion of controlled signal 174 to an inoperative approach signal;

2. The discontinuance and removal of South Wye Junction Interlocking, milepost 1.2, consisting of the removal of signals 198, 200, and 202 and the conversion of power-operated crossover 197 and power-operated switch 199 to hand operation;

3. The discontinuance and removal of signals 204, 206, and 208 between South Wye Junction, milepost 1.2 and Earhart Junction, milepost 1.6 and the installation of a "stop" board just south of Earhart Junction; and

4. The Conversion of the method of operation on the associated main tracks from Interlocking Rules to Norac Rule 261 and Automatic Block Signal Rules.

The reason given for the proposed changes is the installation of electronic track circuits associated with pole line elimination and the reduced traffic through the area.

BS-AP—No. 3187

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201-9136.

The Burlington Northern Railroad Company seeks approval of the following proposed reduction of the limits of the traffic control system (TCS), on the Nebraska Division, near Lincoln, Nebraska:

1. The conversion of the TCS to interlocking limits on the single main track between Hall Tower Interlocking Wye Switch, milepost 62.67 and CP Lancaster, milepost 60.36, on the First Subdivision;

2. The conversion of the TCS to interlocking limits on the two main tracks between Baird Interlocking, milespost 58.88 and 33rd Street, milepost 56.80, on the Third Subdivision; and

3. The conversion of the TCS to interlocking limits on the two main tracks between CP West Cushman, milepost 4.55 and CP Plamor, milepost 6.0, on the Second Subdivision.

The reason given for the proposed change is to reduce the workload of the dispatchers/control operators, relieving them of the responsibility for switching movements.

BS-AP—3188

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201-9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Southwest Plains, Missouri,

milepost 316.0 and Thayer, Missouri, milepost 338.0, on the Springfield Division, Fourth Subdivision; consisting of the discontinuance and removal of 8 automatic signals and the installation of 12 automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3189

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between West Inland, milepost 148.0 and East Brick Yard Wye, milepost 154.0, near Hastings, Nebraska, on the Springfield Division, Fourth Subdivision; consisting of the discontinuance and removal of the two automatic signals and the installation of four automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3190

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between South Henrietta, Oklahoma, milepost 512.0, on the Ft. Worth Division, Fourth Subdivision; consisting of the discontinuance and removal of 14 automatic signals and the installation of 16 automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3191

Applicants: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

Mr. G. M. Short, Chief Engineer Signals, Soo Line Railroad Company, Soo Line Building, Box 530, Minneapolis, Minnesota 55440.

The Burlington Northern Railroad Company (BN) and the Soo Line Railroad Company jointly seek approval of the proposed discontinuance and removal of the automatic interlocking near Minneapolis, Minnesota, milepost 0.9, on BN's Dakota Division, 15th Subdivision, where the BN single main track crosses at grade a single main of the Soo Line. The proposed changes consist of the removal of four interlocking signals and two approach signals, and the installation of gates with stop signs normally lined and locked across the Soo Line track.

The reason given for the proposed changes is that reduced traffic patterns do not justify high cost to maintain an aging signal system.

BS–AP—No. 3192

Applicant: Southern Pacific Transportation Company, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Transportation Company seeks approval of the proposed modification of the automatic block signal system on the two main tracks between milepost C–765.7 and milepost C–767.9, on the Oregon Division, Brooklyn District, near Brooklyn, Oregon; consisting of the discontinuance and removal of the automatic block signal system on main track No. 1 and operate the track under yard limit rules.

The reason given for the proposed changes is that the traffic no longer requires the signal system for present day operations.

BS–AP—No. 3193

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the two main tracks, between Kewanee, Illinois, milepost 131.1 and Galva, Illinois, milepost 139.3, on the Galesburg Division, Fourth Subdivision; consisting of the discontinuance and removal of four automatic signals and the installation of eight automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3194

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Mark, Missouri, milepost 134.1 and NS Crossing, milepost 120.8, on the Galesburg Division, Eighth Subdivision; consisting of the relocation of four automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3195

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of "CP 237" Interlocking, milepost 237.7, at Utica, New York, on the Albany Division, Chicago Line, consisting of the discontinuance and removal of six controlled signals and the conversion of the remaining power-operated switch to hand operation equipped with an electric lock.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP—No. 3196

Applicant: Arkansas and Missouri Railroad Company, Mr. G.B. McCready, Vice President and General Manager, 107 North Commercial, Springdale, Arkansas 72764.

The Arkansas and Missouri Railroad Company seeks approval of the proposed discontinuance and removal of block signals 3749 and 3756 and associated inoperative approach signals, near Winslow, Arkansas, milepost 375.6 on the First Subdivision.

The reason given for the proposed changes is to reduce operative expenses.

Rules Standards and Instructions Application (RS&I–AP)—No. 1083 (Filed concurrently with BS–AP—No. 3187)

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks relief from §§ 236.301 and 236.314 of the Rules, Standards, and Instructions (49 CFR, part 236) in connection with the proposed changes in BS–AP—No. 3187 to the extent that;

1. Signals not be required to govern train movements over each hand-operated switch located at milepost 61.02 and milepost 60.41, within

proposed interlocking limits, on the single main track, Nebraska Division, First Subdivision, near Lincoln, Nebraska;

2. Derails not be provided at the clearance point on each hand-operated electrically locked switch located at milepost 57.31 and milepost 58.30, within proposed interlocking limits, on the two main tracks, Nebraska Division, Third Subdivision, near Lincoln, Nebraska; and

3. Operator control not be required for the electrically locked hand-operated switches, located at milepost 57.31 and milepost 58.30, within proposed interlocking limits, on the two main tracks, Nebraska Division, Third Subdivision, near Lincoln, Nebraska.

The applicant's justification for relief is the proposed changes sought in BS-AP—No. 3187.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on September 2, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-21660 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-01-M

Research and Special Programs Administration

[Docket Nos. IRA-40B, IRA-45, IRA-46 & IRA-49]

Administrator's Action Dismissing Appeals for Mootness

IR-23(A): City of New York, Appeal of Inconsistency Ruling IR-23 on Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Cargo Through the City of New York (Docket No. IRA-40B)

IR-28(A): City of San Jose, CA, Appeal of Inconsistency Ruling IR-28 on Restrictions for Storage of Hazardous Materials (Docket No. IRA-45)

IR-31(A): City of Louisiana and Union Pacific Railroad Company Appeals of IR-31 on Louisiana Statutes and Regulations for Rail Transportation of Hazardous Materials (Docket No. IRA-49)

IR-32(A): Chemical Waste Transportation Institute, Appeal of IR-32 on City of Montevallo, Al, Requirements for Transportation of Hazardous Waste (Docket No. IRA-46)

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Administrator's Dismissal of Appeals from inconsistency Rulings (IR) Nos. 23, 28, 31 and 32.

APPLICABLE FEDERAL REGULATIONS: Hazardous Materials Transportation Act (HMTA), 49 App U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180, issued thereunder.

SUMMARY: The Administrator of the Research and Special Programs Administration (RSPA) of the U.S. Department of Transportation (DOT) is dismissing, on the ground of mootness, the appeals from four inconsistency rulings issued by RSPA's Director of the Office of hazardous Materials Transportation (OHMT). (The title of Director of OHMT has been changed to Associate Administrator for Hazardous Materials Safety.) These inconsistency rulings were issued, and the appeals from those rulings filed, prior to the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), which amended the preemption provisions of the HMTA, including the criteria for preemption. The regulations implementing the HMTUSA amendments also have eliminated the appeal from the decision of OHMT to the RSPA Administrator.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research & Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

I. General Authority and Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of Federal, State and local laws. The HMR were originally promulgated under the Explosives and Other Dangerous Articles Act, 18 U.S.C. 831-835, which was repealed in 1979 (*see* Pub. L. 96-129, November 30, 1979). The HMR were reissued, and subsequent revisions have been made, pursuant to the HMTA's authority for the Secretary of Transportation to issue regulations for the safe transportation of hazardous materials. HMTA, Pub. L. 93-633 105(a), 88 Stat. 2157 (1975) (amended 1990, *see* 49 App. U.S.C. 1804(a)(1)).

As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [HMTA]." Pub. L. 93-633 112(a), 88 Stat. 2161 (1975) (amended 1990, *see* 49 App. U.S.C. 1811(a)). This provision was intended by Congress "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974), as quoted in Inconsistency Ruling No. 2 (IR-2) (State of Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc.), 44 FR 75566, 75567 (Dec. 20, 1979).

The HMTA also authorized the Secretary of Transportation to determine that a State or local requirement was not preempted by the HMTA and the HMR, upon finding "that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce." HMTA, Pub. L. 93-633 112(b), 88 Stat. 2161 (1975) (amended 1990, *see* 49 App. U.S.C. 1811(d)).

In 49 CFR part 107, subpart C, the Materials Transportation Board (RSPA's predecessor agency) "published procedures that implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings." IR-2, 44 FR at 75567. Such inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local relationships," and also a possible "basis for an application . . . [for] a waiver of preemption pursuant to section 112(b) of the HMTA." *Id.* RSPA's procedures for issuing inconsistency rulings incorporated the following criteria for determining whether a State or local requirement was consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the

regulations issued under the Act is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

41 FR 38167, 38171 (Sept. 9, 1976), 49 CFR 107.209(c) (Oct. 1, 1990 ed.) These "dual compliance" and "obstacle" criteria, respectively, are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978). In 1990, the preemption provisions of the HMTA were amended by HMTUSA, and now:

—set forth in the statute the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing 32 inconsistency rulings between 1978 and 1990, 49 App. U.S.C. 1811(a);

—include as an additional preemption criterion that any State, local or Indian tribe requirement concerning five "covered subjects" is preempted unless it "is substantively the same" of the HMTA or the HMR, 49 app. U.S.C. 1804(a)(4);

—authorize States and Indian tribes to "establish, maintain, and enforce" highway routing requirements applicable to the transportation of hazardous materials, in accordance with procedural and substantive standards to be established by the Secretary of Transportation, and provide that two years after the issuance of such Federal standards any State or Indian tribe highway routing requirement not in accordance with those standards is preempted, 49 app. U.S.C. 1804(b);

—replace RSPA's inconsistency ruling process with explicit authority for the Secretary of Transportation to make administrative determinations whether State, local or Indian tribe requirements are preempted by the HMTA and the HMR, 49 app. U.S.C. 1811(c)(1);

—continue, but make discretionary, the authority of the Secretary of Transportation to waive preemption of State, local or Indian tribe requirements, if the same findings previously applicable to findings of non-preemption are made, 49 app. U.S.C. 1811(d); and

—provide that such administrative decisions on preemption and waiver of preemption are judicially reviewable, 49 app. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to issue preemption determinations and waivers of preemption under the HMTA, except for those concerning highway routing which were delegated to the Federal Highway Administration (FHWA). 56 FR 31343 (July 10, 1991).

RSPA has revised its procedures to implement the HMTUSA amendments to the HMTA preemption provisions. See 56 FR 8616 (February 28, 1991), 56 FR 15510 (April 17, 1991), and 57 FR 20424 (May 13, 1992). In those revisions, RSPA: (1) Replaced the procedures for an inconsistency ruling with procedures for a "preemption determination," 94 CFR 107.203—107.211, 107.227 (2) defined "substantively the same" to mean "that the non-Federal requirement conforms in every significant respect to the Federal requirement," 49 CFR 107.202, and (3) eliminated the administrative appeal within RSPA of decisions on preemption and waiver of preemption, but provided a more limited petition for consideration. 49 CFR 107.211.

RSPA has also indicated that "[a]s under the previous inconsistency ruling process, only the question of statutory preemption under the HMTA will be considered under the preemption determination process." 56 FR at 8618. Other reasons for preemption, such as another Federal statute, State law, and the Commerce Clause of the Constitution, will not be examined. However, it may be necessary to examine other statutes when it is claimed that a particular state, local or Indian tribe requirement is "otherwise authorized by federal law, . . ." 49 App. U.S.C. 1804(a)(4)(A), 1811(a).

In making decisions on preemption and waiver of preemption under HMTA, as in issuing inconsistency rulings, RSPA will be guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when a Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains an express preemption provision, which RSPA has implemented through regulations and applied in the 32 inconsistency rulings issued between 1978 and 1990.

II. The Four Inconsistency Rulings

On the effective date of the HMTUSA amendments to the HMTA, appeals were pending from four inconsistency rulings issued by OHMT. Those rulings and the appeals therefrom are summarized here.

A. IR–23: New York City—Hazardous Cargo Through Traffic

In April 1987, National Tank Truck Carriers, Inc. (NTTC) and American Trucking Associations, Inc. (ATA) applied for an administrative ruling to determine whether certain New York City regulations were inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA. Such regulations included the Fire Department Regulations for the Transportation of Hazardous Cargo Through the City of New York by Motor Vehicle.

In IR–23 (53 FR 16840, May 11, 1988), OHMT found six provisions of New York City's through traffic regulations inconsistent with the HMTA and the HMR, and preempted by the HMTA. The provisions were:

(1) The inclusion in the regulations of traffic movements "passing through the City without pickup or delivery and to deliveries to piers, airports and shipping terminals out of the City." Section II.B.

(2) The requirement for specific Fire Department authorization "to enter or pass through New York City" for trucks carrying materials which are "prohibited by City, State, Federal law or regulation" and then only when "no practicable alternative route . . . exists, or that critical emergency requires delivery in the City." Section II.C.

(3) The exemption from these regulations for trucks which meet separate permit requirements for pickups and deliveries in New York City. Section II.D.

(4) The time restrictions which prohibit through traffic during rush hours, defined as 7:00–9:00 a.m. and 4:00–6:00 p.m., Monday through Friday (6:00–10:00 a.m. and 3:00–7:00 p.m. for trucks carrying explosives). Section III.

(5) The requirement that trucks follow 24 specified routing patterns (primarily interstate highways) through New York City, or from points outside New York City to piers, airports and shipping terminals (or the reverse). Section IV.

(6) The prohibition against through traffic stopping for fuel or any other reason within New York City, "except as required by traffic." Section V.D.

RSPA found consistent with the HMTA and the HMR, and not preempted, Section V.F., which requires trucks carrying hazardous cargo through New York City to avoid congested areas so far as possible and to use highway exits as close as possible to the truck's final destination.

New York City appealed OHMT's ruling in IR–23 to the RSPA Administrator. On August 23, 1988,

RSPA published a public notice and invitation to comment on the appeal. 53 FR 32184. In response, comments in opposition to the appeal were submitted jointly by NTTC, ATA, National Paint & Coatings Association, Inc., and National Private Truck Council. Rebuttal comments were submitted by New York City.

B. IR-28: San Jose, CA—Storage of Hazardous Materials

In September 1988, Yellow Freight Systems, Inc. (Yellow Freight) applied for an administrative ruling to determine whether San Jose, California's Hazardous Materials Storage Ordinance (HMSO), contained in chapter 17.68 of the San Jose Municipal Code, was inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA. Under the HMSO, the storage of hazardous materials within the City of San Jose is prohibited without a permit. To obtain a permit, one must submit and receive approval of a Hazardous Materials Management Plan and pay an annual fee.

The ruling in IR-28 (55 FR 8884, March 8, 1990) addressed the San Jose HMSO only as it applied to activities involving the transportation of hazardous materials, including the loading, unloading and storage incidental to that transportation. As limited to that context, OHMT found seven parts of chapter 17.68 of the San Jose Municipal Code inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA:

(1) The definitions of "hazardous material" in sections 17.68.040D and 17.68.100;

(2) The requirement to obtain a permit in section 17.68.150 and part 8 and related documentation requirements throughout chapter 17.68;

(3) All other information and documentation requirements, including those relating to emergency response information, throughout chapter 17.68;

(4) The hazardous materials storage requirements of section 17.68.160;

(5) The hazardous materials loading and unloading requirements of section 17.68.210;

(6) The incident reporting requirements of section 17.68.450, insofar as they apply to incidents involving irradiated reactor fuel; and

(7) The civil penalty provisions of section 17.68.1050, insofar as they apply to inconsistent provisions of chapter 17.68.

RSPA found consistent with the HMTA and the HMR, and not preempted, the incident reporting requirements of section 17.68.450, except as they apply to incidents involving irradiated nuclear fuel, and the civil penalty provisions of section 17.68.1050, insofar as they apply to consistent provisions of chapter 17.68.

San Jose appealed OHMT's ruling in IR-28 to the RSPA administrator. On June 5, 1990, RSPA published a public notice and invitation to comment on the appeal. 55 FR 22986. In response, comments in opposition to the City's appeal were submitted by Yellow Freight, ATA, Hazardous Materials Advisory Council (HMAC), National Small Shipments Traffic Conference, Inc., Health and Personal Care Distribution Conference, Inc., and National Motor Freight Traffic Association, Inc. A rebuttal comment was submitted by San Jose.

C. IR-31: Louisiana—Hazardous Materials by Rail

In September 1989, the State of Louisiana applied to RSPA for an administrative ruling that La. Rev. Stat. 32:1501-1520 and the regulations thereunder (La. Admin. Code, Title 33, Part V, Sections 10501-10505, 10901-10905) are consistent with the HMTA and the HMR, and therefore not preempted by the HMTA. In its application, Louisiana stated that it had simply adopted "in toto the provisions of 49 Code of Federal Regulations, parts 171-179 as they pertain to rail carriers and shippers of hazardous materials under the" HMTA.

In IR-31 (55 FR 25572, June 21, 1990), OHMT examined only questions of preemption under the HMTA and did not address the issues of whether the Louisiana statutes and regulations are preempted under the Federal Railroad Safety Act (FRSA), 45 U.S.C. § 421 *et seq.*, the Motor Carrier Safety Act, 49 U.S.C. *et seq.*, or other federal statutes. OHMT determined that La. Rev. Stat. 32:1501-1520 and the regulations thereunder are consistent with the HMTA and the HMR, except for the following provisions which were found to be inconsistent and preempted to the extent indicated.

(1) La. Rev. Stat. 32:1502(5)(a) and (8), insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the HMR;

(2) La. Rev. Stat. 32:1502(5)(b), to the extent it defines as "explosives" any material not so defined in the HMR;

(3) La. Admin. Code, Title 33 §§ 10501(c) and 10901(c), containing definitions of "train";

(4) La. Rev. Stat. 32:1503, imposing hazardous transportation insurance requirements;

(5) La. Rev. Stat. 32:1510, requiring written incident/accident reports;

(6) La. Rev. Stat. 32:1512-1514, insofar as those penalty provisions relate to the enforcement of inconsistent substantive requirements;

(7) La. Rev. Stat. 32:1512, insofar as it imposes civil penalties for other than "knowing" violations; and

(8) La. Rev. Stat. 32:1504B, 32:1505, 32:1508, and 32:1509A(3), insofar as those inspection and enforcement provisions relate to inconsistent substantive requirements.

The State of Louisiana appealed three of OHMT's findings in IR-31, concerning the designation of hazardous materials, the definition of "explosive," and the requirement of written incident/accident reports (Nos. 1, 2 and 5 in the list above). Union Pacific Railroad Company (Union Pacific) appealed the refusal of OHMT to consider the preemption provision in the FRSA and two parts of IR-31 which found consistent a requirement for State licensing of locomotive engineers domiciled in the State and authorized State enforcement officials to stop and inspect any transport vehicle, including trains.

On September 6, 1990, RSPA published a public notice and invitation to comment on the appeals by the State of Louisiana and Union Pacific. 55 FR 36735. In response, comments on the appeals were submitted by Union Pacific, Norfolk Southern Corporation, and the Association of American Railroads.

D. IR-32: Montevallo, AL—Hazardous Waste Shipments

In January 1989, Chemical Waste Transportation Council (CWTC) applied for an administrative ruling to determine whether Sections 7-40 through 7-50 of the City of Montevallo, Albama code, concerning the transportation of hazardous waste, are inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA. In IR-32 (55 FR 367336, September 6, 1990), OHMT found that the following provisions are inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA, as those provisions applied to the transportation of hazardous materials, including the loading, unloading and storage incidental to transportation:

(1) The definition of hazardous waste in section 7-41;

(2) The routing requirements in section 7-42;

(3) The time restrictions in section 7-45;

(4) The weather-related restrictions in section 7-46(a) and (b);

(5) The citizens band radio requirement in section 7–45(d) as it relates to radioactive materials;

(6) The prenotification requirements in section 7–47(a);

(7) The accident reporting requirement in section 7–48(b) as it relates to irradiated reactor fuel;

(8) The liability insurance requirement in section 7–48(c); and

(9) The section 7–49 prohibition on storage of hazardous waste as it relates to storage of hazardous waste incidental to transportation.

RSPA also found several requirements of the Montevallo City Code consistent with the HMTA and the HMR, and not preempted, on the following subject: (1) Speed limits, Sec. 7–43; (2) separation distance, Sec. 7–44; (3) headlights, Sec. 7–46(c); (4) citizens band radios, except as related to radioactive materials, Sec. 7–46(d); (5) placarding, Sec. 7–47(b); (6) manifest in possession of driver, Sec. 7–47(a); and (7) accident reporting, except as related to irradiated reactor fuel, Sec. 7–48(b).

III. Dismissal of Appeals on Grounds of Mootness

While RSPA's inconsistency rulings in these four proceedings set forth RSPA's opinions at the time, as to the consistency or inconsistency with the HMTA and the HMR of State and local regulations, the statute and regulations underlying these rulings have changed significantly. As outlined in Part I, above, the HMTA now expressly preempts all State and local requirements in five "covered subjects," which are not "substantively the same" as Federal requirements. Regulations implementing the 1990 amendments to the HMTA (a) define "substantively the same," (b) delegate to FHWA, rather than RSPA, the authority to decide preemption issues involving State and local routing requirements; and (c) no longer provide for an appeal within RSPA from a decision on inconsistency or preemption by OHMT (now the Associate Administrator for Hazardous Materials Safety).

In order to consider these appeals, RSPA would be forced to assume the fiction that these changes had not occurred, or somehow adapt the statutory and regulatory changes to these appeals. Two of the appeals (IR–28 and IR–31) involve State or local requirements on "covered subjects." Three (IR–23, IR–28, and IR–32) expressly or arguably concern highway routing requirements, a subject which is now within the purview of FHWA. And in at least two cases (IR–23 and IR–32), the local governmental body has indicated that it has made revisions to the challenged regulations.

In light of all these changes since these advisory rulings were issued, due process would require reopening the docket to allow the submission of further comments. This would involve essentially the same time, effort and procedures as if a new preemption determination proceding were initiated in accordance with 49 App. U.S.C 1811(c)(1), without (1) a judicially-reviewable result, or (2) any assurance that the applicants, appellants, or other parties to these appeals would benefit from decisions on the appeals.

In summary, RSPA has concluded that proceeding to decisions on these appeals would not provide a meaningful result for the applicants who sought these inconsistency rulings, the appellants who have sought review of them, or DOT itself. Should any of the parties to these inconsistency rulings desire a more definitive, different, or legally binding statement than already set forth, regarding the preemptive effect of the HMTA on the State or local requirement in question, it may seek an administrative or judicial determination of preemption under 39 App. U.S.C. 1811(c) or an administrative waiver of preemption under 49 App. U.S.C. 1811(d). In doing so, that party may make any of the arguments on which an appeal of RSPA's inconsistency rulings was based (if still relevant), and it may rely upon any of the arguments and materials submitted in the prior proceedings.

IV. Ruling

In light of the changes to the HMTA, RSPA's procedural regulations, and the factual circumstances, and for the reasons set forth above, the appeals from IR–23, IR–28, IR–31, and IR–32 are dismissed, because the issues raised in those appeals are moot and no meaningful result would be obtained in deciding those appeals.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC on August 31, 1992.

Douglas B. Ham,

Acting Administrator.

[FR Doc. 92–21626 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Donated Book Assistance Awards

AGENCY: United States Information Agency.

ACTION: Notice; Changes in funding level.

SUMMARY: The Book Promotion Branch of the U.S. Information Agency is announcing a new funding level for the Donated Book Assistance awards in the East European area made in the original solicitation announcement in Vol 57, No. 23, page 4243 dated February 4, 1992 to non-profit U.S. institutions and organizations to administer donated book projects during FY'92. That portion of the RFP as pertains to Eastern Europe that reads "$150,000 for this region" is amended to read "$225,000 for this region". All other information remains the same. USIA proposes to award 3 or more grants totaling $225,000. Institutions which have not previously submitted proposals under this RFP may do so by contacting Ms. Carol Nelson at the U.S. Information Agency, room 320, 301 4th Street, SW., Book Program Division, E/CBP, Washington, DC 20547, tele: (202) 619–4895 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington DC time on September 21, 1992. Faxed documents will not be accepted, nor will documents postmarked on September 21, 1992 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

ADDRESSES: One signed original and twelve copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Donated Book Assistance Awards, Grants Management Division, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

Notification

All applicants will be notified of the results of the review process on or about November 30, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 2, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–21672 Filed 9–8–92; 8:45 am]

BILLING CODE 8230–01–M

Fulbright Foreign Student Enhancement Seminars

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations, universities and university consortia to implement professional enhancement programs for Fulbright foreign students in Washington, DC; Chicago, Illinois; and San Francisco, California. Seminar participants will be Fulbright foreign students in the greater metropolitan areas of these cities and other Fulbright foreign students whose travel costs to the program would not exceed an average of $400 round trip per person. Interested organizations may propose to conduct programs in one or more of the designated cities. However, a separate budget and program agenda must be proposed for each city. The program in each city will consist of a three-day seminar for 150 students with an agenda combining some introductory material on the United States with in-depth coverage of an economic, political, or cultural issue characteristic of the region. Programs should take advantage of the local resources of the city.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, October 30, 1992. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked on October 30, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline. Programs should be held in March or April 1993. No funds may be expended until the grant agreement has been signed.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Fulbright Foreign Student Enhancement Seminars, Office of Grants Management, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Dr. Winnie D. Emoungu at the U.S. Information Agency, Academic Exchange Programs Division, E/AE, room 234, 301 4th Street, SW., Washington, DC. 20547, telephone 202-619-4360, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for the program is contained in the Mutual Educational and Cultural Exchange Act of 1961 as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs and projects must conform with all Agency requirements and are subject to final review by the USIA contracting officer.

Guidelines

Program description: The major goals of the seminar are: (1) To provide for first year Fulbright students, in an off-campus setting, an introduction of some of the key features of the U.S. economic, political, and social system; (2) to enable them to meet community and civic leaders, people who have had a significant impact on the city or community hosting the seminar; and (3) to broaden and expand students' view of the U.S. beyond the somewhat limited and stereotyped view they may have known prior to their Fulbright grant. The goals will be accomplished through a series of lectures, interactive panel discussions as well as contacts with local leaders and other citizens through home hospitality with American families and field trips.

Program components should include:

(1) Interactive discussions, led by experts on intercultural awareness, of some of the distinctive features of U.S. culture as they relate to the customary goals and expectations of foreign students.

(2) Panel discussions, with audience participation, on selected major features of the U.S., such as the role of the private sector and private enterprise in the U.S. economy; the federal system; the role of the media in politics; U.S. society, ethnicity, and the absorption of new immigrants; a regional economic issue, etc.

(3) Opportunities for representatives of USIA to discuss with the students the goals and structure of the Fulbright Program, its current and future significance to them and the responsibilities as well as rights and privileges of being a Fulbrighter.

(4) Events to allow students to meet with local business, civic, educational, cultural and media leaders.

(5) Homestays and other home hospitality opportunities so that the students interact on at least one occasion with people other than those typically encountered on campus.

(6) Field trips to sites of local cultural, historical or recreational interest.

A detailed outline of a proposed seminar agenda should be included in the proposal. The outline should demonstrate the organization's ability to enlist the participation of informed lecturers, keynote speakers and/or presenters whose credentials and experience show evidence of in-depth knowledge of seminar topics. Invited speakers should provide international students with access to expertise and insights not otherwise available to them.

The application should include information on previous programs conducted for foreign students and detailed information on the volunteer services the organization anticipates using in program implementation. Proposals should include a listing of names, titles, addresses, and telephone numbers of the executive officer(s) of the organization and of the person(s) directly responsible for the project. Resumes or vitae of key personnel should be provided. USIA recommends the inclusion of brochures and general information concerning the organization and evidence of previous experience with international students in the proposal package.

Budget

A comprehensive line item budget must be submitted with the proposal by the application deadline. Specific details are available in the application packet. The grant requested from USIA may not exceed $90,000 for each program. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and

in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's budget and contracts offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality, rigor, and appropriateness of the proposed program to seminar objectives.

2. Program Planning. Detailed agenda and relevant work should demonstrate rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. The proposal should demonstrate evidence of flexibility to accommodate grantee needs.

3. Institutional Capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve program goals. The proposal should demonstrate the ability to recruit experts to participate in the seminar as presenters, lecturers, or keynote speakers.

4. Evidence of strong administrative and managerial experience with similar programs (at least four years).

5. Effective use of community and regional resources, including volunteers.

6. Evaluation Plan. Proposals should provide a plan for evaluation by the grantee institution and by participants.

7. Cost Effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. Cost-Sharing. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

9. Institutional Track Record/Ability. Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

Options for Renewals

Subject to availability of funds and subject to satisfactory performance of grantee organization, USIA may invite proposals for renewals of grants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 15, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-21567 Filed 9-8-92; 8:45 am]

BILLING CODE 8230-01-M

Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 17 in room 600, 301 4th Street, SW., Washington DC. from 10:15 a.m.-12 p.m.

At 10:15 a.m. the Commission will met with Mr. Stanley Silverman, Comptroller, USIA and Mr. Lynn Noah, Chief, Resource Management Committee Staff, USIA, to discuss budget and management issues. At 11 a.m. the Commission will meet with Mr. Harlan Rosacker, Director of Personnel, USIA; Mr. Jeff Lite, Chief, Foreign Service Personnel, and Ms. Patricia Noble, Chief, Civil Service Personnel, to discuss personnel issues.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619-4468 for further information.

Dated: September 1, 1992.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 92-21566 Filed 9-8-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 9, 1992.

Dated: September 1, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

New Collection

1. Prosthetic Patient Satisfaction Survey, VA Form 10-0142A and B.

2. The information will be used to demonstrate that VA is providing timely, high quality prosthetic services to patients and to monitor and measure prosthetic improvements.

3. Individuals or households.

4. 1,558 hours.

5. 3 minutes.

6. Semi-annually.

7. 31,150 respondents.

[FR Doc. 92-21584 Filed 9-8-92; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

Merit Review Board for	Date	Time	Location
The Department of Veterans Affairs gives notice under the Federal Advisory Committee, Act, 5 U.S.C. app., of the meetings of the following Federal Advisory Committees.			
Hematology	September 21, 1992	8 a.m. to 5 p.m	Holiday Inn Central.[1]
Nephrology	September 23, 1992	do	Holiday Inn Central.
Do	September 24, 1992	do	
Alcoholism and Drug Dependence	September 25, 1992	do	Washington Vista.[2]
Oncology	October 1, 1992	do	Washington Vista.
Do	October 2, 1992	do	
Gastroenterology	October 1, 1992	do	Washington Vista.
Do	October 2, 1992	do	
Respiration	October 5, 1992	do	Holiday Inn Central.
Do	October 6, 1992	do	
Mental Health and	October 8, 1992	do	Holiday Inn Central.
Behavioral Sciences	October 9, 1992	do	
Surgery	October 11, 1992	do	New Orleans Marriott.[3]
Infectious Diseases	October 13, 1992	do	Washington Vista.
Do	October 14, 1992	do	
Endocrinology	October 15, 1992	do	Washington Vista.
Do	October 16, 1992	do	
Basic Sciences	October 16, 1992	do	Holiday Inn Central.
Do	October 17, 1992	do	
Neurobiology	October 19, 1992	do	Holiday Inn Central.
Do	October 20, 1992	do	
Do	October 21, 1992	do	
Immunology	October 22, 1992	do	Washington Vista.
Do	October 23, 1992	do	
Cardiovascular Study	October 29, 1992	do	Washington Vista.
Do	October 30, 1992	do	

[1] Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington DC 20005.
[2] Washington Vista, 1400 M. Street, NW., Washington, DC 20005.
[3] New Orleans Marriott, 555 Canal Street, New Orleans, LA 70140.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 523–5942 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: August 20, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–21583 Filed 9–8–92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 15, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5473A Marine Accident Report: Capsizing and Sinking of the Fishing Vessel SEA KING near Astoria, Oregon on January 11, 1991.

5846 Highway Special Investigation Report: Heavy Truck Wheel Separation.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

September 4, 1992.

[FR Doc. 92–21800 Filed 9–4–92; 2:56 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 7, 14, 21, and 28, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 7

Tuesday, September 8

10:00 a.m.
Briefing on Advanced and Evolutionary Reactor Topics: Form and Content for a Design Certification Rule and Follow-up to SECY–90–016 (Public Meeting) (Contact: Dennis Crutchfield, 301/504–1199)

Wednesday, September 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 11

8:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

8:30 a.m.
Briefing by Charles Meinhold on 1990 Recommendations of the International Commission on Radiological Protection (ICRP Publication 60) (Public Meeting)

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Raymond Fraley, 301/492–8049)

Week of September 14—Tentative

Monday, September 14

2:00 p.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)

Thursday, September 17

2:00 p.m.
Status Briefing on Shutdown and Low Power Risk Issues (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 21—Tentative

Thursday, September 24

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 28—Tentative

Wednesday, September 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 (Commissioner Remick not present) on September 1, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Litigative and Related Internal Personnel Matters" (Closed—Ex. 2, 6, 9B, and 10) be held on September 1 and on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

William M. Hill, Jr.,

Office of the Secretary.

September 4, 1992.

[FR Doc. 92–21837 Filed 9–4–92; 2:58 pm]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 2:30 p.m. (open portion), Tuesday, September 22, 1992.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:20 p.m.):

1. President's Report
2. Information Reports
3. Finance and Insurance Project in Colombia
4. Finance Project in Hungary
5. Finance Project in West Africa
6. Finance Project in Guyana
7. Finance Project in Zambia
8. Insurance Project in Slovakia
9. Pending Major Projects
10. Disposition of Guaranty Reserve and Allocation of Retained Earnings
11. Proposed Defense Conversion Policy
12. Approval of 4/21/92 and 7/14/92 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:30 p.m.)

1. Approval of 4/21/92 and 7/14/92 Minutes (Open Portion)
2. Information Reports
3. Recommendation for meeting schedule through end of September 1993

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 336–8403.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 92–21835 Filed 9–4–92; 2:57 pm]

BILLING CODE 3210-01-M

Corrections

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270, and 271

[FRL-4132-4]

RIN 2050-AD36

Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

Correction

In the issue of Friday August 28, 1992, on page 39275 in the correction to rule document 92-15997, in the last line, "November 19, 1992" should read "November 9, 1992".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Exemption for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors With Respect to Qualified Eligible Clients

Correction

In rule document 92-18642 beginning on page 34853 in the issue of Friday, August 7, 1992, make the following corrections:

1. On page 34854, in the first column, in footnote 8, in the first line, "CPOs" should read "CPO's".

2. On page 34855, in the 3d column, in the 1st full paragraph, in the 16th line, "was sufficient" should read "was a sufficient".

3. On page 34857, in the third column, in footnote 28, in the third line, "invest" should read "investee".

4. On page 34859, in the first column, in the first full paragraph, in the last line, "provisions" should read "provision".

5. On the same page, in the same column, in footnote 33:

a. Beginning in the tenth line, "revoked or refused, persons who are subject to an injunction from" should be deleted.

b. In the last line, after "investment-related" insert "activities, and persons who have been found to have violated specified investment-related".

§ 4.7 [Corrected]

6. On page 34864, in the first column, under § 4.7(b)(1)(ii)(B)(*2*)(*xi*), in the fourth line, "$500,000,000" should read "$5,000,000".

7. On the same page, in the second column, under § 4.7(b)(2)(i), in the first line, "(a)" should read "(A)", and in the next to last line, "BROCHURE OF" should read "BROCHURE OR".

§ 4.8 [Corrected]

8. On page 34865, in the second column, under § 4.8, the second paragraph designated "(a)" should read "(b)".

BILLING CODE 1505-01-D

federal register

Wednesday
September 9, 1992

Part II

Environmental Protection Agency

Final NPDES General Permits for Storm Water Discharges From Construction Sites; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4202-4]

Final NPDES General Permits for Storm Water Discharges from Construction Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits.

SUMMARY: The Regional Administrators of Regions I, II, III, IV, V, VI, VIII, IX, and X (the "Regions" or the "Directors") are issuing final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity from construction sites in 10 States (Alaska, Arizona, Idaho, Louisiana, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, and Texas); the Territories of Puerto Rico, Johnston Atoll, and Midway and Wake Islands; on Indian lands in Alaska, Arizona, California, Colorado, Florida, Idaho, Maine, Massachusetts, Mississippi, Montana, New Hampshire, Nevada, North Carolina, North Dakota, Utah, Washington, and Wyoming; from Federal facilities in Colorado, and Washington; and from Federal facilities and Indian lands in Louisiana, New Mexico, Oklahoma, and Texas.

These general permits establish Notice of Intent (NOI) requirements, special conditions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with discharges authorized by the permit.

ADDRESSES: Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office. The addresses of the Regional Offices and the name and phone number of the Storm Water Regional Coordinator is provided in section IV.F of the Fact Sheet.

The index to the administrative records for these permits are available at the appropriate Regional Office. The complete administrative record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. Specific record information will be made available at the appropriate Regional Office as requested.

DATES: These general permits shall be effective on September 9, 1992. This effective date is necessary to provide appropriate dischargers with the opportunity to comply with the October 1, 1992 deadline for submitting an NPDES application for storm water discharges associated with industrial by submitting a Notice of Intent (NOI) to be covered by the permits.

Deadlines for submittal of Notices of Intent (NOIs) are provided in section IV.A.1 of the Fact Sheet and part II.A of the general permits. Today's general permits also provide additional dates for compliance with the terms of the permit.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permits and for copies of the Notice of Intent form (the Notice of Intent form in appendix C of this notice can be copied and submitted) contact the NPDES Storm Water Hotline at (703) 821-4823, or the appropriate EPA Regional Office. The name, address and phone number of the Regional Storm Water Coordinators are provided in section IV.F of the Fact Sheet.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Coverage of General Permits
III. Summary of Options for Controlling Pollutants; and
IV. Summary of Permit Conditions
A. Notice of Intent Requirements
1. Deadlines for Submitting NOIs
2. Authorization to Discharge
3. Contents of the NOI
4. Additional Notification
B. Special Conditions
1. Prohibition on Non Storm Water Discharges
2. Releases of Reportable Quantities of Hazardous Substances and Oil
C. Storm Water Pollution Prevention Plan Requirements
1. Contents of the Plan
a. Site Description
b. Controls to Reduce Pollutants
c. Maintenance
d. Inspections
e. Non-Storm Water Discharges
2. Deadlines for Plan Preparation and Compliance
3. Signature and Plan Review
4. Keeping Plans Current
5. Additional Requirements
6. Contractors
D. Retention of Records
E. Notice of Termination Requirements
F. Regional Offices
V. Cost Estimates
VI. Economic Impact (Executive Order 12291)
VII. Paperwork Reduction Act
VIII. Section 401 Certification
IX. Regulatory Flexibility Act

I. Introduction

The Regional Administrators of the United States Environmental Protection Agency (EPA) are issuing final general permits for the majority of storm water discharges associated with industrial activity as follows:

Region I—For the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region II—For the Commonwealth of Puerto Rico.

Region IV—For Indian lands located in Florida (two tribes), Mississippi, and North Carolina.

Region VI—For the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—For the State of South Dakota; for Indian lands located in Colorado (including the Ute Mountain Reservation in Colorado), Montana, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation New Mexico.

Region IX—For the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—For the State of Alaska, and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

This notice contains four sets of appendices. Appendix A summarizes EPA's response to major comments received on the draft general permits published on August 16, 1991, (56 FR 40948). Appendix B provides the language of the final general permits. The permits in appendix B are similar. Appendix B provides the language of the final general permits. Except as provided in part X of the permits, parts I through IX apply to all permits. Part X of the permit contains conditions which only apply in the State indicated. Appendix C is a copy of the Notice of Intent (NOI) form (and associated instructions) to be used by dischargers wanting to obtain coverage under the general permits. Appendix D is a copy of the Notice of Termination (NOT) form (and associated instructions) that can be used by dischargers wanting to notify

EPA that their storm water discharges associated with industrial activity have been terminated or that the permittee has transferred operation of the facility.

On August 16, 1991, (56 FR 40948) EPA requested public comment on draft general permits that were the basis for today's final general permits. In addition to addressing storm water discharges from construction activities, the August 16, 1991, draft general permits addressed storm water discharges from other industrial activities. The permits in this notice only address storm water associated with construction activity. Elsewhere in today's **Federal Register**, EPA is publishing NPDES permits for storm water discharges from nonconstruction industrial facilities.

EPA received over 125 comments on construction issues associated with the draft general permits. In addition, public hearings to discuss the draft general permits were held in Dallas, TX; Oklahoma City, OK; Baton Rouge, LA; Albuquerque, NM; Seattle, WA; Boise, ID; Juneau, AK; Pierre, SD; Phoenix, AZ; Orlando, FL; Tallahassee, FL; Augusta, ME; Boston, MA; and Manchester, NH.

EPA is incorporating portions of the detailed fact sheet for the draft general permits published on August 16, 1991, as part of the final fact sheet and statement of basis for today's final permits. The sections of the prior fact sheet being incorporated are Section 1, Background; Section 2, Types of Discharges Covered; and Section 3, Description of Discharges Covered; and Section 5, The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewers.

II. Coverage of General Permits

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)).[1] The term "storm water discharge from construction activities" will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

These final general permits may authorize storm water discharges from existing construction sites (facilities where construction activities began before October 1, 1992, and final stabilization is to occur after October 1, 1992) and new construction sites. New construction sites are those facilities where disturbances associated construction activities commence after October 1, 1992. To obtain authorization under today's permits, a discharger must submit a complete NOI and comply with the terms of the permit. The terms of the permit, including the requirements for submitting an NOI, are discussed in more detail below.

The following discharges are not authorized by these final general permits:

- Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;
- Non-storm water discharges (except certain non-storm water discharges specifically listed in today's general permits). However, today's permits can authorize storm water discharges from construction activities where such discharges are mixed with non-storm water discharges that are authorized by a different NPDES permit;
- Storm water discharges from construction sites that are covered by an existing NPDES individual or general permit. However, storm water discharges associated with industrial activity from a construction site that are authorized by an existing permit may be authorized by today's general permit after the existing permit expires, provided the expired permit did not establish numeric limitations for such discharges;
- Storm water discharges from construction sites that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and
- Storm water discharges from construction sites if the discharges are likely to adversely affect a listed endangered or threatened species or a species that is proposed to be listed as endangered or threatened or its critical habitat.

III. Summary of Options for Controlling Pollutants

Most controls for construction activities can be categorized into two groups: (1) Sediment and erosion controls; and (2) storm water management measures. Sediment and erosion controls generally address pollutants in storm water generated from the site during the time when construction activities are occurring. Storm water management measures generally are installed during and before competition of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures include housekeeping best management practices.

A. Sediment and Erosion Controls

Erosion controls provide the first line of defense in preventing offsite sediment movement and are designed to prevent erosion through protection and preservation of soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: Stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is given in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992.

1. Sediment and Erosion Controls: Stabilization Practices

Stabilization, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be vegetation, such as grass, trees, vines, or shrubs. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filled with rock). Mulches, such as straw or bark, are most effective when used in conjunction with establishing vegetation, but can be used without vegetation. Stabilization of exposed and denuded soils is one of the most important factors in minimizing erosion while construction activities occur. A vegetation cover reduces the erosion potential of a site by absorbing the kinetic energy of raindrops that would otherwise disturb unprotected soil; intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment in the runoff. Stabilization measures are often the

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council* v. *EPA*, Nos. 90-70671 and 91-70200, slip op. at 6217 (9th Cir. June 4, 1992).

most important measures taken to prevent offsite sediment movement and can provide large reductions of suspended sediment levels in discharges and receiving waters.[2] Examples of stabilization measures are summarized below.

a. Temporary seeding. Temporary seeding provides for temporary stabilization by establishing vegetation at areas of the site where activities will temporarily cease until later in the construction project. Without temporary stabilization, soils at these areas are exposed to precipitation for an extended time period, even though work is not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion.[3]

b. Permanent seeding. Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site by controlling erosion and is typically required at most sites for aesthetic reasons.

c. Mulching. Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching by itself, does provide some erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding activities, providing a higher likelihood of successful establishment of vegetation. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

d. Sod stabilization. Sod stabilization involves establishing long-term stands of grass with sod on exposed surfaces. When installed and maintained properly, sodding can be more than 99 percent effective in reducing erosion,[4] making it the most effective vegetation practice available. The cost of sod stabilization (relative to other vegetative controls) typically limits its use to exposed soils where a quick vegetative cover is desired and sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilization.

e. Vegetative buffer strips. Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

f. Protection of trees. This practice involves preserving and protecting selected trees that exist on the site prior to development. Mature trees provide extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

2. Sediment and Erosion Controls: Structural Practices

Structural practices involve the installation of devices to divert flow, store flow, or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed upslope areas through use of earth dikes, temporary swales, perimeter dike/swales, or diversions to stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Approaches to removing sediment from site runoff include diverting flows to a trapping or storage device or filtering diffuse flow through silt fences before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

a. Earth dike. Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation.

b. Silt fence. Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be carefully maintained to ensure structural stability and to remove excess sediment.

c. Drainage swales. A drainage swale is a drainage channel lined with grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

d. Sediment traps. Sediment traps can be installed in a drainage way, at a storm drain inlet, or other points of discharge from a disturbed area.

e. Check dams. Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff.

f. Level spreader. Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

g. Subsurface drain. Subsurface drains transport water to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. Pipe slope drain. A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of a slope to convey surface runoff down slopes without causing erosion.

i. Temporary storm drain diversion. Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

j. Storm drain inlet protection. Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

k. Rock outlet protection. Rock protection placed at the outlet end of culverts or channels can reduce the depth, velocity, and energy of water so that the flow will not erode the receiving downstream reach.

l. Other controls. Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

B. Storm Water Management Measures

Storm water management measures are installed during the prior to completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in significant changes in

[2] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

[3] "Guides for Erosion and Sediment Control in California," USDA, Soil Conservation Service, Davis CA, Revised 1985.

[4] "Guides for Erosion and Sediment Control in California," USDA Soil Conservation Service, Davis CA, Revised 1985.

land use. Such changes typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount within a drainage area increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in runoff compared to preconstruction levels. Traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management measures include infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices," Metropolitan Washington Council of Governments, March 1992.

1. Onsite Infiltration

A variety of infiltration technologies, including infiltration trenches and infiltration basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration devices tend to mitigate changes to predevelopment hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide ground water recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction.[5] Infiltration trenches can be more easily placed into under-utilized areas of a development and can be used for small sites and infill developments. However, trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

2. Flow Attenuation by Vegetation or Natural Depressions

Flow attenuation provided by vegetation or natural depressions can provide pollutant removal and infiltration and can lower the erosive potential of flows.[6] In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devices include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are less than other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.[7] Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should usually be used in combination with other storm water devices.

Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage systems.[8]

3. Outfall Velocity Dissipation Devices

Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen erosion caused by the discharge.

4. Retention Structures/Artificial Wetlands

Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands [9] can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.[10] These devices rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also create wildlife habitat, recreation, and landscape amenities, as well as corresponding higher property values.

5. Water Quality Detention Structures

Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.[11] Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.[12]

C. Housekeeping BMPs

Pollutants that may enter storm water from construction sites because of poor housekeeping include oils, grease, paints, gasoline, concrete truck washdown, raw materials used in the manufacture of concrete (e.g., sand, aggregate, and cement), solvents, litter, debris, and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;
- Locate equipment washdown areas on site, and provide appropriate control of washwaters;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

IV. Summary of Permit Conditions

These general permits contain Notice of Intent requirements, a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting

[5] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", July, 1987, Metropolitan Washington Council of Governments.

[6] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[7] "Standards and Specifications for Infiltration Practices", 1984, Maryland Water Resources Administration.

[8] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

[9] See "Wetland basins for Storm Water Treatment: Discussion and Background", Maryland Sediment and Stormwater Division, 1987 and "The Value of Wetlands for Nonpoint Source Control—Literature Summary", Strecker, E., et.al., 1990.

[10] "Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, 1987.

[11] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[12] "Urban Surface Water Management", Walesh, S.G., Wiley, 1989

quantities, requirements for developing and implementing storm water pollution prevention plans, and requirements for site inspections.

A. Notice of Intent Requirements

NPDES general permits for storm water discharges associated with industrial activity require that dischargers submit a Notice of Intent (NOI) to be covered by the permit prior to the authorization of their discharges under such permit (see 40 CFR 122.28(b)(2), (April 2, 1992, (57 FR 11394)). Consistent with these regulatory requirements, today's permits establish NOI requirements. Dischargers that submit a complete NOI are not required to submit an individual permit application for such discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

Dischargers who want to obtain coverage under these permits must submit NOIs using the form provided by EPA (or a photocopy thereof). The NOI form is provided in appendix C of this notice and can be photocopied for use in submittals. NOI forms are also available from EPA's Storm Water Hotline ((703) 821–4823) and EPA Regional Offices (see part F of today's notice). Completed NOI forms must be submitted to the following address: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Dischargers operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans, must, in addition to filing copies of the NOI with EPA, submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated below.

1. Deadlines for Submitting NOIs

Deadlines for submittal of NOIs to be authorized to discharge under these permits are as follows:

• On or before October 1, 1992, for storm water discharges from construction sites where disturbances associated with a construction project occur on or before October 1, 1992, and final stabilization [13] is completed at the site after October 1, 1992;

• At least 2 days prior to the commencement of construction activities (e.g., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities), where such activities commence after October 1, 1992; and

• For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after an NOI has been submitted), an NOI shall be submitted at least 2 days prior to when the operator commences work at the site.

EPA will accept an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

2. Authorization

Dischargers who submit a complete NOI in accordance with the requirements of these permits are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, unless notified by EPA.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. Contents of the NOI

A photocopy of the NOI in appendix C of today's notice may be completed and submitted to EPA's central address to obtain authorization to discharge under today's permits. The NOI form requires the following information:

• The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter;

• The site owner's name, address, and telephone number;

• The name, address, and telephone number of the operator(s) with day-to-day operational control who have been identified at the time of the NOI submittal, and their status as a Federal, State, private, public, or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI of the additional operator must indicate the preexisting NPDES permit number for discharge(s) from the site;

• The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving waters);

• The permit number of any NPDES permit(s) for any other discharge(s) (including any other storm water discharges or any non-storm water discharges) from the site;

• An indication of whether the operator has existing sampling data that describe the concentration of pollutants in storm water discharges. Existing data should not be included as part of the NOI and should not be submitted unless and until requested by EPA; and

• An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with the permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. A copy of the plans or permits should not be included with the NOI submission, and should not be submitted unless and until requested by EPA.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI (see appendix C).

4. Additional Notification

In addition to submitting the NOI to EPA, facilities operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans are required to submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated above. Failure to do so constitutes a violation of the permit.

[13] The term "final stabilization" is defined in today's permits and is discussed in more detail in the Notice of Termination section of today's fact sheet.

B. Special Conditions

1. Prohibition on Non-Storm Water Discharges

Today's permits do not authorize non-storm water discharges that are mixed with storm water except for specific classes of non-storm water discharges specified in the permits. Non-storm water discharges that can be authorized under today's permits include discharges from firefighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with permit requirements; potable water sources including waterline flushings; irrigation drainage; routine external building washdown that does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.[14]

To be authorized under today's permits, these sources of non-storm water (except flows from firefighting activities) must be specifically identified in the storm water pollution prevention plan prepared for the facility. (Plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water components of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or biocides; for higher maintenance lawn areas, a plan could identify measures such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing biocide use with an integrated pest management program, introducing natural vegetation or more hearty species, and reducing water use (thereby reducing the volume of irrigation drainage).

Today's permits do not require pollution prevention measures to be identified and implemented for non-storm water flows from firefighting activities since these flows will usually occur as unplanned emergency situations where it is necessary to take immediate action to protect the public.

[14] These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(iv)(D)).

The general prohibition on non-storm water discharges in today's permits ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by these permits. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharge cannot be covered by today's permits and the discharger should (1) submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or (2) discontinue the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

Today's permits provide that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, today's permits require the following actions:

- The permittee must notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302, as soon as they have knowledge of the discharge;
- The permittee must modify the storm water pollution prevention plan for the facility within 14 calendar days of knowledge of the release to provide (1) a description of the release, (2) the date of the release and (3) the circumstances leading to the release. In addition, the permittee must modify the plan, as appropriate, to identify measures to prevent the reoccurrence of such releases and to respond to such releases.
- Within 14 calendar days of the knowledge of the release, the permittee must submit to EPA (1) a written description of the release (including the type and estimated amount of material released), (2) the date that such release occurred, (3) the circumstances leading to the release, and (4) any steps to be taken to modify the storm water pollution prevention plan for the facility.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), the spill is not authorized by this permit. The discharger must report the spill as required under 40 CFR 110. In the event of a spill, the requirements of section 311 of the CWA and otherwise applicable provisions of sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil-requirements that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

C. Storm Water Pollution Prevention Plan Requirements

The pollution prevention plans required by today's permits focus on two major tasks: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with industrial activity from the facility and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of these permits.

In developing these permits, the Agency reviewed a significant number of existing State and local sediment and erosion control and storm water management requirements. State and local data were reviewed for a wide range of climates and varying types of construction activities.

1. Contents of the Plan

Storm water pollution prevention plans must include a site description; a description of controls that will be used at the site (e.g., erosion and sediment controls, storm water management measures); a description of maintenance and inspection procedures; and a description of pollution prevention measures for any non-storm water discharges that exist.

a. Site description. Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The plan must identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the source identification components for pollution prevention plans must provide a description of the site and the construction activities. This information is intended to provide a better understanding of site runoff and major

pollutant sources. At a minimum, plans must include the following:

• A description of the nature of the construction activity. This would typically include a description of the ultimate use of the project (e.g., low-density residential, shopping mall, highway).

• A description of the intended sequence of major activities that disturb soils for major portions of the site (e.g., grubbing, excavation, grading).

• Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities. Where the construction activity is to be staged, it may be appropriate to describe areas of the site that will be disturbed at different stages of the construction process.

• Estimates of the runoff coefficient of the site after construction activities are completed as well as existing data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficients can be estimated from site plan maps, which provide estimates of the area of impervious structures planned for the site and estimates of areas where vegetation will be precluded or incorporated. Runoff coefficients are one tool for evaluating the volume of runoff that will occur for a site when construction is completed. These coefficients assist in evaluating pollutant loadings, potential hydraulic impacts to receiving waters, and flooding impact. They are also used for sizing of post-construction storm water management measures.

• A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance; and outline of areas that will not be disturbed; the location of major structural and nonstructural controls identified in the plan; the location of areas where stabilization practices are expected to occur; the location of surface waters (including wetlands); and locations where storm water is discharged to a surface water. Site maps should also include other major features and potential pollutant sources, such as the location of impervious structures and the location of soil piles during the construction process.

• The name of the receiving water(s), and areal extent of wetland acreage at the site.

b. Controls to reduce pollutants. The storm water pollution prevention plan must describe and ensure that implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Permittees are required to develop a description of four classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address (1) erosion and sediment controls, (2) storm water management, (3) a specified set of other controls, and (4) any applicable procedures and requirements of State and local sediment and erosion plans or storm water management plans.

The pollution prevention plan must clearly describe the intended sequence of major activities and when, in relation to the construction process, the control will be implemented. Good site planning and preservation of mature vegetation are primary control techniques for controlling sediment in storm water discharges during construction activities as well as for developing a strategy for storm water management that controls pollutants in storm water discharges after the completion of construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls. The description of the intended sequence of major activities will typically describe the intended staging of activities on different parts of the site.

Permittees must develop and implement four classes of controls in the pollution prevention plan, each of which is discussed below.

i. Erosion and sediment controls. The requirements for erosion and sediment controls for construction activities in these permits have three goals: (1) To divert upslope water around disturbed areas of the site; (2) to limit the exposure of disturbed areas to the shortest duration possible; and (3) to remove sediment from storm water before it leaves the site. Erosion and sediment controls include both stabilization practices and structural practices.

Stabilization Practices. Pollution prevention plans must include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as quickly as possible. Stabilization practices are the first line of defense for prevention erosion; they include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetative buffer strips, and other appropriate measures. Temporary stabilization practices are often cited as the single most important factor in reducing erosion at construction sites.[15]

Stabilization also involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

Since stabilization practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. These permits provide that, except in three situations, stabilization measures be initiated on disturbed areas as soon as practicable, but no more than 14 days after construction activity on a particular portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

• Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased.

• Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.

• In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measure is precluded by seasonal arid conditions, in which case, stabilization measures must be initiated as soon as practicable.

Structural Practices. The pollution prevention plan must include a description of structural practices to the degree economically attainable, to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site that are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains,

[15] "New York Guidelines for Urban Erosion and Sediment Control", USDA, Soil Conservation Service, March 1988.

pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural measures should be placed on upland soils to the degree possible.

For sites with more than 10 disturbed acres at one time that are served by a common drainage location, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably sized dry wells or infiltration structures), must be provided where economically attainable until final stabilization of the site has been accomplished. Flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization may be diverted around both the sediment basin and the disturbed area. The requirement to provide 3,600 cubic feet of storage area per acre drained does not apply to such diverted flows.

For the drainage locations which serve more than 10 disturbed acres at one time and where a sediment basin providing storage or equivalent controls for 3,600 cubic feet per acre drained is not economically attainable, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and at a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Alternatively, the permittee may provide a sediment basin providing storage for 3,600 cubic feet of storage per acre drained. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

ii. Storm water management. The plan must include a description of "storm water management" measures [16]. These permits address only the installation of storm water management measures and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenances after storm water discharges associated with construction activities have been eliminated from the site.

Land development can significantly increase storm water discharge volumes and peak velocities where appropriate storm water management measures are not implemented. In addition, storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients, and oxygen demanding constituents.[17]

Storm water management measures that are installed during the construction process can control the volume of storm water discharged and peak discharge velocities, as well as reduce the amount of pollutants discharged after the construction operations have been completed. Reductions in peak discharge velocities and volumes can also reduce pollutant loads, as well as reduce physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to predevelopment runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be placed on upland soils to the degree attainable. The installation of such devices may be subject to section 404 of the CWA if the devices are placed in wetlands (or other waters of the United States).

Options for storm water management measures that are to be evaluated in the development of plans include infiltration of runoff on site; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures (including wet ponds); and sequential systems that combine several practices.

The pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS).[18] A number of storm water management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems. The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practice", prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Proper selection of a technology depends on site factors and other conditions.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, EPA encourages facilities to avoid creating ground water pollution problems. For example, if the water table is unusually high in an area or soils are especially sandy and porous, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed predevelopment levels can be based on hydrologic models which consider conditions such as the natural vegetation which is typical for the area.

Increased discharge velocities can greatly accelerate erosion near the

[16] For the purpose of the special requirements for construction activities, the term "storm water management" measures refers to controls that will primarily reduce the discharge of pollutants in storm water from sites after completion of construction activities.

[17] See "Nationwide Urban Runoff Program," EPA, 1984.

[18] TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

outlet of onsite structural measures. To mitigate these effects, these permits require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Velocity dissipation devices maintain and protect the natural physical and biological characteristics and functions of the watercourse, e.g., hydrologic conditions, such as the hydroperiod and hydrodynamics, that were present prior to the initiation of construction activities.

iii. Other controls. Other controls to be addressed in storm water pollution prevention plans for construction activities require that no non-storm water solid materials, including building material wastes shall be discharged at the site, except as authorized by a section 404 permit.

These final permits require that offsite vehicle tracking of sediments and the generation of dust be minimized. This can be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and/or providing street sweeping.

In addition, these permits require that the plan shall ensure and demonstrate compliance with applicable State and/or local sanitary sewer, septic system, and waste disposal regulations.[19]

iv. State and local controls. Many municipalities and States have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States have also developed storm water management controls. These general permits require that storm water pollution prevention plans for facilities that discharge storm water associated with industrial activity from construction activities include procedures and requirements of State and local sediment and erosion control plans or storm water management plans. Permittees are required to provide a certification that their storm water pollution prevention plan reflects requirements related to protecting water resources that are specified in State or local sediment and erosion plans or storm water management plans.[20]

In addition, permittees are required to amend their storm water pollution prevention plans to reflect any change in a sediment and erosion site plan or site permit or storm water management site plan or site permit approved by State or local officials for which the permittee receives written notice. Where such amendments are made, the permittee must provide a recertification that the storm water pollution prevention plan has been modified. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines, or technical guidance documents, but rather to site-specific State or local permits or plans.

c. Maintenance. Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans must contain a description of prompt and timely maintenance and repair procedures addressing all erosion and sediment control measures (e.g., sediment basins, traps, silt fences), vegetation, and other measures identified in the site plan to ensure that such measures are kept in good and effective operating condition.

d. Inspections. Procedures in a plan must provide that specified areas on the site are inspected by qualified personnel provided by the discharger a minimum of once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches. Areas of the site that must be observed during such inspections include disturbed areas, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Where sites have been temporarily or finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (with an average annual rainfall of 10 to 20 inches) the inspection must be conducted at least once every month.

Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the runoff from the site. Erosion and sediment control measures identified in the plan must be observed to ensure that they are operating correctly. Observations can be made during wet or dry weather conditions. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. This can be done by inspecting receiving waters to see whether any signs of erosion or sediment are associated with the discharge location. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, the site description and the pollution prevention measures identified in the plan must be revised as soon as possible after an inspection that reveals inadequacies. The inspection and plan review process must provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

An inspection report that summarizes the scope of the inspection, name(s) and qualifications of personnel conducting the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken must be retained as part of the storm water pollution prevention plan for at least three years after the date of inspection. The report must be signed in accordance with the signatory requirements in the Standard Conditions section of these permits.

Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.[21]

e. Non-storm water discharges. Today's permits may authorize storm water discharges from construction

[19] In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes force untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate, and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

[20] Operators of storm water discharges from construction activities which, based on an evaluation of site specific conditions, believe that State and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

[21] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

activities that are mixed with discharges from firefighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources including waterline flushings, irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, uncontaminated ground water (including dewatering ground water infiltration), and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.[22]

EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified, and implemented, they generally pose low risks to the environment. The Agency also notes that it can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence.

2. Deadlines for Plan Preparation and Compliance

Today's permits establish the following deadlines for storm water pollution prevention plan development and compliance:

• The plan must be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate.

• For construction activities that have begun on or before October 1, 1992, except for sediment basins, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. The plan shall provide for compliance with sediment basins required under the permits by no later than December 1, 1992.

• For construction activities that have begun after October 1, 1992, the plan must provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

3. Signature and Plan Review

Signature and plan review requirements are as follows:

• The plan must be signed by all permittees for a site in accordance with the signatory requirements in the Standard Permit Conditions section of the permit, and must be retained on site at the facility that generates the storm water discharge.

• The permittee must make plans available, upon request, to EPA, and State or local agency approved sediment and erosion plans, grading plans, or storm water management plans. In the case of a storm water discharge associated with industrial activity that discharges through a municipal separate storm sewer system with an NPDES permit, permittees must make plans available to the municipal operator of the system upon request.

• EPA may notify the permittee at any time that the plan does not meet one or more of the minimum requirements. Within 7 days of such notification from EPA (or as otherwise requested by EPA), the permittee must make the required changes to the plan and submit to EPA a written certification that the requested changes have been made.

4. Keeping Plans Current

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or to municipal separate storm sewer systems. The plan must also be amended if it proves to be ineffective in eliminating or significantly minimizing pollutants in the storm water discharges from the construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan. Amendments to the plan will be reviewed by EPA as described above.

5. Additional Requirements

These permits authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, only under the following conditions:

• The industrial source other than construction is located on the same site as the construction activity; and

• Storm water discharges from where the construction activities are occurring are in compliance with the terms of this permit.

6. Contractors

The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement presented below before conducting any professional service at the site identified in the pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

All certifications must be included in the storm water pollution prevention plan.

D. Retention of Records

The permittee is required to retain records or copies of all reports required by this permit, including storm water pollution prevention plans and records of all data used to complete the NOI to be covered by the permit, for a period of at least three years from the date of final stabilization. This period may be extended by request of the Director.

E. Notice of Termination

A discharger may submit a Notice of Termination (NOT) to EPA in two sets of circumstances: (1) After a site has undergone final stabilization and the facility no longer discharges storm water associated with industrial activity from a construction site and (2) when the permittee has transferred operational control to another permittee and is no longer an operator for the site. NOTs must be submitted using the form provided by the Director (or a photocopy thereof). A copy of the NOT form is in Appendix D and can be photocopied for use. NOTs will assist EPA in tracking the status of the discharger.

Today's permits define final stabilization for the purpose of submitting an NOT as occurring when all soil disturbing activities are completed and a uniform perennial

[22] This is consistent with the allowable types of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(A)).

vegetative cover with a density of 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Equivalent stabilization measures include permanent measures other than establishing vegetation, such as the use of rip-rap, gabions, and/or geotextiles.

A copy of the NOT, and instructions for completing the NOT, are provided in Appendix D of today's notice. The NOT form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter.
- The name, address, and telephone number of the operator addressed by the NOT.
- The NPDEs permit for the storm water discharge identified by the NOT.
- The following certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit form the Clean Water Act."

Notices of Termination are to be sent to the following address: Storm Water Notice of Termination, P.O. Box 1185, Newington, Virginia 22122.

The NOT must be signed by the appropriate individual in accordance with the signatory requirements of 40 CFR 122.22. A description of these signatory requirements is provided in the instructions accompanying the NOT (see appendix D).

Submittal of a NOT, by itself, does not relieve permittees from the obligations of the permit, such as the requirement to stabilize the site. Appropriate enforcement actions may still be taken for permit violations where a permittee submits a NOT but the permittee has not transferred operational control to another permittee or the site has not undergone final stabilization.

F. Regional Offices

Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, P.O. Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications or other written correspondence concerning discharges in any State, Indian land, or from any Federal Facility covered, should be sent to the appropriate EPA Regional Office listed below:

CT, MA, ME, NH, RI, VT

United States EPA, Region I, Water Management Division, (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, room 2209, Boston, MA 02203. Contact: Veronica Harrington, (617) 565–3525.

NJ, NY, PR, VI

United States EPA, Region II, Water Management Division, (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278. Contact: Jose Rivera, (212) 264–2911.

AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division, (FPB–3), Storm Water Staff, 345 Courtland Street, NE., Atlanta, GA 30365. Contact: Chris Thomas, (404) 347–3012.

AR, LA, NM (except see Region IX for Navajo lands and see Region VIII for Ute Mountain Reservation land), OK, TX

United States EPA, Region VI, Water Management Division, (6W–EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202. Contact: Region VI Storm Water Hotline at (214) 655–xxxx.

CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM–C), Storm Water Staff, 999 18th Street, Denver, CO 80202–2466. Contact: Vern Berry, (303) 293–1630.

Note.—For *Montana Indian Lands*, please use the following address:

United States EPA, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620–0026. Contact: Paul Montgomery, (406) 449–5486.

AZ, CA, HI, NV, American Samoa, Guam, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID, Johnston Atoll, Midway and Wake Island

United States EPA, Region IX, Water Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105. Contact: Eugene Bromley, (415) 744–1906.

AK, ID (except see Region IX for Duck Valley Reservation lands), OR, WA

United States EPA, Region X, Water Management Division, (WD–134), Storm Water Staff, 1200 Sixth Street, Seattle, WA 98101. Contact: Steve Bubnick, (202) 553–8399.

V. Cost Estimates

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). Today's permits provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all the controls listed in Tables 1 and 2. In general, sites that disturb a large area will incur higher pollution prevention costs.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding	$1.00 per square foot.
Permanent seeding	$1.00 per square foot.
Mulching	$1.25 per square foot.
Sod stabilization	$4.00 per square foot.
Vegetative buffer strips	$1.00 per square foot.
Protection of trees	$30.00 to $200.00 per tree set.
Earth dikes	$5.50 per linear foot.
silt fences	$6.00 per linear foot.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS—Continued

drainage swales—grass	$3.00 per square yard.
drainage swales—sod	$4.00 per square yard.
drainage swales—riprap	$45.00 per square yard.
drainage swales—asphalt	$35.00 per square yard.
drainage swales—concrete	$65.00 per square yard.
check dams—rock	$100.00 per dam.
check dams—covered straw bales	$50.00 per dam.
level spreader—earthen	$4.00 per square yard.
level spreader—concrete	$65.00 per square yard.
subsurface drain	$2.25 per linear foot.
Pipe slope drain	$5.00 per linear foot.
Temporary storm drain diversion	variable.
storm drain inlet protection	$300.00 per inlet.
rock outlet protection	$45.00 per square yard.
sediment traps	$500 to $7,000 per trap.
temporary sediment basins	$5,000 to $50,000 per basin.
sump pit	$500 to $7,000.
Entrance stabilization	$1,500 to $5,000 per entrance.
Entrance wash rack	$2,000 per rack.
Temporary waterway crossing	$500 to $1,500.
Wind breaks	$2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.
Sources: "Means Site Work Cost Data", 9th edition, 1990, R.S. Means Company.
"Sediment and Erosion Control, An Inventory of Current Practices", prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

	Annualized cost for 9-acre developed area	Annualized cost for 20-acre developed area
Wet Ponds	$5,872	$9,820
Dry Ponds	3,240	5,907
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls", Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.
Costs are presented in 1992 dollars. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

VI. Economic Impact (Executive Order 12291)

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. Section 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been completed for all States, Indian lands and Federal facilities covered by today's general permits. The following summary indicates where additional permit requirements have been added as a result of the certification process and also provides a more detailed discussion of additional requirements for Puerto Rico and Arizona in particular.

Region I

Maine: No additional 401 conditions.

Maine: Indian lands only, no additional 401 conditions.

Massachusetts: Indian lands only, no additional 401 conditions.

New Hampshire: No additional 401 conditions.

New Hampshire: Indian lands only, no additional 401 conditions.

Region II

Puerto Rico: See the following discussion and part X.A of the general permit for additional 401 conditions.

The Environmental Quality Board (EQB) of Puerto Rico issued on June 25, 1992, the General Water Quality Certificate (GWQC) in accordance with section 401 of the Clean Water Act for storm water discharges from construction activities that are classified as associated with industrial activity. This action was taken in response to the Region II Environmental Protection Agency's certification request of November 1, 1991.

The EQB's draft GWQC incorporated special conditions that must be met by all storm water discharges from construction activities that are classified as associated with industrial activity. A public notice was prepared including a notification to interested parties about the intention to issue a GWQC. The public notice provided a thirty (30) day public comment period. The EQB did not receive any comments regarding the GWQC; therefore, the EQB has finalized the GWQC.

The special conditions included in the GWQC are intended to assure that the general permit applicant will comply with the applicable requirements of the

Commonwealth of Puerto Rico Law and section 301(b)(1)(c) and 401(d) of the Clean Water Act. The GWQC contains, among others, the following special conditions:

• Prior to the construction of any treatment system of waters composed entirely of storm water, the permittee shall obtain the approval of the engineering report, plans, and specifications from the EQB.

• The permittee shall submit to EQB with copy to the Regional Office the following information regarding its storm water discharge(s) associated with industrial activity: the number of storm water discharges associated with industrial activity covered by this permit and a drawing indicating the drainage area of each storm water discharge associated with industrial activity:

—For construction activities that have begun on or before October 1, 1992, the permittee is required to submit the information listed above no later than November 15, 1992.

—For construction activities that have begun after October 1, 1992, the permittee is required to submit the information listed above within forty-five (45) days of submission of the NOI.

• All discharges covered by the GWQC shall be free of oil sheen at all times.

• The storm water discharges from construction activities covered by the GWQC will not cause violation of the applicable water quality standards.

• From construction activities that have begun on or before October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. On or before November 1, 1992, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. This certification should be signed by the person who fulfills the signatory requirements of the general permit.

• For construction activities that have begun after October 1, 1992, that plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities. Within thirty (30) days of submission of the NOI, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. This certification should be signed by the person who fulfills the signatory requirements of the general permit.

• Compliance with the pollution prevention plan requirements does not relieve the permittee of his or her responsibility to comply with the provisions of the Sediment and Erosion Control Plant (Plan CEST, as referred to in Spanish) required by EQB.

Review and appeals of special conditions attributable to the GWQC shall be made through the applicable procedures of the Commonwealth of Puerto Rico and may not be through EPA procedures. Copies of the GWQC may be obtained by writing to the EQB, P.O. Box 11488, Santurce, Puerto Rico, 00910, or by calling at (809) 767–8181.

Region IV

Florida: Indian lands only, no additional 401 conditions (two separate permits for two different tribes).

Mississippi Indian lands: No additional 401 conditions.

North Carolina Indian lands: No additional 401 conditions.

Region VI

Louisiana and Indian lands in Louisiana: No additional 401 conditions.

New Mexico and Indian lands in New Mexico (except Navajo lands and Ute Mountain Reservation lands): No additional 401 conditions.

Oklahoma and Indian lands in Oklahoma: No additional 401 conditions.

Texas and Indian lands in Texas: No additional 401 conditions.

Region VIII

South Dakota and Indian lands in South Dakota: No additional 401 conditions.

Montana Indian lands only: No additional 401 conditions.

North Dakota Indian lands only: No additional 401 conditions.

Wyoming Indian lands only: No additional 401 conditions.

Utah Indian lands only (except the Goshute Reservation in Utah and Navajo reservation lands in Utah): No additional 401 conditions.

Colorado Federal facilities, Colorado Indian lands, and New Mexico Indian lands (including the Southern Ute Reservation and the Ute Mountain reservation, which includes the entire reservation, which is located in Colorado and New Mexico): See part X.B for additional 401 conditions.

Region IX

Arizona: See the following discussion and part X.C of the general permit for additional 401 conditions.

A special condition (see part X.C of the permit) was added to ensure compliance with the water quality standards of the State of Arizona. Although the general permit excludes from coverage facilities which contribute to a violation of a state water quality standard, the State of Arizona is concerned about the practical implementation of this exclusion. The State believes that there is considerable uncertainty regarding the quality of storm water runoff from different types of facilities and which facilities should be excluded from coverage. In addition, the State has expressed concern regarding the performance of the BMPs which would be required by the permit. There, part X.C was added to ensure compliance with State water quality standards for facilities which are covered by the permit.

The special condition in part X.C of the permit (well registration numbers) was added primarily to ensure protection of State groundwater resources. The State is concerned that in Arizona, many facilities may dispose of some storm water to dry wells or injection wells rather than discharge to surface waters. This special condition will allow the State to gather additional information concerning discharges to groundwater. The State also wishes to receive a copy of the actual NOI forms for its files. The special condition in part X.C of the permit will allow the State to receive NOTs as well as NOIs.

The special condition in part X.C of the permit was added to provide a definition of the term "significant sources of non-storm water" which was not otherwise defined. The State is particularly concerned about discharges which may cause or contribute to a violation of a water quality standard.

Arizona Indian lands only (including the Navajo reservation lands in Utah, New Mexico): No additional 401 conditions. California Indian lands only: No additional 401 conditions. Nevada Indian lands only (including the Duck Valley reservation lands in Nevada and Idaho, including the Goshute territory in Utah): No additional 401 conditions. Johnston Atoll: No additional 401 conditions. Midway and Wake Island: No additional 401 conditions.

Region X

Alaska: See part X.D for additional 401 conditions. Alaska Indian lands: No additional 401 conditions. Idaho: See part X.E for additional 401 conditions. Idaho Indian lands (except the Duck Valley reservation lands in Nevada and Idaho): No additional 401 conditions. Washington Indian lands: No additional 401 conditions. Washington Federal facilities, see part X.F for additional 401 conditions.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permits provide small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: August 28, 1992.

Patricia Meaney,

Acting Regional Administrator, Region I.

Fact Sheet for Final National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Construction Activities That Are Classified as "Associated With Industrial Activity" Located in the Commonwealth of Puerto Rico (PRR100000)

(The following signature indicates approval of the Fact Sheet developed for the permit indicated above.)

Dated: August 28, 1992.

William J. Muszynski,

Acting Regional Administrator, Region II.

Dated: August 28, 1992.

Patrick M. Tobin,

Acting Regional Administrator, Region IV.

Dated: August 27, 1992.

B.J. Wynne,

Regional Administrator, Region VI.

Dated: August 28, 1992.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

Dated: August 28, 1992.

Daniel W. McGovern,

Regional Administrator, Region IX.

Dated: August 27, 1992.

Dana Rasmussen,

Regional Administrator, Region X.

Appendix A—Summary of Responses to Public Comments on the August 16, 1991, Draft General Permits

NOI Deadlines

In the August 16, 1991, draft general permits, EPA proposed that NOIs to obtain coverage under the permits be submitted within 180 days of the date of issuance of the general permits or at least 30 days prior to the commencement of construction of a new storm water discharge associated with industrial activity.

Subsequent to the August 16, 1991, notice, EPA extended to October 1, 1992 the regulatory deadlines for submitting individual permit applications (see November 5, 1991, (56 FR 56549)), and part 2 of group applications (see April 2, 1992 (57 FR 11394)), for storm water discharges associated with industrial activity.

Today's final general permits provide that NOIs for construction activities that commence before October 1, 1992, and continue past that date must be submitted on or before October 1, 1992. As discussed in the November 5, 1991, and April 2, 1992, rules, the October 1, 1992, date provides consistency with the deadlines for submitting individual permit applications and Part 2 of group applications. Using the October 1, 1992, deadline will minimize confusion regarding these deadlines, particularly where EPA issues permits for different States on different dates, and will provide an equitable framework for complying with permit application requirements.

As discussed in more detail below, some commenters on the August 16, 1991, draft general permits indicated that, in some cases, general contractors would not have been selected 30 days prior to the commencement of the construction activities. These commenters indicated that if general contractors were required to submit NOIs 30 days prior to commencing construction activities, then delays in project initiation could result. In response to these concerns, today's permits provide that NOIs for construction activities that commence after October 1, 1992, be submitted at least 2 days prior to the commencement of construction. EPA believes that shortening the deadline for submitting NOIs for storm water discharges from construction sites that commence after October 1, 1992, will minimize delays in project starts and, as discussed below, address concerns regarding who needs to apply. Today's rule also clarifies that where an operator has not yet been identified at the point in time during the planning process when an NOI for the site is initially submitted, the owner may submit an initial NOI with the operator submitting an NOI at a later date (but prior to the time when that operator commences work at the site).

Some commenters requested clarification as to whether dischargers that missed the deadlines for submitting an NOI may ultimately obtain general permit coverage. A number of these commenters were particularly concerned about situations where a discharger is unaware of the requirement to obtain an NPDES permit for their discharge by October 1, 1992. These commenters urged EPA to provide flexibility in allowing them to submit an NOI to be authorized to discharge under the general permit after the deadlines specified in the general permit.

In response, EPA recognizes that there will be situations where it will be appropriate to allow a discharge to be authorized under the general permit after the deadline for submitting an NOI. For example, some facilities may only become aware of the general permit or even that their storm water discharge must be authorized by an NPDES permit after the deadline for submitting an NOI has passed. The Agency recognizes that the NPDES storm water program is relatively new, at least in terms of implementation activities, and that the application deadlines have changed on several occasions, which may have confused some dischargers. While ignorance of NPDES storm water requirements is not a shield from enforcement for discharging without a permit, the Agency recognizes the administrative advantages to allowing an existing discharger to obtain coverage under the general permit. For example, an existing facility that missed the October 1, 1992, deadline for submitting an NOI may experience significant project delays if it is required to wait until an individual permit is issued for the site.

In response to these concerns, today's permit clarifies that a discharger that misses either the October 1, 1992 deadline or the 48-hour deadline for facilities that commence construction after October 1, 1992, may submit an NOI and be authorized to discharge under the general permits However, EPA wants to clarify that in such instances, the Agency may bring an appropriate enforcement action against the discharger.

NOI Requirements—Who Applies?

A number of commenters requested that EPA clarify which parties associated with a construction project must submit an NOI to be covered by the general permit. Some commenters indicated that different parties (e.g., site owner, developer, general contractor), can have different roles at different construction projects. Some of the commenters suggested that EPA should establish flexible requirements for who must submit an NOI to address the roles of the different parties responsible for the project, roles that can vary from site to site.

The commenters raised two major sets of concerns on this issue. The first set of concerns addressed the relationship between permit compliance and business practices in the construction industry. Several commenters indicated that, in situations where competitive bids are used to award construction contracts, they believed it was critical that the party that controls the specifications of the project incorporate prior to the bidding process the project specifications for sediment and erosion controls and storm water management measures necessary for permit compliance. These commenters indicated that they thought successful program implementation depended on ensuring that the specifications and costs associated with compliance with the permit be considered during the bid process. They indicated that the contractors bidding on the job should know the requirements of a storm water pollution prevention plan for a site to ensure that all of the bidders will be able to take the costs of complying with the plan into consideration in preparing a bid for the project. Several commenters raised concerns that contractors that were considering the costs associated with permit compliance may be at a competitive disadvantage when bidding on a project where sediment and erosion controls and/or storm water management measures were not addressed in the project specifications used during the bid process. These commenters thought that such an approach may result in economic incentives for other contractors to short change the pollution controls necessary under the permit in an attempt to submit a more competitive bid. Other commenters raised concerns that contractors may not be able to unilaterally build certain storm water management devices or sediment and erosion controls that are not identified in job specifications. In addition, some commenters indicated that if the party controlling the job specification (typically an owner or developer) were not permittees or co-permittees, then the costs of modifying plans after project initiation to address changes in site conditions would fall on the contractor, who may not be able to recoup the costs from the owner/developer.

The second set of concerns involved timing issues and the potential for delayed project starts. Several commenters indicated that in the construction industry, the site owner or developer (or their representative) often obtains required permits before the construction contract is awarded. This is done to prevent delays and to give the owner/developer an opportunity to modify job specifications to address issues raised in seeking permits. Some of these commenters noted the connection between the issues of who is required to submit an NOI and when an NOI is required. They indicated that in a significant number of situations, a contractor will not have been selected 30 days prior to initiation of the construction project.[23] Many of these commenters raised concerns that projects could be delayed if EPA required the contractor to submit the NOI 30 days prior to initiation of the project. Other commenters suggested that multiple general contractors could be used at some sites, with the first contractor initiating work (such as initial clearing and grading) long before the second contractor is selected.

In response, today's permits require the "operator" of a construction site to submit the NOI for coverage under a permit. For the purposes of submitting NOIs under these general permits, the Agency wants to clarify that the "operator" is the party or parties that either individually or taken together meet the following two criteria: (1) They have operational control over the site specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions (e.g. are authorized to direct workers at the site to carry out activities identified in the plan).

Control over site specifications is necessary to ensure that the site plan allows for the design of storm water management measures and other controls necessary to comply with the permit. In addition, control over site specifications is necessary to modify specifications based on information obtained during the construction process or as otherwise required by EPA. Day-to-day operational control over activities at the site is necessary to ensure that plans are effectively implemented. This is particularly true in the construction industry where conditions and activities are continually changing.

EPA anticipates that different types of parties (e.g., owners, developers, general contractors, etc.) will satisfy the two criteria for the operator that must submit the NOI at different projects. In addition, the Agency anticipates that in many instances, more than one party will have to submit an NOI for the same project in order to satisfy both criteria. For example, at a given site, the property owner may have operational control over site specifications, while a general contractor may have day-to-day control over activities at the site. In this situation, both the property owner and the general contractor must submit an NOI. EPA believes that this approach is necessary to ensure that the relevant parties are aware of their responsibilities under the permit.

EPA believes that this approach also addresses concerns about timing issues and minimizes the potential for delayed project starts. The Agency has incorporated a considerable amount of flexibility into the NOI requirements of today's permits to minimize the potential for project delays. Where multiple parties are required to submit NOIs for the same site, and all parties are known before the NOIs are submitted, then an NOI must be submitted for each party, with all NOIs for the project sent to EPA together in the same envelope. In situations where the party that controls the site specifications (such as an owner or developer) wants to submit an NOI before the operator(s) with day-to-day control of activities at the site is selected, they may do so. However, after an operator with day-to-day control of site activities is selected, the newly selected operator must submit an NOI before commencing activities on the site. Similarly, where a second operator with day-to-day control is selected after the first operator has commenced work, the newly selected operator must submit an NOI before they commence activities on the site. This flexibility should ensure that projects are not delayed.

EPA strongly recommends that pollution prevention plans be prepared

[23] The August 16, 1991 draft general permits would have required for many construction sites that NOIs be submitted 30 days before construction starts.

well in advance of submitting an NOI. Preparing plans as part of the project design phase will ensure that sediment and erosion controls and storm water management concepts are incorporated into the site design in the most cost-effective manner. Where competitive bids are used to award construction contracts, the Agency strongly recommends that the party that controls the specifications of the project prepare the pollution prevention plan prior to initiation of the bid process to ensure that bidders will clearly understand what controls will be necessary. One of the major advantages to a general permit for storm water discharges from construction activities is that it provides a known framework for developing storm water pollution prevention plans. The regulatory certainty provided by a general permit is intended to provide site developers with an opportunity to develop storm water pollution prevention plans well in advance of initiating construction at a site. The Agency recommends that developers take advantage of the opportunity to develop a storm water pollution prevention plan well in advance of initiating construction activities, and to make the design of sediment and erosion controls and storm water management measures an integral phase of the site design process. Early plan preparation will allow the costs of plan compliance to be considered during the bid process and will encourage the maximization of net environmental benefits by considering sediment and erosion controls and storm water management before site plan parameters and procedures are locked in.

Other commenters requested clarification on whether a NOI must be submitted where the property changes ownership, for example, when a developer sells a graded lot to a builder for residential buildings. A number of these commenters indicated that ownership and general contractors frequently change during the construction process. One example given was for residential land development, where an initial land owner acts as the initial developer, and hires a general contractor to put in roads, rough grading and major utility trunks (e.g., sewer and water lines). The developer then sells off parcels to one or more builders, and the builder, or the builder's contractors erect structures, tap into utilities, and put a final grade on the lot. Builders may continue to own the property or sell it (as in the case of a detached single family home) either after or prior to the establishment of final vegetative cover.

Today's permits provide that NOIs must identify and be signed by the party(s) that has operational control of the site. As discussed above, two criteria are to be evaluated when determining the operator(s) for the purpose of NOI submission, the operator must (1) have operational control of the site specifications (including the ability to make modifications in specifications); and (2) have the day-to-day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions. For many construction projects, more than one party (such as a site owner and general contractor for the project) will have to submit an NOI to ensure that both criteria are met. Where one of the parties that exhibits operational control changes, as determined by applying the two criteria, then the new party meeting the criteria must submit a new NOI. Thus, if the original developer sells a parcel to a builder, and the builder takes over operational control of site specifications and/or day-to-day operational control of activities at the site necessary to ensure compliance with plan requirements and permit conditions, than the builder must submit a new NOI.

In response to concerns about multiple parties involved in the construction process, and to provide additional clarification, today's permits also require that all contractors and subcontractors that will implement measures identified in the plan be identified in the plan, and certify that they understand the terms and conditions of today's permit. The Agency believes that this is an appropriate mechanism for ensuring that the responsibilities of the various parties involved are clearly understood. However, the Agency wants to clarify that subcontractors themselves do not need to submit an NOI provided the operator with day-to-day operational control of activities at the site (such as a general contractor) has submitted an NOI. Subcontractors need only certify their knowledge of permit requirements.

EPA believes that the approach taken to NOI requirements in today's permits will have a number of benefits. First, the Agency believes that it is critical that the parties with operational control over both site specifications and day-to-day activities at the site be identified in the NOI. This will assist in identifying responsible parties, provide for an opportunity for the various parties involved to clarify the terms and responsibilities of the plan among themselves, and ensure that effective enforcement may take place.

Second, the Agency believes that it is appropriate to provide flexibility, consistent with the NPDES regulations,[24] by allowing the owner to submit an NOI prior to selection of a general contractor or other operator, as long as the new operator submits an updated NOI after they are selected. This approach will minimize delays to conducting construction activities. In addition, it will address situations where a second operator or general contractor is selected during the construction process to either replace an earlier operator/general contractor or to conduct a different phase of the project.

The Agency believes that shortening the minimum time period between when an NOI is submitted and when a discharge is authorized to 2 days will simplify the NOI process and minimize any project delays. The NOI process will be simplified by allowing more time for all of the operators at the site to be identified, which will increase the likelihood that all or most site operators will be selected prior to the deadline for submitting an NOI. This will allow all operators to be identified in the initial submittal.

Concerns About Project Delays

A number of comments raised concerns that the NPDES requirements for storm water discharges from construction activities may result in significant delays to construction projects. Several of these commenters indicated that they believed EPA's review of detailed pollution prevention plans prior to the issuance of permits could not be accomplished in a short period of time. Other commenters requested clarification as to when dischargers would be authorized to discharge under the permit. Some commenters expressed concerns that EPA would not be able to approve NOIs in a timely manner. As discussed above, some commenters were concerned about

[24] The NPDES regulations at 40 CFR 122.21(b) provide that when a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit. However, EPA's regulations do not preclude an owner from applying for a permit where the operator has not yet been identified or where the owner and operator are the same entity. Thus, in the case of storm water discharges from construction sites, the Agency's regulations do not preclude the owner of a planned construction site during the plan development phase before the bid process has been completed so long as when a different operator is chosen (such as a general contractor), the new operator becomes a co-permittee. EPA considers the term "operator" to include a general contractor in certain circumstances where the contractor has operational control over activities at the site (see November 16, 1990 (55 FR 48034).

the issues of deadlines for submitting NOIs and who must submit NOIs.

In response, the Agency has taken a number of steps to minimize delays to construction projects. As discussed above, shortening the deadline for submitting NOIs and providing flexibility to allow owners to submit NOIs before contractors are selected will minimize project delays. In addition, EPA wants to clarify that, unless the discharger is notified by EPA to the contrary, storm water discharges form construction sites identified in a complete NOI are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, provided a pollution prevention plan has been prepared in accordance with the requirements of the permit. This short time period between submitting NOIs and being authorized to discharge under the general permit will minimize delays to construction project starts.

The Agency also wants to clarify that it does not intend to conduct detailed reviews of all pollution prevention plans prior to authorizing such storm water discharges under today's permit. Today's permits do not require permittees to submit pollution prevention plans to EPA before commencing discharges. As discussed above, today's permits base authorization on the submittal of an NOI rather than on EPA review and approval of individual site pollution prevention plans. However, under the permits, EPA retains authority to request and review storm water pollution prevention plans and to require dischargers to adjust plans or submit individual permit applications where appropriate.

NOI Requirements

A number of commenters on the August 16, 1991, draft general permits indicated that NOI requirements were generally less burdensome than individual permit applications. However, commenters raised several concerns with specific requirements of the NOI.

The August 16, 1991, draft permits would have required that NOIs include the mailing address of the facility. One commenter indicated that construction sites may not have mailing addresses. In response today's permits provide that where a mailing address for a construction site is not available, the location can be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, range to the nearest quarter section of the approximate center of the facility that the construction site is located in. However, a mailing address must be provided for the site owner and the operator. These addresses can be different than address of the construction site.

The August 16, 1991, draft permits would have required up to four 4 digit standard industrial classification (SIC) codes that best describe the principal products of the facility. EPA notes that while this requirement may be appropriate for other classes of facilities it is generally not necessary for construction activities.

A number of commenters suggested additional information that should be included in NOIs for construction sites, including area to be disturbed, a schedule of activities, erosion and sediment control plans approved by State and local governments. In response, as discussed above, EPA does not intend to conduct intensive plan reviews prior to approving NOIs. Rather, the Agency intends to use information in NOIs primarily for tracking purposes. However, today's permits require more detailed information be included in pollution prevention plans. Therefore, the Agency believes that the NOI requirements of today's permits will provide sufficient information to satisfy the limited purpose for which the Agency intends to use the NOI, and that additional information will be available to the Agency, where necessary, in the required pollution prevention plans or from other sources.

Notice of Termination

Some commenters requested clarification as to when requirements to discharge according to a permit for storm water discharges from construction activities end. Other commenters requested clarification on who is responsible for maintaining vegetation and structures after construction was completed. Some commenters requested that EPA provide a mechanism for reporting to EPA when construction activities at a site have been completed. Several commenters suggested that the general permits provide the discharger with the opportunity to file a notice of termination at the completion of construction.

In response to these concerns, today's permits have been modified to allow permittees to submit a Notice of Termination (NOT) to EPA indicating that the specific activities in the pollution prevention plan have ended and either the area has been stabilized or the operator has changed and the next steps in the plan are the responsibility of a different operator. NOTs must include a certification that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed, or that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have otherwise been eliminated, or that the person submitting the NOT is no longer the operator.

For the purpose of these general permits, EPA is defining the term "final stabilization" to mean that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70 percent of the cover for the area has been established or that equivalent stabilization measures have been employed. The 70 percent criteria applies to the minimum density of vegetation associated with all disturbed areas where vegetative stabilization is to be established. (The criteria is not met when 30 percent of the exposed area is not stabilized and 70 percent of the exposed area is fully stabilized). Equivalent stabilization measures would include situations where adequate and appropriate geotextiles and/or mulches are used to stabilize a site until vegetation is established. In addition, equivalent measures would include situations where a site is completely covered with impervious structures, and therefore is generally not susceptible to soil and erosion from precipitation.

The Agency believes that final stabilization is a critical component of a construction project. The 70 percent criterion provides a completion point that is directly tied to the key sediment and erosion objectives of the plan. The 70 percent criterion also is consistent with several State and local program requirements (see for example, "Pennsylvania Soil and Erosion Control Manual", 1983). The 70 percent criterion has been identified as economically achievable for several of the management measures for construction activities in the "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", EPA, May 1991, proposed under section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

The Agency wants to also clarify that after the site is finally stabilized and all storm water discharges associated with industrial activity are eliminated from a facility, then the NPDES program generally does not require the discharger to continue to maintain vegetation or storm water measures at the site. Thus, a storm water discharge from a non-industrial site will generally

not be subject to existing NPDES requirements after construction activities, including final stabilization, at the site have been completed pending the expiration of the storm water permit moratorium and EPA regulations under section 402(p)(6) of the CWA [25].

Discharges from Asphalt Plants

A number of commenters indicated that construction activities frequently use mobile asphalt plants and mobile concrete plants at a construction site on a temporary basis. These facilities mix asphalt cement or portland cement with aggregate to produce asphalt pavement or concrete. One commenter indicated that for highway and related public works projects, such plants are often located on leased property immediately adjacent to the construction site. Some commenters recommended that mobile asphalt or concrete plants used at a construction site be covered under the general permit for construction activities. In addition, one commenter recommended that storm water discharges from mobile asphalt or concrete plants used at a construction site that otherwise did not have a storm water discharge associated with industrial activity (e.g., a site that disturbed less than 5 acres), should not be required to obtain an NPDES permit.

In response, the Agency agrees that a number of construction sites will employ the services of mobile asphalt or concrete plants. The Agency notes that this situation is similar to that of a construction project that is conducted at an existing industrial facility (e.g., for the purpose of expanding or otherwise modifying the industrial facility). The Agency has noted that the storm water concerns, along with the appropriate controls, are somewhat different for construction projects than for other traditional industrial facilities, including mobile asphalt or concrete plants. Accordingly, the August 16, 1991, draft general permits contained requirements for pollution prevention plans for storm water discharges from construction sites that were significantly different from plan requirements for other types of industrial facilities. The Agency notes that the operator of mobile asphalt or concrete plants can be different from the site operator. Today's permits reflect EPA's attempts to address these concerns without imposing significant administrative burdens or increasing the potential for delay. Today's general permits clarify that storm water discharges associated with industrial activity from a construction site that are mixed with a storm water discharge from an industrial source other than construction (including storm water discharges from dedicated asphalt or concrete plants) may be covered by the permit under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity;
- Storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and
- Storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

This approach will ensure that appropriate pollution prevention measures are implemented for the various components of industrial activity occurring at the site. The Agency also intends to issue general permits for storm water discharges associated with industrial activity from facilities other than construction activities in the near future. The Agency intends that, similar to today's permits, the permits for storm water discharges from traditional industries will establish simplified procedures for permit coverage that will minimize project delays and burdens on permittees with temporary or permanent industrial facilities.

With respect to mobile asphalt or concrete plants at construction sites of less than five acres, the Agency notes that storm water discharges from the asphalt plant or concrete will generally be associated with industrial activity. The regulatory definition of storm water discharge associated with industrial addresses both concrete plants and asphalt plants (see 40 CFR 122.26(b)(14)(ii)). However, the storm water discharges from the rest of the construction site would generally not meet the definition of "storm water associated with industrial activity" if the site did not disturb more than five acres. Thus, the operator of the mobile asphalt or concrete plant would be required to obtain NPDES permit coverage (under a permit other than today's permit), while other storm water discharges from the site would generally not need NPDES permit coverage.

Non-Storm Water Discharges

The August 16, 1991, draft permit required that all discharges covered by the permits had to be composed entirely of storm water, and that discharges of material other than storm water must be in compliance with a different NPDES permit issued for the non-storm water discharge. EPA indicated that it was taking this approach because these general permits were not intended to authorize process wastewaters.

A number of commenters strongly supported the prohibition, or noted that it appeared reasonable. However, a number of comments addressing this provision raised technical concerns that certain non-storm water discharges are commonly allowed to discharge via a separate storm sewer or are otherwise mixed with storm water discharges. These commenters indicated that some classes of non-storm water discharges could not easily be separated from drainage or separate storm sewer systems, and that separating such discharges from a storm system would typically not provide any environmental benefits. Some of these commenters indicated that they believed that a strict prohibition on non-storm water discharges would significantly limit the number of facilities that obtained coverage under the general permit.

In response to these comments, EPA believes that it is important to retain a modified version of this provision in the permit to clarify that certain non-storm water discharges, such as process waste waters, or discharges from portable toilets, are not authorized by these storm water general permits. However, today's permits provide for two sets of circumstances where storm water discharges that are mixed with storm water may be authorized by this permit.

Consistent with the proposal, the permit authorizes storm water discharges associated with industrial activity that are mixed with non-storm water discharges that are in compliance with a different NPDES permit. Typically, the compliance point for numeric limitations for the non-storm water discharge will be before the discharges are mixed. Similarly, where a permit for a non-storm water discharge requires monitoring, such monitoring should be conducted prior to mixing or during dry weather conditions when the storm water discharges are not

[25] However, where a construction project results in an industrial facility or activity, an NPDES permit is still required to authorize any storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(14)). In addition, section 402(p)(2)(E) of the CWA provides EPA and authorized NPDES States with authority to designate storm water discharges that are a significant contributor of pollutants to waters of the United States or that contribute to a violation of a water quality standard as needing an NPDES permit.

occurring. This will allow a discharger to use the same conveyance or outfall for both process discharges authorized by a different NPDES permit and storm water discharges authorized by today's permits.

In response to comments, the Agency recognizes that discharging some classes of non-storm water via separate storm sewers or otherwise mixed with storm water discharges are largely unavoidable and/or may pose little if any environmental risk. Therefore, the Agency has clarified that today's permits authorize storm water discharges from construction activities that may mix with discharges from fire fighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources (including waterline flushings), irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, uncontaminated ground water (including dewatering ground water infiltration), and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge. EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified and implemented, they generally pose low risks to the environment. The Agency also notes that EPA can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges and because of their low probability and the unpredictability of their occurrence. The Agency notes that the approach in today's permits taken for non-storm water discharges is parallel to the approach taken for non-storm water discharges to large and medium municipal separate storm sewer systems in its November 16, 1990 rulemaking (55 FR 47990).

One commenter on the August 16, 1991, draft permits suggested that EPA exempt discharges from a 25-year, 24-hour storm event from the prohibition on non-storm water discharges, because during such an event non-storm water discharges may occur that are beyond the permittee's ability to control. EPA does not agree that the occurrence of a 25-year, 24-hour storm event should result in a wholesale exemption from NPDES requirements for non-storm water discharges. Large storm events should not be used as an excuse for dumping non-storm water discharges to waters of the United States; such discharges remain point source discharges under the CWA. Typically, systems that can result in non-storm water discharges should be designed to ensure no unpermitted discharge during large storm events. The Agency believes that the approach taken in today's permits is suitable for such releases, and does not want to create confusion or encourage such releases by providing such an exemption. Factors such as extreme or hazardous weather conditions can be evaluated as a matter of enforcement discretion where appropriate.

Releases of Reportable Quantities of Hazardous Substances

The August 16, 1991, draft general permits provided that the permits would not relieve the permittee of reporting requirements for releases of hazardous substances in excess of reporting quantities established under 40 CFR 117 and 40 CFR 302. The draft permits further provided that the discharge of hazardous substances in storm water discharges are to be minimized in accordance with the applicable storm water pollution prevention plan and that in no case shall storm water discharges contain a hazardous substance equal to or in excess of a reporting quantity.

A number of commenters strongly supported the provision or noted that it appeared reasonable. However, several other commenters indicated that the prohibition on releases of hazardous substances in excess of reporting quantities acted as a series of effluent limitations, and that the Agency had not established such limitations consistent with the technology-based or water quality-based standards of the CWA. These commenters indicated that the reporting quantities established under 40 CFR 117 and 40 CFR 302 were not developed as numeric effluent limitations under the NPDES program. One of these commenters indicated that some hazardous substances still had reporting quantities of 1 pound which had been arbitrarily established by Congress. However, a number of the commenters that objected to the prohibition as an perceived effluent limitation agreed that the reporting such discharges was appropriate and that a facility with such a discharge should not be exempt from liability provisions under CERCLA or the CWA. Some of these commenters also noted that the use of best management practices aimed at preventing and/or cleaning up the release, instead of numeric end-of-pipe limitations, is the most effective way to address these discharges.

In response, the Agency has modified this provision in today's permits for the purposes of providing additional consistency with the reporting requirements for releases of hazardous substances and oil in excess of reporting quantities at 40 CFR 110, 40 CFR 117 and 40 CFR 302, to provide clarification that the Agency does not intend for the prohibition on releases in excess of reporting quantities to act as numeric effluent limitations, and to address such releases in a manner consistent with the approach taken in today's permits with respect to pollution prevention plan implementation.

Today's permits require that the discharge of hazardous substances or oil in the storm water discharge(s) from a facility must be minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period, the permittee must:

- Notify the National Response Center (NRC) as soon as he or she has knowledge of the discharge;
- Notify the appropriate EPA Regional Office within 14 calendar days of knowledge of the release; and
- Modify the storm water pollution prevention plan for the facility within 14 days of knowledge of the release to provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the permittee must modify the plan as appropriate to identify measures to prevent the reoccurrence of such releases and to respond to such releases.

The Agency has clarified that today's permits do not authorize the discharge of hazardous substances or oil resulting from an on-site spill. This is consistent with CWA and CERCLA requirements for hazardous substances and oil for anticipated intermittent point source discharges at 40 CFR 117.12(d)(2)(i).

The Agency believes that this approach will result in the same objectives as the approach laid out in the August 16, 1991, draft permits (i.e., to provide the Agency with information that allows for considering whether an individual permit is appropriate), while minimizing confusion and concerns regarding the provision. Further, this approach provides additional flexibility for implementing appropriate pollution prevention measures. The Agency also believes that ample enforcement authority exists under the CWA and CERCLA for addressing releases of hazardous substances in excess of reportable quantities. The approach taken in the today's permits also supplements those authorities by providing additional notification requirements and by addressing pollution prevention measures in addition to the response/enforcement authorities under CERCLA and section 311 of the CWA.

One commenter raised concerns that the prohibition implied that discharges of a hazardous substance up to an applicable reporting quantity was acceptable and that a permittee was not required to do anything unless such a release occurred. In response, EPA does not intend to imply that discharges of hazardous substances of amounts up to an applicable reporting quantity are acceptable in the sense that a discharger must do nothing until they discharge a hazardous substance or oil in excess of a reportable quantity. The Agency notes that these permits do not establish numeric effluent limitations for storm water discharges from construction activities. Rather, the permits require dischargers to develop and implement best management practices and pollution prevention measures to reduce and/or control pollutants in the discharge even in cases where the discharge does not contain hazardous substances or contains hazardous substances at levels significantly lower than reporting quantities.

One commenter suggested that EPA exempt discharges from a 25-year, 24-hour storm event from the prohibition on reportable quantities because such releases may be beyond the discharger's ability to control. In response, the Agency has, except for spills, modified today's permit by replacing the prohibition on reporting quantities with a requirement the discharge of hazardous substances or oil must be minimized in accordance with the applicable storm water pollution prevention plan for the facility. Today's permits are not intended to authorize spills of hazardous substances from non-storm sources, and the Agency does not believe that it would be appropriate to authorize such discharges during a 25-year, 24-storm event.

Pollution Prevention Plan Requirements

At the heart of the August 16, 1991, draft permits were flexible requirements for the development and implementation of storm water pollution prevention plans. The draft general permits proposed that plans identify of pollutant sources and specify implementation of measures to prevent or otherwise reduce pollutants in storm water discharges. For construction activities, the draft general permits proposed a flexible framework for the development of control measures to be implemented in accordance with pollution prevention plans. The flexible framework for controls primarily addressed sediment and erosion measures, and storm water management measures.

A number of commenters encouraged EPA to maintain flexibility in controls because of the site-specific nature of construction activities. These commenters expressed their belief that adequate flexibility allows for the most efficient and cost-effective implementation of pollution prevention plans for sediment and erosion control and storm water management. The Agency agrees that flexibility is important to establishing effective and workable general permits.

A large construction industry trade association noted that, generally, the pollution prevention plans requirements of the August 16, 1991, draft general permits reflected an appropriate level of erosion and storm water management control for most construction projects. Their comments indicated that most development projects already employ the controls set forth in the plan.

A number of commenters stressed the importance of appropriate timing of controls, for example, that perimeter controls should be established before conducting major grubbing and grading activities. Other commenters stressed the importance of good site planning as a primary control technique for controlling sediment in storm water discharges from construction sites. Some of these commenters pointed to a number of benefits of good site planning, such as limiting the amount of disturbed area at any given time. Other commenters raised concerns that because activities at construction site typically change during the course of the project, permittees could not provide for compliance with all provisions of the plan at all times. In other words, the timing of certain controls would be dependent on the timing associated with construction activities that were relevant to that control.

The Agency agrees with these comments that the timing of controls and site planning are critical components to the success of the measures identified in a plan. As is discussed in more detail later, the Agency believes that good site planning also provides a number of significant economic incentives to dischargers. In addition, the Agency recognizes that sediment and erosion controls and other pollution prevention measures need to be coordinated with site activities, and that not all measures will be taken at the same time at a given site. For example, it is generally not appropriate to attempt to establish vegetation on portions of a site unless construction activities which will disturb that portion of the site have been completed or are temporary inactive.

In response to these concerns, the Agency has modified the permit to require that the plan clearly describe the intended sequence of major activities, and that for each control measure, the timing during the construction process for which the measure will be implemented. For example, perimeter controls for one portion of the site might be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. In that instance, perimeter controls would be actively maintained until final stabilization of portions of the site that are upward of the perimeter control. Requiring that plans clearly describe the intended sequence of major activities will assist in ensuring that measures are implemented at appropriate times. In addition, as discussed in more detail below, the Agency believes that this provision will encourage sound site planning, which can provide economic incentives to the discharger while at the same time minimize the discharge of pollutants to waters of the United States.

Several commenters urged EPA to impose sediment and erosion controls such as sediment traps and stabilization measures on all storm water discharges from construction activities over 1 or 2 acres is size. In response, EPA wants to clarify that these general permits only address storm water discharges from construction activities that are classified as "associated with industrial activity" pursuant to 40 CFR 122.26(b)(14). The regulatory definition of "storm water discharge associated with industrial activity" is limited to those construction activities or common plans of development or sale that will result in

the disturbance of five or more acres total land area.

A number of other commenters suggested that storm water discharges from construction activities subject to State and local requirements where local regulations are more or less in conformance with Federal guidelines should be exempted from either NPDES permit requirements altogether or from the requirement to develop pollution prevention plans. In response, the Agency wants to clarify that today's general permits can allow coverage of all storm water discharges from construction activities that result in the disturbance of five or more acres.

Section 402(p)(2)(B) of the CWA provides that storm water discharges associated with industrial activity must be authorized by an NPDES permit. EPA has defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction sites that disturb 5 or more acres (see 40 CFR 122.26(b)(14)).[26] Storm water discharges that are classified as a storm water discharge associated with industrial activity are not exempted from the requirement to obtain an NPDES permit even though they are in compliance with stringent State or local requirements. The Agency has attempted to develop the requirements in today's permits such that they will not conflict with State or local requirements. As part of this effort, today's permits require that pollution prevention plans for construction sites include requirements in applicable sediment and erosion site and/or storm water management plans or site permits approved by State or local officials.

Several commenters indicated that the amount of detail required in a plan was unduly burdensome for small sites. In response, EPA has attempted to provide a flexible framework for developing pollution prevention plans for construction activities, which minimizes burdens on construction site operators consistent with the requirements of the CWA. The Agency notes that many State or local governments typically require sediment and erosion plans, grading plans and/or storm water management plans that are significantly more detailed than those required under today's permits and that are accompanied by a more burdensome review process, and that such requirements usually apply to most sites that are smaller than 5 acres, as well as those sites that are 5 or more acres. The Agency has attempted to ensure that dischargers would be able to build on plans developed in accordance with State and local requirements and thereby minimize the burdens of today's permit requirements. The Agency also wants to clarify that under the NPDES regulations, only construction activities with a "storm water discharge associated with industrial activity" (e.g., those sites that disturb more than five acres) are generally required to obtain NPDES permit coverage.

A number of commenters indicated their belief that large linear construction projects, such as highway, pipeline, or utility corridor projects should be exempt from NPDES requirements. In response, the Agency again wants to clarify that the regulatory definition of "storm water associated with industrial activity" defines applicability in terms of whether a construction project disturbs more than five acres, and that storm water discharges from linear construction projects that satisfy this criterion are required to obtain NPDES permit coverage.

Several commenters indicated that projects that crossed State lines would be subject to different permits. The Agency wants to clarify that where a construction project with storm water discharges associated with industrial activity crosses State lines, the discharger must obtain permit coverage in each of the States where construction activities associated with the project will occur.

Pollutant Source Identification Requirements

The August 16, 1991, draft permits contained tailored pollutant source identification requirements for pollution prevention plans for construction activities. The draft permits required that plans provide a description of the nature of the construction activity; estimates of the total area of the site and the area of the site that is expected to undergo excavation or grading; an estimate of the runoff coefficient of the site and existing data describing the soil or the quality of any discharge from the site; a site map indicating drainage patterns and approximate slopes after major grading activities, the location of major control structures identified in the plan, and the location of surface waters; and the name of receiving waters.

One commenter indicated that runoff coefficients would typically change during the construction process, and requested clarification as to when during the construction process that coefficient should be estimated. In response, the Agency has clarified in the final permit that the site description in the plan should contain an estimate of the runoff coefficient when construction at the site is completed. The Agency believes that an estimate of the runoff coefficient after construction is completed is important for characterizing the discharge and sizing drainage and storm water management devices. The Agency believes that dischargers will generally have access to site plans that will allow the estimation of such coefficients.

A number of commenters urged EPA to require additional information describing other major features that could be pollutant sources. Various items that were suggested by commenters included areas used for storage of soils, chemicals and wastes, as well as areas where spills of toxic or hazardous materials may occur (such as areas where fueling activities are conducted).

In response to these comments, the Agency encourages dischargers to identify additional major pollutant sources in the plan where appropriate, such as soil stockpiles, vehicle maintenance areas, waste storage area, and portable sanitary units. However, today's permits do not specify that additional activities or features of sites be identified to ensure flexibility and to avoid confusion.

One commenter recommended that EPA not require the location of soil stockpiles to be identified in pollution prevention plans, since soil stockpiles are typically stored for short durations or are moved from location to location several times over short periods of time. Another commenter indicated that sites for soil storage are usually not identified until construction actually begins.

In response, today's permits require permittees to provide a description of potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the site, such as exposed, unstabilized soil stockpiles. The Agency wants to clarify that where major sources of pollutants are identified in a storm water pollution prevention plan for a site, and the pollutant source is moved, or conditions at the site change, then the plan is to be modified to address the change in condition. Identifying a pollutant source, such as a soil stockpile, in a storm water pollution prevention plan does not preclude a discharger from moving the pollutant source during the construction process, as long as the plan is updated in an appropriate manner. Similarly, if a major pollutant source, such as a soil

[26] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. *Natural Resources Defense Council* v. *EPA*, Nos. 90–70671 and 91–70200 (9th Cir., June 4, 1992).

stockpile, is not initially identified in a plan, the discharger is not precluded from establishing the stockpile at a later date as long as the plan is updated in an appropriate manner. This approach is consistent with good planning practices that are necessary for successful implementation of sediment and erosion controls.

Several commenters indicated that large, linear construction projects, such as pipeline projects, road construction, and powerline installation offered unique circumstances and would have difficulty in providing source identification information. One commenter gave the example that it would not be possible to provide a concise description of a project occurring over a 150 mile corridor.

In response, the Agency believes that the requirements in today's permits should be applicable to large, linear construction projects. The Agency believes that the basic information required in the plan is important for evaluating and designing pollution prevention measures. The Agency agrees that a 150 mile long construction project is a complex undertaking, and as a result, that storm water pollution prevention plans for such projects may not be "concise statements". However, the Agency recognizes the amount of preplanning that goes into such a project, and believes that most of the information required in the source identification portions of the permits will either already be available or can be developed with a reasonable effort. For example, operations involving the construction of roads or other structures will be concerned with evaluating and/or modifying grades. Information used in the construction process can be used to develop estimates or descriptions of drainage patterns and approximate slopes anticipated after grading activities.

Sediment and Erosion Controls—General Comments

The August 16, 1991, draft general permits recognized that measures to control sediment and erosion at construction activities could be broken into two major classes: (1) Vegetation measures that are intended to cover or maintain an existing cover over soils; and (2) structural practices to divert flows from upland areas or to remove sediment from site runoff. The draft general permits required that pollution prevention plans for construction activities contain a description of both vegetation measures and structural practices that would be used at the site.

A number of commenters indicated that the primary water quality concern with construction sites is the control of suspended solids. These commenters implied that the Agency should focus efforts primarily or exclusively on sediment and erosion controls at construction sites. The Agency agrees that controlling the discharge of sediment is a primary objective of today's permits. However, the Agency also notes that in some circumstances, material handling practices at a site may result in the discharge of toxic pollutants via a storm water conveyance to waters of the United States and should be addressed in the storm water pollution prevention plans for construction sites. In addition, studies such as the Nationwide Urban Runoff Program (NURP) show that after construction is completed, storm water from the site can contain a variety of toxic metals and other constituents. The storm water management measures in today's permits can be designed to reduce the discharge of these pollutants.

Some commenters indicated they believed that the mandatory controls listed should be provided as guidelines to be considered on a case-by-case basis. Another commenter did not support the inclusion of design standards into sediment controls, but rather favored the development of guidelines to be considered on a case-by-case basis, with individual site controls selected by the permittee based on a consideration of the area, terrain, climate, type of construction, duration of construction and any other relevant factors. In response, the Agency believes that it has provided an appropriate amount of flexibility in today's general permits. However, where dischargers believe that the measures required by the permit are not appropriate for their site, they may submit an individual application to the appropriate EPA Regional Office rather than submit an NOI to be covered by these permits.

One commenter suggested that a simple performance standard for sediment and erosion control, such as requiring "measures to keep silt out of streams" should be incorporated into the permit. Another commenter noted that one State (which is an authorized NPDES State), requires that turbidity downstream from the construction site not exceed upstream turbidity by more than 60 nephelometric turbidity units (NTUs). In response, the Agency will continue to evaluate appropriate design and performance standards for storm water discharges from construction activities. However, at this time, the Agency does not have sufficient data to support the application of the performance standard suggested by the commenter to the variety of site-specific conditions that the facilities covered by today's permits will face.

Sediment and Erosion Controls—Stabilization Measures

The August 16, 1991, draft general permits required that storm water pollution prevention plans from construction activities contain a description of vegetative practices designed to preserve existing vegetation where attainable and to revegetate open areas as soon as practicable after grading or construction. The draft permits provided that vegetative practices are to be initiated on all disturbed areas within 7 calendar days of the last activity at the area. The permit recognized that vegetative practices may include: temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer strips, and protection of trees.

Several commenters requested that EPA clarify whether commonly used stabilization measures such as mulching, providing a straw cover, or the use of geotextiles would be considered "vegetative practices" under the permits. In response, the Agency has replaced the term "vegetative practices" with the term "stabilization measures" in the final permits. The Agency believes that replacing the term "vegetative practices" (used in the August 16, 1991, draft general permits), with the term "stabilization measures" will ensure adequate flexibility to allow the use of erosion control measures, such as mulch or geotextiles, other than establishing vegetative cover. The Agency had intended such flexibility in the August 16, 1991, draft permits, but a number of commenters were concerned that a more limited interpretation of the term "vegetative practices" might result. The Agency believes that these misinterpretations will be minimized by this terminology change.

One commenter suggested that gabions (wire mesh boxes filled with rock and used for bank or slope stabilization) be listed as a sediment and erosion control. The Agency agrees that gabions, where installed correctly, are an effective measure for stabilizing channels and steep slopes and can act as a retaining wall. The Agency wants to clarify that in some situations, gabions can be used as a component of a strategy to comply with the stabilization provisions of today's permits and has listed them as an available measure. However, the Agency believes that attempting to list every possible soil and erosion measure in the permit would cause confusion and

has added the term "other appropriate measures" to the list of stabilization measures in the permit to ensure the intended flexibility in selecting measures.

A number of commenters addressed the requirement in the August 16, 1991, draft general permits that vegetative practices (stabilization measures) be initiated within 7 calendar days of the last activity at disturbed areas. Several of these commenters requested clarification of the phrase "last activity at that area". These commenters indicated that some dischargers may argue that the provision could be interpreted not to apply until after final rough grading occurs even where portions of a site undergo initial grading followed by an extended period (several months or even years) where no construction activity occurs on that part of the site. In response to this concern, the Agency has modified the language in the final permit to address stabilization requirements "after the construction activity in that portion of the site has temporarily or permanently ceased". The Agency recognizes that at some construction sites, a large area can be denuded of vegetation by initial grading or other activities, even though subsequent construction activity will not be conducted on significant portions of the site for several months or even years. The Agency also recognizes that disturbed areas where no construction is occurring for extended periods can create significant amounts of pollutants if interim stabilization measures are not taken. The Agency agrees with commenters that an interpretation of this provision that does not address situations where construction activities temporarily cease for an extended length of time is not consistent with the stabilization measures required under the permits. The Agency has therefore clarified that the stabilization requirements in today's permits apply to when activities temporarily and permanently cease.

A number of commenters questioned the length of the seven day time period in the draft permits. Some commenters suggested a number of alternatives that would provide additional flexibility, such as requiring that vegetative practices be initiated "within a reasonable period upon completion of final grading", expanding the time frame to a longer period (such as 14 or 30 days), conditioning the requirement to apply only during periods of the year when rain is reasonably expected, or specifying that any State or local requirements for the initiation of vegetative practices take precedence over the general permit requirement. These comments generally noted that, although the 7 day period is used by some States and local governments, a 14 day period is more commonly used.

In response to these comments, the Agency is modifying the language in the final permits to provide that, except for three situations, stabilization measures may be initiated as soon as practicable, but in no case more than 14 days after construction activity on a portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

- Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased;
- Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.
- In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures is precluded by seasonal arid condition, in which case, stabilization measures must be initiated as soon as practicable.

This modification has been made so that the requirement in these permits is more consistent with the various State and local requirements in areas where the permits will apply and to provide construction site operators additional flexibility in providing for stabilization measures. This modification also provides flexibility in situations where activities at a portion of a site are discontinued for only a relatively short period of time (i.e., more than 14 days, but less than 21 days).

One commenter expressed concern that a 7 day period was too long and that even a short rainstorm during the 7 day period could result in damaging sediment and erosion of streams. This commenter urged EPA to require stabilization within 72 hours. The commenter indicated that the 72 hour time period was consistent with the Agency's proposed guidance specifying management measures for sources of Nonpoint Pollution in Coastal Waters.

The Agency agrees that storm events during the period prior to stabilization can result in the discharge of significant amounts of sediments to waters of the United States. The Agency also notes that EPA requested comment on a 72 hour stabilization requirement for particularly sensitive watersheds (but not for general usage) in "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", May 1991. While the Agency agrees that a 72 hour stabilization requirement should be considered for sensitive watersheds, the Agency does not agree that this criterion is appropriate for today's general permits, which are intended to address a wide range of facilities occurring under a wide range of conditions.

Several commenters urged EPA to require that stabilization measures be completed within a specified time after the last activity, rather than just initiated. These commenters pointed out that where seeding occurred without mulcing or geotextiles, a significant amount of erosion could occur prior to germination and establishment of a protective cover. In response, the Agency is concerned that establishing deadlines for when stabilization measures must be completed may not provide enough flexibility, given the variety of conditions that facilities covered by today's permits will face. While the Agency recognizes that erosion can occur during the time between initiation of stabilization measures and when an area is finally stabilized, the Agency believes that establishing a time period by which vegetation must be established in these general permits may in some cases limit the ability of the discharger to determine with certainty that initiated measures will be fully successful within the minimum time frame. Therefore, today's permits only address when stabilization measures must be initiated. However, the Agency does encourage dischargers to complete stabilization measures as quickly as possible and to use measures such as mulch or geotextiles where there will be a significant lag between initiation of vegetative measures and establishing a satisfactory vegetative cover.

One commenter suggested that the time period for initiating stabilization measures should correspond to the time period that the NPDES authority plans to conduct routine site inspections. In other words, the commenter suggested that if EPA intended to conduct a site inspection every two weeks, dischargers should be given at least 2 weeks before initiating stabilization measures otherwise the requirements may not be adequately enforced. In response, the Agency is not basing the time period on the frequency at which the Agency is likely to conduct inspections. The Agency will rely on a number of tools, such as permittee inspection and compliance evaluation reports and unannounced EPA site inspections to ensure compliance with this provision.

A number of commenters raised concerns that the draft provision did not

take into account different climatic conditions in the various States where EPA was issuing permits. In particular, a number of commenters questioned the feasibility of initiating vegetative practices within 7 days of the last activity during periods that were not conducive to revegetation efforts, such as in dry weather periods or during winter conditions.

A number of these commenters urged the Agency to provide for special considerations in arid regions or for time periods where there was snow cover.

Some of these commenters noted that seeding, planting, or sodding within seven days may not be appropriate because the best success with planting occurs during limited seasons. Other commenters noted that in arid regions, hot, dry summer months are not conductive to good seed germination and that plants have little chance of survival without a great investment of time, money, and water. In such arid areas, water for artificial irrigation is often not available and, where available, is expensive and may not be the best use of limited water resources. Some of these commenters indicated that revegetation efforts should be well coordinated with seasonal weather conditions to minimize the loss and costs of vegetation.

One commenter indicated that in arid regions or regions with predictably long durations of dry weather, it may be more cost effective for the builder to wait to complete two or three homes and landscape simultaneously rather than landscape each home site as construction is completed. If rainfall is not expected during this period and perimeter sediment controls are maintained, this practice would pose limited threats to water quality. Other commenters indicated their belief that rapid stabilization measures may not always be necessary, especially in areas of the country which go many weeks in the summer without any rain, because of the lower likelihood of discharging storm water. One commenter indicated that EPA should allow the option of "equivalent measures" such as proper slope design and construction, with seeding or planting to occur as soon as conditions are favorable, for protecting exposed soils during dry seasons.

While the Agency agrees that some phases of the stabilization process, such as spreading grass or wildflower seeds, should be coordinated with seasonal climatic conditions, measures such as the application of mulch and/or geotextiles do not depend on conditions that allow grass or wildflower seeds to germinate or become established. However, at this point in time, the Agency believes it is appropriate to provide additional flexibility with respect to stabilization requirements during dry seasons in arid or semi-arid climates while the Agency continues to evaluate appropriate stabilization measures for arid and semi-arid climates. Therefore, today's permits provide that where stabilization measures are precluded by seasonal arid conditions, the 14 day criteria is replaced by the criteria that stabilization measures shall be initiated as soon as practicable. In general, the determination of when stabilization measures are practicable should consider seasonal rainfall patterns. In the August 16, 1991, notice, the Agency requested comment on defining "arid areas" as areas with an average annual rainfall of less than 10 inches and "semi-arid areas" as areas with an average annual rainfall of 10 to 20 inches. Most comments addressing this issue generally agreed that this was an acceptable way to characterize arid and semi-arid conditions. Therefore, today's permits incorporate these criteria for defining arid and semi-arid regions.

Other commenters noted that snow cover could preclude the initiation of stabilization measures, and that frozen ground could interfere with establishing vegetation. The Agency agrees that snow cover may preclude the initiation of stabilization measures, and has modified today's permits to provide additional flexibility in such cases. The Agency recognizes that frozen ground conditions will generally slow vegetative growth, but will not preclude the initiation of stabilization measures such as the use of mulches, geotextiles and even seeding. The Agency also recognizes that initiating vegetative measures on frozen ground conditions differs from such activities in arid conditions in several respects. First, initiating vegetative measures in arid conditions may require artificial watering to avoid having seed and seedlings die, whereas on frozen ground, seeds generally will remain dormant but undergo less harm. Second, the potential for storm water discharges during arid conditions and during winter conditions in non-arid climates is significantly different. The additional flexibility in today's permits is limited to snow cover and arid conditions, the conditions that EPA has identified as creating the most difficulty and expense for initiating stabilization measures.

One commenter suggested that selective location of small detention basins for removal of runoff sediments would be more successful and cost effective than vegetative measures. The Agency disagrees with this comment. As discussed in the August 16, 1991, notice, stabilization measures are generally recognized as being the most important measures taken to prevent off-site sediment movement, and can provide up to a six-fold reduction in discharge suspended sediment levels. Stabilization measures, such as restoring vegetative cover, can prevent erosion by protecting soils. Stabilization measures should be viewed as the first line of defense in preventing off-site sediment movement. Structural sediment measures are generally recognized as a second line of defense for portions of the site where stabilization practices cannot be immediately employed due to construction activity. Structural sediment measures focus on removing pollutants from runoff. It is typically more effective to stabilize a portion of a site (where possible) than to provide structural controls that attempt to remove pollutants from runoff. Structural controls typically only remove 50 to 95 percent of the sediment in a discharge. In addition, small basins are expected to have discharges from a significant percentage of storm events. However, stabilization measures can be difficult to employ while construction activities are occurring on a specific portion of the site.

One commenter urged the Agency to specify a minimum amount or percentage of area at construction sites where vegetation must be preserved. While the Agency agrees with the commenter that preserving vegetation during construction activities can often be the most efficient and cost-effective sediment and erosion practice, the Agency does not believe that a numeric criterion could be established that would be appropriate for all facilities covered by these general permits. For some sites, such as infill projects in densely developed areas, requiring dischargers to preserve a minimum amount of vegetation could result in significant modifications to project designs. The Agency does not believe that today's general permit is the appropriate tool for establishing such site-specific criteria for finished sites. Rather, today's permits require that plans ensure that existing vegetation is preserved where attainable. The Agency believes that an approach using this narrative criterion is more appropriate because it will provide more flexibility in meeting the objective of preserving existing vegetation. While today's permit does not establish a minimum amount of vegetation that must be preserved at a site, it does provide that a site must undergo final stabilization prior to eliminating a storm water

discharge associated with industrial activity from a construction site. Today's permits require that plans ensure that existing vegetation is preserved where attainable. Planning to preserve existing vegetation where attainable can significantly reduce the compliance costs of today's permits by minimizing the amount of disturbed areas where stabilization measures must occur. This will also decrease pollutant discharges.

Sediment and Erosion Controls—Structural Measures

The August 16, 1991, draft permits required storm water pollution plans for construction activities to include a description of structural practices to the degree attainable to divert flows or otherwise limit runoff from exposed areas of the site. The draft permits required that detention basins providing storage for a 10 year, 24 hour storm or equivalent measures be established where attainable where more than 10 disturbed acres at one time are served by a common drainage location. The draft permits required that silt fences, straw bale dikes, or equivalent sediment controls be provided for all sideslope and downslope boundaries of the construction area where a sediment basin was not attainable for drainage locations serving more than 10 disturbed acres and for drainage locations which serve 10 or less disturbed acres.

A number of commenters indicated that straw bales and brush barriers have limited effectiveness for successful use in controlling sediment in runoff from construction activities. Some of these commenters indicated that these controls are seldom if ever installed properly or maintained, and must be replaced frequently. Some commenters indicated that encouraging straw bales or brush barriers might conflict with State or local requirements that might not allow their use as a sediment control measure. These commenters recommend that straw bales and brush barriers should not be identified in the permit as methods of structural control. In response to comments, and based on further evaluation of the administrative record, the Agency agrees with these commenters and has modified the final general permits so that these controls are not specifically listed as an appropriate structural control. The permits indicate that structural practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. In addition, today's permits require that pollution prevention plans include requirements specified in applicable sediment and erosion and/or storm water management site plans or site permits that have been approved by State or local officials.

Several commenters indicated that temporary sediment traps should be required for discharge points where temporary sediment basins were not required, including where the area served by a drainage location was less than 5 acres and had concentrated flows or which drained an area of greater than 2 acres. The Agency agrees that properly installed and maintained temporary sediment traps can provide effective sediment removal where sediment basins are not economically attainable. The Agency also recognizes that installing sediment traps can be less expensive than installing larger sediment basins, and that in some situations where it is not economically attainable to install a sediment basin, it is easier to find locations for siting smaller sediment traps. In response, today's permits continue to specifically list sediment traps as a structural practice, and the Agency strongly recommends the use of sediment traps where more effective sediment basins are not economically attainable.

In the August 16, 1991, notice, the Agency requested comment on the minimum size criteria for the temporary sediment basins and on whether a 10 acre threshold for requiring sediment control basins was appropriate. The Agency received a number of commenters addressing the minimum size criteria for the temporary sediment basins. A number of the industry commenters supported the 10-year, 24-hour storm as being a reasonable basis for sediment basin design, and noted that the rule provided the necessary flexibility to be appropriate. One regulatory Agency suggested use of a more stringent 25-year, 24-hour storm. However, other commenters urged the Agency to use a smaller storm as the basis for design, and offered various alternates. One of these commenters indicated its belief that a majority of sites would find the 10-year, 24-hour criteria to be unattainable, and that the use of sediment basins would be rejected at these sites in favor of less effective controls.

In response to comments, today's permits are providing additional flexibility for requirements for sediment basins by using a criteria based on the 2-year, 24-hour storm rather than the 10-year, 24-hour storm. (As discussed below, today's permits use a criterion expressed in terms of cubic feet of water storage per drainage acre as a surrogate for the 2-year, 24-hour storm). The Agency has selected the 2-year, 24-hour storm in response to concerns that the 10-year, 24-hour storm was too stringent in some cases, and based on further consideration of standards of practice in the construction industry and by a number of State and local governments as the basis for basin design. As discussed below, the 2-year, 24-hour storm event is consistent with the Agency's approach in the "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", EPA, May 1991.

Several commenters indicated that expressing the size criteria for sediments basins in terms of a storm event was too vague or that permittees would have difficulty ascertaining the size of a design storm in a particular region. Several other commenters that supplied calculations or other information exhibited some confusion regarding the manner in which they calculated basin volumes based on a storm event. Other commenters indicated that different models or equations would result in significantly different basin volumes for the same site and design-storm. While the Agency does not agree that permittees would necessarily have a difficult time ascertaining the size of a design storm,[27] the Agency is concerned about the possible confusion among the construction industry associated with basing the size of basins on a design storm, and the possible variation in basin volume based solely on the equation or model used. In order to minimize confusion among permittees, the Agency has decided to define the minimum size of basins in terms of a volume criterion (cubic feet of water storage per disturbed acre) rather than using a design storm. Using a criterion of 3,600 cubic feet per acre as a surrogate for a two-year storm will provide clarity to the requirement. In addition, a criterion based on cubic feet per acre can be more equitable than a criterion based on a storm size, since applying a criterion based on a storm size requires the use of a hydraulic model. Since hydraulic models can differ, and different parameters can be used in models to lead to different results,

[27] This information is available from a number of sources, including from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce; and "Weather Bureau Technical Paper No. 40", May 1961 and "NOAA Atlas 2", 1973 for the 11 Western States.

dischargers using different models and applying different criterion to their models could end up with different size specifications for essentially the same size storm. However, a criterion based on the number of cubic feet of water storage per disturbed acre will be much more equitably applied since it is based on only one parameter (the number of disturbed acres) which is easily and uniformly estimated.

EPA has established the 3,600 cubic feet per disturbed acre criteria based on an evaluation of the 2-year, 24-hour storm for a number of areas addressed by today's permits. The Agency selected a 3-inch storm event as representative of the 2-year, 24-hour storm, based on the evaluation of the 2-year, 24-hour storm in a number of locations. The Agency further assumed that a 3-inch storm will generate 1 inch of runoff which is approximately 3,600 cubic feet. (This assumes that one-third of the rainfall runs off the site, and two-thirds of the rainfall is infiltrated at the site). The 3,600 cubic foot criterion has also been identified in "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", EPA, May 1991, as being able to handle 90 percent of the storms each year.[28]

A number of commenters objected to the allowing an exemption from the requirement to provide basins where such basins are not attainable. One commenter implied that the exemption from the requirement to install a basin was akin to an exemption from the requirement to obtain an NPDES permit. Several industry commenters indicated that this would give operators who are unconcerned about good design/construction practices a competitive advantage by providing an overly broad loophole, and requested that EPA remove the exemption to provide a "level playing field" for all. Other commenters indicated that other structural controls such as silt fences were not as effective as sediment basins.

In response, the Agency remains concerned about eliminating the exemption in this permit. The Agency believes there will be circumstances where it is not technically feasible to provide sediment basins, and does not believe that it would be appropriate to effectively preclude coverage of such sites under today's permits. Today's permits are intended to address a large number of construction sites. Sufficient flexibility is necessary to accommodate differences between sites. Further, it should be recognized that sediment basins are just one component of the comprehensive pollution prevention approach required under today's permits. As part of this comprehensive approach, today's permits requires that for drainage locations which serve 10 or more disturbed acres and where a sediment basin or equivalent controls are not economically attainable, sediment traps, silt fences, or equivalent sediment controls are required for all sideslope and downslope. While the Agency notes that these substitute structural controls may not be as effective as sediment basins at removing sediment from runoff, the Agency notes that it has limited this exemption for drainage locations that serve more than 10 disturbed acres to situations where basins are unattainable. In such cases, dischargers are still required to comply with the other provision of the permit, and are encouraged to emphasize other aspects of the pollution prevention plan, such as preserving mature vegetation, sequencing project activities to minimize the amount of exposed area, and quickly stabilizing disturbed areas when activities have temporarily or permanently ceased.

A number of commenters requested clarification of the factors that should be considered when determining whether a sediment basin would be attainable. One commenter indicated that in heavily populated, densely developed areas, it may be physically impossible to implement sediment basins. One commenter indicated that detention basins should be required when an area will be disturbed for a certain length of time rather than being based on the size of the disturbance, and that other factors, such as the receiving stream, should also be factored into any decision. One commenter indicated that regulatory hurdles associated with obtaining any Federal, State or local permit for installing of a basin may make a basin unattainable.

In response, the Agency wants to clarify that an evaluation of whether a sediment basin is unattainable at a particular site should be based on the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived. This evaluation should be based on a consideration of factors related to the availability of space for the basin, and difficulties in construction (e.g. removing underlying bedrock). Construction activities that commence prior to October 1, 1992 may consider the existing site plan when evaluating whether sediment basins are unattainable. For example, a basin may be unattainable because of space limitations associated with site design. However, the attainability of sediment basins at sites which began construction prior to October 1, 1992 should be reevaluated prior to commencing subsequent phases of the project.

The Agency does not agree that the length of time that an area is disturbed and the nature of the receiving stream are appropriate factors when considering whether a basin is 'attainable'. The Agency believes that concerns about 'unexpected' storm events in arid regions, the potential for significant amounts of precipitation during relatively short time periods, and potential project delays make a criterion based on the disturbance time inappropriate. Basing a decision on whether a basin is attainable on factors such as the ability of the stream to accept sediment is inappropriate, as the requirement for sediment basins in today's permit is technology-based and not water quality-based. Further, the Agency has concerns about the ability of dischargers to evaluate the capability of a receiving water to accept sediment. While Federal, State or local legal prohibitions on such a basin would clearly make a basin not attainable, EPA does not believe that the requirement to obtain a Federal, State or local permit (other than an NPDES permit) for basin installation and potential delays associated with obtaining such permits, per se, should not be considered as making a basin not attainable. The Agency believes that it has provided sufficient flexibility in the permit by providing additional alternatives for drainage locations that serve less than 10 disturbed acres at any one time. EPA believes that this approach provides dischargers with economic incentives to schedule activities at the site so as to minimize the area disturbed at any one time. In addition, the Agency believes that such scheduling activities will result in less pollutant discharges than would occur if appropriate scheduling is not conducted.

One commenter raised concerns about possible water quality impacts associated with the timing of releases from temporary sediment basins. The commenter suggested that EPA should coordinate the requirement for basins with other activities within a basin. In response, EPA notes that the construction process in general will have significant changes to the hydrology of the runoff from a site. Generally, construction sites will discharge a considerably higher volume

[28] See also "Performance of Current Sediment Control Measures at Maryland Construction Sites" Schuller and Lugbill, 1990.

of runoff after preexisting vegetation is disturbed. Sediment basins can change the timing associated with when runoff is discharged, and will often result in a decreased volume of runoff discharged. EPA notes that the potential for impacts on receiving streams of the increased volume of runoff generated by a site depends on a complex array of variables, including the nature and locations of other activities within the watershed, that are generally beyond the scope of this permit. In addition, the Agency notes that concerns about timing the hydraulic release of a temporary sediment basin are generally significantly less than when siting storm water management basins within a watershed because of the temporary nature of sediment basins and differences in typical outlet designs. The Agency recommends that dischargers consider potential impacts to receiving waters associated with increases in the volume of runoff from the construction site when it develops its pollution prevention plan.

Several commenters indicated that the construction of roads should be specifically exempted from the requirement to install sediment basins because the linear nature of road construction would render such a containment system impracticable. In response, the Agency wants to clarify that the requirement for basins applies to drainage locations serving more than 10 acres. As discussed above, space availability is one factor to consider when determining that a sediment basin is not attainable. EPA recognizes that in some cases, limited space will make the installation of a sediment basin not attainable.

Several commenters recommended that temporary sediment basins should be required for all drainage locations larger than five acres. In response, today's permit requires that all permittees identify and implement structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. EPA recognizes that a number of technologies can be used to remove sediment in storm water discharges from construction sites, including sediment basins, sediment traps, and silt fences. The effectiveness of the various technologies depends on a number of factors, including the volume of flow to the control measure. For a given storm event, the volume of storm water from disturbed areas of a construction site depends on the disturbed area drained.

Silt fences generally cannot handle large flows. When exposed to large flows, silt fences can be knocked over, torn, or covered with silt. For this reason, the applicability of silt fences is often limited to under two acres. Sediment traps can generally handle larger flows than silt fences, but generally have less capacity than sediment basins. The capacity of a sediment basin depends on a number of factors, including the size of the sediment trap. A number of State and local governments generally limit the use of sediment traps to drainages of below 10 acres.[29]

In developing today's permits, the Agency recognizes that the selection of appropriate structural measures for sediment control will depend on a number of factors, including the size of the drainage area. The Agency believes that today's permits provide the appropriate amount of flexibility, consistent with the physical limitations of the various types of control techniques.

While the Agency recognizes that basins will be the most appropriate sediment control for some drainage locations that serve an area of less than 10 acres, the Agency believes it is appropriate to retain additional flexibility in these general permits for implementing sediment controls for drainage locations serving less than 10 acres. Today's general permits are anticipated to authorize discharge from a large, diverse set of sites, and therefore this additional flexibility is appropriate. The Agency also notes, that in general, drainage locations serving smaller areas may be faced with more obstacles in siting such basins.

One commenter requested guidance on when temporary sediment basins could be removed. Another commenter indicated that temporary sediment basins should remain in place until full vegetative and/or mechanical stabilization is achieved, whereupon removal is accepted practice. In response, EPA agrees that generally basins should not be removed until the final stabilization of basin's drainage area is completed. However, in some cases, basins may not be attainable during the final phases of the project when space becomes limited. In such cases, the determination of the basins attainability may change with time, with the basin being attainable during the initial stages of the project, but becoming unattainable during the later stages of the project.

One commenter, while indicating that the requirement for sediment basins to a 10-year, 24-hour storm was reasonable, requested clarification whether a facility that only discharged during a 10-year, 24-hour storm was required to obtain a permit. In response, the regulatory definition of storm water discharge associated with industrial activity does not exempt from NPDES requirements discharges that result from a 10-year, 24-hour storm. The Agency believes that the requirements of today's permits are appropriate for construction sites that only discharge during a 10-year, 24-hour storm. The Agency notes that such storm events can sweep out significant amounts of sediment from basins, and that other measures required under today's permits, such as stabilization measures can limit the amount of sediment in basins that can be subsequently discharged. In addition, the stabilization measures and other measures of today's permits are often necessary to keep sediment basins from losing significant capacity which can lead to basin failure. The Agency also notes that basins that are not drawn down (allowed to discharge in a controlled fashion) in between storm events can overflow after a series of storms, which individually are substantially less than the 10-year, 24-hour storm.

Storm Water Management Controls

The August 16, 1991, draft permits required that pollution prevention plans provide a description of storm water management measures (i.e. measures to control pollutants in storm water discharges that will occur after construction operations have been completed). The draft permits indicated that such practices may include a variety of measures, and that the plan must provide a justification based on site conditions for rejecting each measure. In addition, the draft permits provided that velocity dissipation devices were to be placed at the outfall location for all detention or retention structures and along the length of any outfall channel as necessary to provide a non-erosive velocity flow.

A number of commenters requested that EPA clarify who had responsibility to maintain storm water management controls after construction was completed. In response to these

[29] See for example, discussion of sediment traps in "Maryland Standards and Specifications for Soil Erosion and Sediment Control", Maryland Department of the Environment in cooperation with Soil Conservation Service, 1991 (10 acre limit), "Wisconsin Construction Site Best Management Practice Handbook", Wisconsin Department of Natural Resources, 1989 (5 acre limit); and "Erosion and Sediment Control Planning and Design Manual", North Carolina Department of Natural Resources and Community Development, 1988 (5 acre limit).

concerns, the Agency had modified today's permits to clarify that the permits only address the initial installation, establishment and operation of storm water management measures during the time that construction activities are occurring, and do not establish requirements for the ongoing operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. Of course, if the construction operation is for the purpose of building a manufacturing facility or other industrial facility which will have storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(12)) after the construction is completed, then the permit for such a discharge may require the subsequent operator of the industrial activity discharge to maintain storm water management measures.

Several commenters expressed their belief that permits for construction activities should not address storm water management controls, where such controls primarily mitigate the increase in pollutants in storm water discharges that will not be subject to the NPDES program after the construction activity is completed. As discussed above, some of these commenters were concerned about possible liability for storm water discharges that occur after construction has been completed.

The Agency disagrees with these comments. First, as discussed above, the Agency has clarified in today's permits that construction site operators will generally not be liable for maintaining storm water structures after construction is completed. Second, the Agency notes that one of the major reasons for deciding to address certain construction activities under the definition of storm water discharge associated with industrial activity was to ensure that storm water management practices were incorporated at such sites (see November 16, 1991, (55 FR 48034)). The Agency also notes that developing a drainage system for storm water is an essential component of a construction project. It is generally much more cost effective to design storm water management controls that reduce the discharge of pollutants into sites during the construction process than it is to retrofit such controls afterwards.[30]

Section 402(a)(1) of the CWA provides that NPDES permits may impose "conditions as the Administrator determines are necessary to carry out the provisions of the Act". In addition, EPA is authorized under 40 CFR 122.44(k)(3) to impose BMPs which are "reasonably necessary * * * to carry the purposes of the Act".[31] The Agency recognizes that construction projects which do not incorporate appropriate storm water management practices can result in dramatic increases in the peak flow rates and volumes of storm water from a site after the construction activities have been completed. Increased discharge volumes can result in increased pollutant loads. In addition, pollutant loads in storm water discharges from the site may increase beyond predevelopment levels because the activities at the site are more intensive after the construction than before construction. These changes, along with increased peak flow rates, can have significant impacts on receiving surface waters. The Agency believes that addressing storm water management controls during the construction phase recognizes that the installation of storm water management and other drainage devices is an integral part of the construction process and is consistent with the objective of maintaining the chemical, physical, and biological integrity of receiving waters.[32]

Two commenters pointed out that storm water management controls could result in significant long term changes to the hydrology of streams and that facilities which modify flood hydrographs (modify the volume of flow with time) should be carefully designed and coordinated with other such facilities in the basin so that the combined effect does not actually increase flood peaks downstream and adversely affect downstream riparian habitat. In response, the Agency recognizes that the addition of impervious structures during the construction process can cause significant changes to the flow patterns of a site. These changes can result in downstream flooding and increases in peak stream velocities and volumes which can have significant negative impacts on the structures of the stream and its ability to act as an aquatic habitat. The Agency also notes that storm water management devices, which generally attempt to restore the natural drainage patterns of a site as much as possible, can influence the volume and rate of peak storm water discharges. The Agency has modified today's permits in two ways to address these concerns. First, the Agency has clarified that velocity dissipation devices at discharge locations and along the length of any outfall channel must be provided as necessary to provide a non-erosive velocity flow from the structure to a water course to better protect and maintain the natural physical and biological characteristics and functions of receiving streams. In addition, as discussed below, today's permit requirements for storm water management encourage dischargers to provide storm water management measures that will mitigate the adverse effects of increases in the volume of storm water discharges beyond predevelopment levels.

The Agency also recognizes the importance of considering various aspects of a watershed when planning development within a watershed. Although such watershed planning is beyond the scope of this permit, the Agency encourages municipalities to develop a watershed approach when planning development and associated storm water management for such new development.[33]

Performance Standards for Storm Water Management Controls

As part of the August 16, 1991, notice, the Agency requested comments on the appropriateness of establishing performance standards or design standards in general permits for storm water management measures to be installed at construction sites. A number of commenters expressed concern regarding the lack of a standard. They indicated that without standards, the permit requirements were too weak, and would not provide the control intended under the CWA. One of these commenters indicated that storm water management controls for new development were perhaps the single most crucial aspect of the general permit, because such controls had the greatest potential for resulting in cost-effective measures that would limit

[30] For example, see the National Urban Runoff Program (NURP) report, EPA, 1984.

[31] This standard for BMPs was recognized in *NRDC* v. *Costle*, 568 F.2d at 1380.

[32] See section 101(a)(1) of the CWA.

[33] Consistent with this objective, NPDES permit applications for discharges from large and medium municipal separate storm sewer systems require that municipal applicants address planning procedures for a comprehensive master plan to develop storm water controls for new development in proposed storm water management programs. (see 40 CFR 122.26(d)(2)(iv)(A)(2)).

impacts to water quality and water resources.

Commenters suggested a number of different approaches to standards for storm water management measures. Several commenters indicated that both performance and design standards were intimately related and needed to be considered in an integrated fashion for successful storm water measures programs. Representatives from several States with successful storm water management programs recommended that EPA establish a performance standard for storm water measures for new development of 80% removal of suspended solids. Another commenter indicated that standards should be developed that put a cap on the total imperviousness of sites, and require a minimum level of mature vegetation preservation. This commenter cited studies that indicated that where total imperviousness of a watershed was greater than 10 to 15 percent, significant declines in stream health would result.

Some commenters indicated that performance standards would promote flexibility to allow the selection of efficient, effective storm water measures. Other commenters asserted that the general permits should rely on design standards rather than performance standards because design standards are effective, easily understood by the regulated community and successfully used in existing State storm water programs. Some of these commenters recognized the need to ensure that design standards did not conflict with existing State and local requirements.

Other commenters urged EPA not to establish design or performance standards for storm water management measures to operate at completed construction sites. Several of these commenters indicated that flexibility is needed to determine the most appropriate site-specific methods for storm water measures, taking into account a number of conditions at individual sites, and that flexibility to determine the most appropriate site-specific controls would not be available if specific standards were mandated for all facilities. Some of these commenters supported deferring to owners and State and local regulators to establish appropriate requirements for storm water measures. One commenter encouraged EPA not to establish national BMP design and performance standards, but rather encouraged the Agency to require States to establish pollution reduction goals.

In response, the Agency remains concerned that NPDES general permits which address a large number of sites which are subject to different State and local requirements and that establish rigid performance standards or design standards for storm water management may not provide a mechanism with sufficient flexibility to address site specific factors. While the Agency recognizes that such requirements will often be appropriate in individual permits in other permit issuing efforts, or other regulatory efforts, the Agency has concerns about the extensive use of such standards in this Tier I general permit. The Agency will continue to evaluate appropriate standards for storm water management applicable to new developments along with the need to provide flexibility in allowing for site-specific adaptation of standards based on project constraints, local conditions and the location of the discharge within the watershed. Therefore, today's general permits do not establish extensive mandatory performance standards or design standards for storm water management measures.

Rather than establish specific performance or design standards, today's permits require that the pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

However, the Agency does recognize the importance of installing storm water management measures during the construction process, and the need to provide additional guidance on what is expected for permit compliance. EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS) [34]. A number of storm water management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems.

In addition, the 80 percent control level for TSS is required in a number of State and local programs for storm water management, including programs in Florida, Delaware and the Lower Colorado River Authority (Texas) [35] As noted in the August 16, 1991, draft permits, the limiting runoff volumes to predevelopment levels is consistent with goals or requirements for storm water management developed by a number of local governments. Limiting increases in runoff volumes above predevelopment levels is generally consistent with flood control measures and provides the additional benefits of mitigating significant long-term changes to the hydrology of streams (such as streambed scour and streambank erosion), increases in flood peaks downstream and adverse impacts to downstream riparian habitat.

No Discharge of Solid Materials

The August 16, 1991, draft permits contained a provision that no solid waste, including building materials, shall be discharged. Today's permits use the term "solid materials" instead of the term "solid waste" to avoid confusion with the use of the term "solid waste" under RCRA. Solid materials include non-storm water related discharges such as waste building materials, demolition debris, water used to wash concrete trucks, and discharges from sanitary facilities.

One commenter indicated that certain building materials can be left behind without any impact on water quality or sediment run-off, and that the permit should allow environmentally benign materials to be buried on site. The Office of the Governor in Alaska indicated that the broad prohibition on disposal of wastes at a construction site was inappropriate for Alaskan conditions, where waste disposal sites may not exist off-site and that sound waste disposal management practices can be achieved onsite in many cases. In response, the Agency remains concerned that inappropriate disposal of building materials, plastics, and other solid materials at construction facilities adversely impacts surface waters. However, to ensure that this provision is not interpreted too broadly, today's

[34] TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

[35] The Agency notes that these programs provide some flexibility in meeting this goal by providing for variances or waivers which can be granted based on a review of site plans. The Agency remains hesitant to require that storm water management measures provide for 80 percent removal in today's general permits because of concerns that the Agency would not be able to provide flexibility to sites where such controls were not economically achievable.

permits have been modified to clarify that no solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a CWA section 404 permit. This modification is also intended to clarify that today's permits are not intended to supersede section 404 requirements.

Off-Site Tracking

The August 16, 1991, draft permits contained a provision that required that off-site vehicle tracking of sediment be minimized. The fact sheet noted that off-site vehicle tracking of sediment could be minimized by paving or graveling roads at the site. Several commenters requested that EPA clarify what constitutes compliance with minimizing the tracking of sediments. Several commenters indicated that in some situations, washing the undercarriage of trucks and other dust control measures are preferable methods for minimizing off-site vehicle tracking. One commenter suggested that where off-site tracking occurs, there should be provisions for street cleaning.

The Agency believes that off-site vehicle tracking of sediment can be an important pollutant source to waters of the United States. The Agency recognizes that there are a number of techniques that can be used to minimize off-site tracking, including providing gravel or paving at site exit locations, parking areas, and roads that carry significant amounts of traffic (e.g., more than 25 vehicles per day), establishing truck washing racks to wash the undercarriage of trucks and other dust control measures. Often, a combination of these measures is required to effectively minimize off-site tracking. The selection of measures depends on the nature of the site. For example, it may be more cost-effective to gravel an onsite road that receives heavy traffic than to rely solely on truck washing racks to prevent the truck from becoming heavily covered with mud. The Agency believes that it is appropriate to provide some flexibility for facilities to select technologies to minimize off-site tracking. However, the Agency also believes that it is important for dischargers to evaluate whether problems associated with off-site tracking have arisen. As discussed in more detail below, the Agency has modified requirements for site inspection to ensure that visual inspections of site entrances and exits evaluate the effectiveness of measures to minimize off-site tracking. In general, significant amounts of sediment coming from a construction site should not be seen on public roads at site exit locations.

Compliance With State or Local Requirements for Sediment and Erosion Control or Storm Water Management

A number of commenters indicated the importance of ensuring that NPDES requirements are consistent with State and local requirements. Several commenters attested to the effectiveness of several State and local program requirements, although some commenters pointed out that in some areas of the country there are no State or local soil and erosion controls or storm water management requirements. Some commenters urged EPA to use the existing framework of erosion and sediment control measures required by various State and local governments. Some of these commenters indicated that many cities had existing institutional frameworks for inspections and permitting in the form of planning and zoning reviews, building and grading permits, and inspectors.

Several commenters asked EPA to clarify that the provision requiring compliance with State and local erosion and sediment/storm water management plans applied to site plans and permits as opposed to comprehensive plans or master plans which provide a framework for issuing site plans and permits. These commenters indicated that a particular site may be operating under permits or plans which were approved based on exceptions or deviations from a master plan or comprehensive plan. Other commenters indicated similar concerns regarding State or local guidelines which are not legally binding, but again provide a framework for developing site plans or permits. In response, EPA has revised the general permit language to clarify that provisions of master plans, comprehensive plans, or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site are not incorporated by reference into the NPDES permit. Further, the term 'site' has been introduced into the permit language before the terms plan or permit to help distinguish between site plans/permits and master plan requirements.

One commenter objected to the requirement to incorporate those requirements of State and local plans or permits that are independent of water pollution control concerns. In response, the Agency has revised the permit language to more clearly indicate that only those requirements in State or local plans or permits that are applicable to protecting surface water resources need to be incorporated into the storm water pollution prevention plans required under the NPDES permits.

One commenter indicated that EPA should ensure that a minimum level of controls be instituted for construction activities even where the State or local government does not have adequate controls. This commenter indicated that a key reason for a national NPDES program was to assure national consistency and to prevent economic disincentives to lock in States with progressive storm water programs. EPA agrees with this commenter that the NPDES permit should establish a minimum level of controls for construction activities. As discussed in greater detail above, storm water pollution prevention plans addressing the implementation of sediment and erosion controls and storm water management measures are required for all sites authorized to discharge by the permits.

One commenter supported the inclusion of State and locally approved storm water plans in the NOI as a way to ensure that the NPDES requirements are compatible with State and local requirements. This would in turn reduce duplication of efforts. In response, while EPA recognizes that a goal of today's permits is to avoid conflicts between NPDES permit requirements and State and local permit requirements, it is not requiring the submission of plans with NOIs. Rather, today's permits provide that NOIs must contain a certification that a storm water pollution prevention plan has been prepared for the facility, and such plan provides compliance with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. The Agency believes that the flexible nature of the permits' requirements for storm water pollution prevention plans coupled with the requirement that plans must include procedures and requirements specified in applicable sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials will avoid conflicts and reduce duplication of efforts.

Several commenters were concerned that the requirement for storm water discharges associated with industrial activity from construction activity to be authorized by an NPDES permit was duplicative. Some of these commenters requested a waiver from NPDES permit requirements where other State or local controls are in place. In response, NPDES permits are required under the CWA for storm water discharges

associated with industrial activity. EPA has defined the term at 40 CFR 122.26(b)(14) to include storm water discharges from those construction sites which disturb five or more acres. Compliance with State or local requirements does not waive the requirement to obtain an NPDES permit. The Agency believes that requiring that plans provide for compliance with State or local requirements for sediment and erosion control and/or storm water management will support the goal of minimizing conflicts between NPDES permit requirements and State and local requirements. The Agency believes that this approach will minimize the administrative burdens associated with these general permits, consistent with the requirements of the CWA. In addition, the Agency notes that the potential for these permits to delay projects is greatly reduced by this approach.

One commenter indicated that EPA should not incorporate State and local requirements into NPDES permits because EPA has not shown that States and local enforcement of sediment and erosion control requirements has been ineffective, that federal enforcement of State and local requirements may result in interpretations that are contrary to those of State and local officials, and that incorporating these requirements by reference would discourage State and local governments from regulation.

In response, the Agency does remain concerned that State and local enforcement and implementation of sediment and erosion controls are not always effectively enforced.[36] In addition, NPDES permits for storm water discharges associated with industrial activity from construction activities must establish conditions in accordance with the CWA, and the Agency does not have to make a showing that State and local programs are ineffective to establish today's permit requirements.

The Agency does not intend to discourage State and local governments from implementing sediment and erosion and/or storm water management requirements. The Agency will be working with municipal operators of large and medium municipal separate storm sewer systems to ensure that such municipalities implement effective local soil and erosion and storm water management programs.[37] In addition, the Agency is continuing to work with State and local governments under section 319 of the CWA and section 6217(g) of the CZARA to develop State and local storm water management and soil and erosion programs.

The Agency believes that in a general permit context, the best way to ensure NPDES permit requirements are compatible with State and local requirements is to build on the requirements of State and local plans or permits. In addition, the process of issuing State and local plans typically represents identification of controls and measures that are achievable at a particular site. The Agency encourages dischargers with concerns that federal enforcement of State and local requirements may result in interpretations contrary to those of State and local officials, to provide a clear description of such requirements in their storm water pollution prevention plans. The Agency intends to work with State and local officials to resolve these issues when they arise. In addition, the general permits specifically provide that dischargers seeking NPDES permit requirements that do not require the provisions of an approved State or local plan or permit be in a storm water pollution prevention plan required by the NPDES permit must submit an individual permit application along with a description of why requirements in approved State or local plans or permits should not be applicable as a condition of an NPDES permit.

One commenter, while supporting the concept that NPDES permit requirements should be compatible with requirements in State and local plans or permits, opposed the extension of federal enforcement to State and local requirements which exceed the NPDES permit requirements. EPA disagrees with the commenter. As stated above, the Agency believes that requiring permittees to provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements in sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials is the best way to ensure that the NPDES permit requirements are compatible with State and local requirements. In addition, the process of issuing State and local plans typically represents identification of controls and measures that are achievable and otherwise appropriate at a particular site. Today's permit provides dischargers with a mechanism for obtaining alternative NPDES permit conditions where the discharger believes that the State or local measures should not be applicable as a condition of an NPDES permit. This approach allows EPA to provide considerable flexibility in the requirements of today's permit while ensuring that adequate and appropriate measures are required.

One commenter indicated that State administrative review procedures may not have been used in the development of State or local plans. In response, the Agency believes that adequate administrative review procedures will be provided in the development of most State or local requirements. Where this is not the case, dischargers may submit an individual application along with an explanation of why requirements in approved State or local plans or permits should not be applicable as a condition of an NPDES permit. However, in response to concerns raised by the commenter, today's permit requires that permittees provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements in sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials. In addition, today's permit requires that storm water pollution prevention plans must be amended to reflect any change in a sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee must provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes. This will ensure that the permittee is only responsible under today's permits for requirements for which they have received adequate notice.

One commenter indicated that allowing facilities the opportunity to seek NPDES permit requirements that did not require the provisions of an approved State or local plan or permit was not consistent with the objective of environmental protection. In response, the Agency wants to clarify that this process does not preempt State or local requirements. A discharger may still face State or local enforcement actions for a violation of a State or local

[36] See "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments. Also, some commenters noted that some State and local programs are subject to significant rates of non-compliance and technology failure

[37] For example, the permit application requirements for discharges from large and medium municipal separate storm sewer systems require that municipal applicants submit proposed management plans to reduce pollutants in storm water discharges from construction sites (see 40 CFR 122.26(d)(2)(iv)(D)).

requirement even where EPA issues an individual NPDES permit that does not specifically require compliance with the State or local requirement. Rather, the process is intended to ensure compliance with the pollution control measures of the CWA.

Discharge Monitoring

On August 16, 1991, EPA requested comment on modifying the regulatory provision at 40 CFR 122.44(i)(2), addressing the establishment of discharge monitoring reporting requirements in NPDES permits for storm water discharges associated with industrial activity. The regulation existing at the time of the proposal provided that requirements in NPDES permits, including NPDES permits for storm water discharges, to report monitoring results are to be established with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

In the August 16, 1991, notice, EPA specifically identified six options for modifying requirements to report monitoring results for storm water discharges associated with industrial activity. In addition, the draft general permits in the same August 16, 1991, notice requested comment on annual discharge sampling of storm water discharges from most classes of storm water discharges associated with industrial activity, including those from construction activities, because this approach was consistent with the option EPA favored in the August 16, 1991, notice for the regulatory change. However, in the August 16, 1991, notice, the Agency indicated that the monitoring requirements in the final permits could be less stringent if the regulatory change provided additional flexibility with respect to minimum monitoring requirements.

On April 2, 1992, (57 FR 11394), EPA published final regulatory modifications to the minimum discharge monitoring and reporting requirements for storm water discharges. Under the modified regulatory framework, monitoring requirements for NPDES permits for storm water discharges associated with industrial activity are to be established on a case-by-case basis, with minimum requirements relating to site inspections rather than discharge monitoring.

A number of commenters on the August 16, 1991, draft general permits indicated that they did not believe that discharge sampling was appropriate for storm water discharges from construction sites due to their temporary nature and variability associated with ground cover, topography, soil types or other factors. Other commenters noted that monitoring efforts can be difficult and expensive to implement due to the intermittent nature of discharges. Several commenters questioned the usefulness of data generated by untargeted sampling requirements and indicated that resources would be better utilized planning, implementing and maintaining effective onsite runoff controls. These commenters indicated their belief that monitoring may be unnecessary where a permittee has developed, implemented, and maintained an effective storm water management control plan. Another commenter indicated that instream sampling used in one State (which is an authorized NPDES State) to evaluate the contribution of a construction site to increased turbidity levels.

Several commenters indicated that sampling of the outfalls associated with long linear projects would present logistic problems. Several commenters from State Departments of Transportation suggested that sampling should only be required for a percentage of their sites, which would be fairly similar in nature throughout the State. Another commenter representing a State Department of Transportation suggested that sampling should not be required unless the project is greater than 5 acres and goes beyond 12 weeks.

Several commenters suggested that EPA require that a Registered Professional Engineer or certified erosion control specialist certify that a storm water pollution plan is being properly implemented at a construction site in lieu of sampling, or that EPA focus on requirements for site inspections or other means of evaluating the effectiveness of controls and permit compliance.

Based on a consideration of the comments received on the draft general permits, and consistent with the regulatory modifications at 40 CFR 122.44 published on April 2, 1992, today's permits do not require construction operators to conduct storm water monitoring. While, the Agency recognizes that storm water monitoring from construction sites can be appropriate in some situations, the Agency is concerned about requiring storm water monitoring for all facilities covered by today's permit for a number of reasons. The Agency has concerns that sampling data may not reflect the transient nature of construction activities. As discussed below, the Agency believes that inspection requirements can be as or more effective than monitoring discharges for evaluating compliance with permit conditions. In addition, the Agency has concerns regarding the possible burdens placed on industries and EPA regarding the review of this information.

Site Inspections

The August 16, 1991, draft permits required that all erosion controls on the site be inspected by the discharger at least once every seven calendar days. Subsequent to the August 16, 1991, notice, the Agency published regulatory modifications on April 2, 1992, (57 FR 11394), to provide that NPDES permits for storm water discharges must, at a minimum, require the discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and to evaluate whether pollution prevention measures are adequate and properly implemented. The April 2, 1992 rule also requires that permits for storm water discharges require operators to maintain records summarizing the results of the inspection and a certification that the facility is in compliance with the permit.

As discussed above, the issue of site inspections is related to the issue of discharge monitoring. A number of commenters on the August 16, 1991, notice generally supported the use of site inspections as a method for evaluating the performance and effectiveness of strategies to reduce pollutants in storm water discharges. These commenters indicated that site inspections can be a more appropriate tool than discharge monitoring for ensuring effective implementation of best management practices. One commenter believed an active inspection program could be instrumental in preventing erosion of soil or stock piles.

EPA generally agrees with these commenters, and consistent with the April 2, 1992, regulatory modifications has decided to focus more on site inspection requirements in these general permits rather than on discharge monitoring requirements. Today's permits require, with several exceptions, that qualified personnel (provided by the discharger) inspect disturbed areas, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. The Agency believes that such inspections are a critical component of a pollution prevention strategy and are necessary to ensure that measures are being properly implemented. The Agency believes that inspections play a particularly important role in pollution prevention strategies for construction activities. Frequent and thorough

inspections are necessary because of the transient nature of construction activities and the nature of measures to reduce pollutants in storm water discharged from construction sites. Because construction sites can be complex, transient operations, frequent inspections are necessary to ensure that new pollutant sources are identified, measures are implemented for new activities at the site, and existing measures are kept operational. Measures to reduce pollutants in storm water discharges, such as silt fences, mulching, sediment ponds, and vegetation, must be properly maintained in order to be effective. Often, these types of controls may become altered by construction activities or by storm events such that their ability to remove pollutants is severely limited. For example silt fences can be run over by equipment, blown out of position by wind, broken during significant storm events, or backfilled with sediment. Sediment basins can lose capacity when they are filled with sediment or when they are not appropriately drawn down in between storm events. In addition, basins can be short-circuited by incorrect flow patterns. Areas that are restabilized with new vegetation can develop severe gullies before vegetation can be established or vegetation may die due to a number of conditions. Given these concerns, the Agency believes that frequent inspections (e.g., once a week and after significant storms that may limit the effectiveness of measures) for construction activities are appropriate and necessary for successful program implementation. The Agency agrees with comments that the major sources of pollutants, as well as major control measures should be observed as part of routine inspections. Today's general permits require inspections of: (1) Disturbed areas, (2) areas used for storage of materials that are exposed to precipitation, (3) erosion and sediment control measures identified in the plan, (4) accessible discharge locations or points, and (5) locations where vehicles enter or exit the site.

One commenter noted the importance of requiring adequate documentation of visual inspections by the dischargers. In response, today's permits clarify that for inspections required under the permit, dischargers must develop a report summarizing the scope of the inspection, name and qualifications of personnel making the inspection, the date of the inspection, major observations made, and actions taken to revise implementation of the plan where appropriate. The Agency believes that this requirement is particularly important given the lack of requirements to collect discharge monitoring data under the permit and the increased importance placed on using site inspections to ensure the effective implementation of pollution prevention plans. The Agency also notes that this approach is consistent with the April 2, 1992 regulatory revisions which require that, at a minimum, NPDES permits for storm water discharges require the discharger to maintain a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and to identify any incidents of non-compliance. Such report and certification must be signed in accordance with the signatory requirements at 40 CFR 122.22.

Several commenters requested that EPA clarify that sediment and erosion controls must be maintained as well as inspected. One commenter urged EPA to clarify that the inspection procedure should include requirements to maintain pollution prevention controls or reevaluate requirements in pollution prevention plans. In response to these comments, today's permits have been clarified to require that plans include a description of procedures to maintain vegetation in good and effective operating conditions, as well as erosion and sediment control measures and other protective measures identified in the site plan. Today's permits also require that pollution prevention measures identified in a facility's plan be revised as appropriate within 7 calendar days based on the results of the inspection.

One commenter requested clarification as to whether the permittee or EPA would be responsible for the inspection. In response, EPA has clarified that the discharger, and not a local, State or EPA regulatory official, will be responsible for conducting the site inspection.

A number of commenters indicated that EPA should specify the qualification of site inspectors. Various types of qualifications were suggested by the commenters, including registered landscape architects, professional engineers, erosion and sediment control specialists certified by the International Soil and Water Conservation Society, and representatives of Soil and Water Conservation Districts. In response, although today's permits do not specify the qualifications of inspectors, the Agency agrees that certain specialists may be appropriate for conducting inspections in some situations. While such qualifications may not be necessary for weekly inspections, use of personnel with specific expertise or training may be helpful during the initial development of plans or to evaluate whether the installation of major structural devices, such as sediment basins, has been conducted properly. However, the Agency is concerned that specifying the qualifications of the inspector could limit flexibility and create problems where an inspector with specified qualifications is not readily available. The Agency will continue to evaluate such approaches, although today's permits maintain flexibility with respect to the qualifications of the person(s) conducting site inspections.

Several commenters raised concerns that inspection requirements were excessive in certain circumstances. One commenter raised concerns about construction projects located in remote areas that are not actively staffed for long periods of time, particularly during the winter months when such operations are typically idled. This commenter raised additional concerns about having to conduct inspections after 24 hour storm events exceeding 0.5 inches because such a condition would require operators to locate and maintain meteorological equipment continuously. Another commenter indicated that requiring weekly inspections in arid areas may waste resources and time, because several months may pass between measurable storm events. This commenter suggested that for arid areas, inspections should be require on a monthly basis or after major storms. Another commenter indicated that weekly inspections are warranted while construction activities are taking place, but would not be warranted throughout the life of the facility.

In response to these comments, EPA is modifying the permits to provide that where sites have been temporarily stabilized, or during seasonal dry periods in arid (average annual rainfall of 0 to 10 inches) and semi-arid (average annual rainfall of 10 to 20 inches) regions, inspections are to be conducted at least once every month. The Agency believes that temporary stabilization measures are generally appropriate prior to suspending activities during winter conditions. Where temporary stabilization measures are not undertaken, weekly inspections should be conducted to ensure that winter rains, snowmelt, or spring rains do not create significant erosion problems, and that other sediment and erosion controls are working properly. The Agency also believes that less frequent inspections can be appropriate during seasonal arid periods in arid and semi-arid regions

given the lower potential for storm events.

One commenter raised concerns that if EPA tied inspections to a specific set of rainfall events, costly meteorological equipment would be needed to measure rainfall events accurately. EPA wants to clarify that today's permits do not require that construction operators maintain meteorological equipment to monitor the magnitude of local rainfall events. Rather, dischargers can rely on other information, such as weather reports and readings from the nearest Weather Bureau gauge station.

Procedures for Plan Modifications

One commenter, while recognizing the need to make sediment and erosion controls and storm water management measures flexible, indicated that a mechanism to amend plans was critical. This commenter indicated that although a plan may initially look good on paper, the implementation at a particular site may not be as effective as expected due to site conditions. The commenter indicated further that construction activities affecting sediment and erosion control require modification after the initial plan has been developed. In response, the Agency wants to clarify that plans may be modified, consistent with the requirements of the permits, to address changing site conditions. The site inspection requirements of today's permits provide that the description of potential pollutant sources identified in the plan and pollution prevention measures identified in the plan are to be revised as appropriate as soon as practicable after inspection. The discharger should provide rationale for these changes (e.g., measures were not as effective as anticipated or that changes were necessary to address amendments to the construction activities plan) should be provided in the storm water pollution prevention plan.

Costs

One commenter indicated that the cost estimates for complying with the requirements of the general permit were five years old and that costs had increased considerably since that time. The commenter indicated that EPA should update its cost estimates to reflect present conditions.

In response, EPA notes that estimates of the costs of compliance with the various conditions of the draft general permits for construction activities were published in two tables in the August 16, 1991, **Federal Register** notice. Table 7 provided estimates of sediment and erosion control costs that were primarily based on the 1990 edition of "Means Site Work Cost Data", 9th edition, R.S. Means Company. These estimates were supplemented by Agency bond price lists from the Washington DC area for 1990. The Washington DC unit costs were used to make the estimates more conservative based on the assumption that material costs for that area were generally higher than other areas of the country.[38] Table 8 provided estimates of the costs of storm water management measures for construction sites. The estimates in Table 8 were based on methodology developed from 1986 data. The Agency notes that these cost estimates can be updated by a variety of methods, including use of the construction cost and building cost indexes of the Engineering News Record (ENR) Index. Using this method, costs can be updated by multiplying a cost estimate from an earlier date by the ratio of the building and/or construction index for the current data over the index for the date of the cost estimate. The value of the construction index at the beginning of 1990 was 4680, while the value of the building index was 2664. The average value of the construction index during 1986 was 4732, while the average value of the building index was 2483. The value of the construction index for March 1992 was 4927, while the value of the building index was 2799. These multipliers have been calculated into the cost estimates in today's permits.

The Agency notes, however, that cost estimates will vary from site to site depending on such factors as the nature of the site, the nature of the project, the degree to which controls were identified early in the process and planning was undertaken to minimize costs, and the existing State or local requirements.

Several commenters indicated that the requirements of the permits would result in adding substantial costs to the consumer price of a finished lot. In response, the Agency has evaluated the costs of the various controls required under today's permits (see August 16, 1991, notice, (56 FR 40989)) and recognizes that in the construction industry, a significant portion of such costs will be passed on to the current or ultimate site owner.

Economic Incentives Associated With Good Site Planning

A number of commenters representing a diverse cross section of industry, trade associations, environmental groups, States, and local governments stressed the importance of good site planning and preservation of mature vegetation as a primary technique for both controlling sediment in storm water discharges during construction activities and for developing a strategy for storm water management that controls pollutants in storm water discharges after construction activities have been completed.

The Agency agrees that good site planning should be a critical component of sediment and erosion controls and storm water management and can provide significant economic incentives to construction site owners and operators. Site planning allows dischargers to identify areas where native vegetation can be preserved, thereby reducing costs associated with temporary and permanent stabilization, structural controls, and storm water management devices. Site planning promotes coordinating activities that limit the amount of area disturbed at one time. Again, this can reduce costs associated with temporary and permanent stabilization, structural controls, and storm water management devices.

The sale value of a construction project can be significantly increased by preserving mature vegetation, preserving streams and natural drainage ways, and providing storm water management devices, such as wet ponds that serve as aesthetic amenities as well as water pollution control devices. Providing "soft" drainage technologies, such as using grass swales and measures that reduce the amount of runoff generated by a site, can dramatically decrease the capital costs of a more traditional drainage system of large underground pipes and conduits.

Appendix B—NPDES General Permits for Storm Water Discharges From Construction Activities That Are Classified as "Associated With Industrial Activity"

Authorization to Discharger Under the National Pollutant Discharge Elimination System

[Permit No. *NHR*10000IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", for Indian Tribes located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

[38] See "Draft—Sediment and Erosion Control, An Inventory of Current Practices", Kamber Engineering, April 20, 1990.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities with stormwater discharges, for Indian Tribes located in the State of New Hampshire.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *MER*10000IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", for Indian Tribes located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities with stormwater discharges, for Indian Tribes located in the State of Maine.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *MA*R10000 IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", for Indian Tribes located in the State of Massachusetts, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities with stormwater discharges, for Indian Tribes located in the State of Massachusetts.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *MER*100000 IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of Maine, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Maine.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *NHR*10000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of New Hampshire.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[NPDES Permit Number PRR100000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity," located in the Commonwealth of Puerto Rico are authorized to

discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water dishcarges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kevin Bricke,

Acting Director, Water Management Division, U.S. Environmental Protection Agency, Region II.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the Commonwealth of Puerto Rico.

Region IV

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[General Permit Number MSR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity," located on Indian land in Mississippi belonging to the Mississippi Band of Choctaw Indians are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

Region IV

[General Permit Number FLR10001F]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*, the "Act") except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on Indian land in Florida belonging to the Miccosukee Indian Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

Region IV

[General Permit Number FLR10000F]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*, the "Act") except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on Indian land in Florida belonging to the Seminole Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

[General Permit Number NCR10000F]

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*, the "Act") except as provided in Part I.B. 3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on Indian land in North Carolina belonging to the Eastern Band of Cherokee Indians in the State of North Carolina are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

[Permit No. T X R100000]

Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of stormwater discharges from construction activities that are classified as "associated with industrial activity", located in the State of Texas, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Texas.

[Permit No. O K R100000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of Oklahoma, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Oklahoma.

[Permit No. NMR100000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of New Mexico, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of New Mexico.

[Permit No. LAR100000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of Louisiana, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Louisiana.

[Permit No. WYR10000F]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the Wind River Indian Reservation in the State of Wyoming, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the States of Wyoming.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. UTR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the following Indian Reservations in Utah (except for the portions of the Navajo Reservation and Goshute Reservation located in Utah)

Northern Shoshoni Reservation;
Paiute Reservations—several very small reservations located in the southwest quarter of Utah;
Skull Valley Reservation; and Uintah & Ouray Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Utah.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. SDR100000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the entire State of South Dakota including the Indian reservations noted below (with the exception of the portion of the Standing Rock Reservation located in South Dakota), and the portion of the Lake Traverse Reservation located in North Dakota

Cheyenne River Reservation; Crow Creek Reservation;
Flandreau Reservation; Lake Traverse Reservation—Also known as the Sisseton Reservation. Includes the entire Reservation, which is located in North Dakota and South Dakota;
Lower Brule Reservation;
Pine Ridge Reservation—Includes only the portion of the Reservation located in South Dakota; Rosebud Reservation; and, Yankton Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of South Dakota and the portion of the Lake Traverse Reservation located in the State of North Dakota.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. NDR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", in all the Indian Reservations located in the State of North Dakota including the following (with the exception of the portion of the Lake Traverse Reservation, also known as the Sisseton Reservation, located in North Dakota)

Fort Totten Reservation—Also known as Devils Lake Reservation;
Fort Berthold Reservation;
Standing Rock Reservation—Includes the entire Reservation, which is located in both North Dakota and South Dakota; and,
Turtle Mountain Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of North Dakota and the portion of the Standing Rock Reservation located in the State of South Dakota.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. MTR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", in all Indian Reservations in Montana including the following Reservations:

Blackfeet Reservation;
Crow Reservation;
Flathead Reservation;
Fort Belknap Reservation;
Fort Peck Reservation;
Northern Cheyenne Reservation; and,
Rocky Boys Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm

water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Montana.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. COR10000F]

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity" in applicable federal facilities located in the State of Colorado, and in the following Indian Reservations

Southern Ute Reservation; and,

Ute Mountain Reservation—Includes the entire Reservation, which is located in Colorado and New Mexico

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Colorado and the portion of the Ute Mountain Reservation located in the State of New Mexico.

Storm Water General Permit for Construction Activities

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. AZR1000IF]

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Indian Lands in the State of Arizona, Including Navajo Territory in the States of New Mexico and Utah

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on the Indian lands specified above.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[Permit No. AZR100000]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the

State of Arizona (Excluding Indian Lands)

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Arizona (excluding Indian lands).

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[Permit No. NVR1000IF]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Indian Lands in the State of Nevada, Including Goshute Territory in the State of Utah, and the Duck Valley Reservation in Nevada and Idaho

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on the Indian lands specified above.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. CAR1000IF]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Indian Lands in the State of California

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on Indian lands in the State of California.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. MWR100000]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Midway Island or Wake Island

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on Midway Island or Wake Island.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[Permit No. JAR100000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Johnston Atoll

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on Johnston Atoll.

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: ID–R–10–000F]

In compliance with the provisions of the Clean Water Act, (33 U.S.C. 1251 *et seq.*), as amended by the Water Quality Act of 1987, Pub. L. 100–4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity" which are located on Indian lands in the State of Idaho, except for those sites identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located on Indian lands in the State of Idaho.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: AK–R–10–000F

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity" which are located on Indian lands in the State of Alaska, except for those sites identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27 day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located on Indian lands in the State of Alaska.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: WA–R–10–001F]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity" which are located on Indian lands in the State of Washington, except for those sites identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27 day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located on Indian lands in the State of Washington.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges from Construction Activities That Are Classified as Associated with Industrial Activity

[General Permit No.: WA–R–10–000F]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators of federal facilities in the State of Washington engaged in discharging storm water from construction activities that are classified as "associated with industrial activity", except for those sites identified in Part I hereof and except those sites located on Indian lands within the State of Washington, are authorized to discharge to waters of the State of Washington and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and any additional conditions in Part X which apply to federal facilities in the State of Washington.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges from Construction Activities That Are Classified as Associated with Industrial Activity

[General Permit No.: ID–R–10–0000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity", except for those sites identified in Part I hereof and except those sites located on Indian lands within the State of Idaho, are authorized to discharge to waters of the State of Idaho and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and any additional conditions in Part X which apply to federal facilities in the State of Idaho.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: AK–R–10–0000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators engaged in discharging storm water associated with construction activities that are classified as associated with industrial activities, except those sites identified in Part I hereof and except those sites located on Indian lands within the State of Alaska and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27 day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located in the State of Alaska.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. ____ R100000 or ____R10000F (for only Indian lands and/or Fed. fac]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State(s) of _____, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit

a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this ____ day of _____, 1992.

_____

(Signature of Water Management Director or Regional Administrator)

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of _____.

NPDES General Permits for Storm Water Discharges From Construction Activities That are Classified as "Associated With Industrial Activity"

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Preface

The Clean Water Act (CWA) provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part IX) of this permit.

The United States Environmental Protection Agency (EPA) has established the Storm Water Hotline at (703) 821-4823 to assist the Regional Offices in distributing notice of intent forms and storm water pollution prevention plan guidance, and to provide information pertaining to the storm water regulations.

Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas of:

Region I—for the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region II—for the Commonwealth of Puerto Rico.

Region IV—for Indian lands located in Florida (two tribes), Mississippi, and North Carolina.

Region VI—for the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—for the State of South Dakota; for Indian lands located in Colorado (including the Ute Mountain Reservation in Colorado), Montana, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation New Mexico.

Region IX—for the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—for the State of Alaska, and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

B. Eligibility

1. This permit may authorize all discharges of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale that will result in the disturbance of five or more acres total land area [1]), (henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may only authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, where:

A. the industrial source other than construction is located on the same site as the construction activity;

b. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are covered by a different NPDES general permit or

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. (Nos. 90-70671 and 91-70200).

individual permit authorizing such discharges.

3. Limitations on Coverage

The following storm water discharges from construction sites are not authorized by this permit:

a. storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization.

b. discharges that are mixed with sources of non-storm water other than discharges which are identified in Part III.A of this permit and which are in compliance with Part IV.D.5 (non-storm water discharges) of this permit.

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VI.L (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires provided the existing permit did not establish numeric limitations for such discharges

d. storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat.

C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or a photocopy thereof), in order for storm water discharges from construction sites to be authorized to discharge under this general permit.[2]

2. Where a new operator is selected after the submittal of an NOI under Part II, a new Notice of Intent (NOI) must be submitted by the operator in accordance with Part II, using a NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L of this permit).

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in paragraphs II.A.2, II.A.3, and II.A.4, individuals who intend to obtain coverage for storm water discharges from a construction site (where disturbances associated with the construction project commence before October 1, 1992), under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part on or before October 1, 1992;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site where disturbances associated with the construction project commence after October 1, 1992, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities);

3. For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after a NOI has been submitted under Parts II.A.1 or II.A.2) a NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1, 2 or 3 of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. Contents of Notice of Intent

The Notice(s) of Intent shall be signed in accordance with Part VI.G of this permit by all of the entities identified in Part II.B.2 and shall include the following information:

1. The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI for the additional operator must indicate the number for the preexisting NPDES permit;

3. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or any non-storm water discharges) from the site;

5. An indication of whether the operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part IV of this permit, and such plan provides compliance with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI submission).

C. Where to Submit

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the Federal Register notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VI.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

2. A copy of the NOI or other indication that storm water discharges from the site are covered under an NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

[2] A copy of the approved NOI form is provided in Appendix C of this notice.

D. Additional Notification

Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules), in addition to submitting the Notice of Intent to EPA in accordance with paragraph II.C.

E. Renotification

Upon issuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.5: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24-hour period:

a. The permittee is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to the appropriate EPA Regional office at the address provided in Part V.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: Provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The plan shall:

1. Be completed (including certifications required under Part IV.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. For construction activities that have begun on or before October 1, 1992, except for sediment basins required under Part IV.D.2.a(2) (structural practices) of this permit, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. The plan shall provide for compliance with sediment basins required under Part IV.D.2.a.(a) of this permit by no later than December 1, 1992;

3. For construction activities that have begun after October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VI.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design,

construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part IV.E). Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B above.

D. Contents of Plan

The storm water pollution prevention plan shall include the following items:

1. *Site description.* Each plan shall, provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which not be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and

f. The name of the receiving water(s), and areal extent of wetland acreage at the site.

2. *Controls.* Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part IV.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description and implementation of controls shall address the following minimum components:

a. *Erosion and sediment controls*—(1). *stabilization practices.* A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in paragraphs IV.D.2.(a).(1).(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a). Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

(b). Where construction activity will resume on a portion of the site within 21 days from when activities ceased, (e.g. the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of site by the 14th day after construction activity temporarily ceased.

(c). In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonal arid conditions, stabilization measures shall be initiated as soon as practicable.

(2). *Structural practices.* A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with 10 or more disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. *Storm water management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA. This permit only addresses

the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site.

(1). Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite and sequential systems (which combine several practices). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2). Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

c. *Other controls*—(1) *waste disposal.* No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

d. *Approved State or local plans.* (1) Permittees which discharge storm water associated with industrial activity from construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VI.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits, should not be applicable as a condition of an NPDES permit.

3. *Maintenance.* A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating condition.

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph IV.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph IV.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph IV.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

5. *Non-Storm Water Discharges.* Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

E. Contractors

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part IV.E.2

of this permit in accordance with Part VI.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. *Certification Statement.* All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part IV.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

The certification must include the name and title of the person providing the signature in accordance with Part VI.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

Part V. Retention of Records

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. *Addresses.* Except for the submittal of NOIs (see Part II.C of this permit), all written correspondence concerning discharges in any State, Indian land or from any Federal Facility covered under this permit and directed to the U.S. Environmental Protection Agency, including the submittal of individual permit applications, shall be sent to the address of the appropriate Regional Office listed below:

1. CT, MA, ME, NH, RI, VT

United States EPA, Region I, Water Management Division (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203.

2. NJ, NY, PR, VI

United States EPA, Region II, Water Management Division (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

3. DE, DC, MD, PA, VA, WV

United States EPA, Region III, Water Management Division (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

4. AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division (FPB–3), Storm Water Staff, 345 Courtland Street, N.E., Atlanta, GA 30365.

5. IL, IN, MI, MN, OH, WI

United States EPA, Region V; Water Quality Branch (5WQP), Storm Water Staff, 77 West Jackson Boulevard, Chicago, IL 60604.

6. AR, LA, NM (Except See Region IX for Navajo Lands, and See Region VIII for Ute Mountain Reservation Lands), OK, TX

United States EPA, Region VI, Water Management Division (6W–EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202.

7. IA, KS, MO, NE

United States EPA, Region VII, Water Management Division, Compliance Branch, Storm Water Staff, 726 Minnesota Avenue, Kansas City, KS 66101.

8. CO, MT, ND, SD, WY, UT (Except See Region IX for Goshute Reservation and Navajo Reservation Lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM–C), Storm Water Staff, 999 18th Street, Denver, CO 80202–2466.

Note—For *Montana Indian Lands,* please use the following address: United States EPA, Region VIII, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620–0026.

9. AZ, CA, HI, NV, Guam, American Samoa, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID

United States EPA, Region IX, Water Management Division (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

10. AK, ID (Except See Region IX for Duck Valley Reservation Lands), OR, WA

United States EPA, Region X, Water Management Division (WD–134), Storm Water Staff, 1200 Sixth Street, Seattle WA 98101.

Part VI. Standard Permit Conditions

A. Duty to Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

a. Criminal

(1). *Negligent Violations* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2). *Knowing Violations* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3). *Knowing Endangerment* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4). *False Statement* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. *Civil Penalties*—The CWA provides that any person who violates a

permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1). *Class I penalty* Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2). *Class II penalty* Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires on October 1, 1997. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof) between August 1, 1997 and September 29, 1997 to remain covered under the continued permit after October 1, 1997. Facilities that had not obtained coverage under the permit by October 1, 1997 cannot become authorized to discharge under the continued permit.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to authorization.* If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. *Certification.* Any person signing documents under paragraph VI.G shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

J. Property Rights

The issuance of this permit does not convey any property rights of any sort,

nor any exclusive privilieges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State of local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the applciation upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

M. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

O. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

Part VIII. Termination of Coverage

A. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VI.G of this permit. The Notice of Termination shall include the following information:

1. The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator addressed by the Notice of Termination:

3. The NPDES permit number for the storm water discharge identified by the Notice of Termination;

4. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VI.G (signatory requirements) of this permit:

> I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

For the purposes of this certification, elimination of storm water discharges associated with industrial activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

B. Addresses

All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof),[3] to the following address: Storm Water Notice of Termination, PO Box 1185, Newington, VA 22122.

Part IX. Definitions

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Commencement of Construction—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

CWA means the Clean Water Act or the Federal Water Pollution Control Act.

Dedicated portable asphalt plant—A portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR 443.

Dedicated portable concrete plant—A portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in appendices H and I of 40 CFR part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part VIII of this permit).

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste

[3] A copy of the approved NOT form is provided in Appendix D of this notice.

product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[4]

Waters of the United States means: (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, praire potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

Part X. State Specific Conditions

The provisions of this Part provide modifications or additions to the applicable conditions of Parts I through IX of this permit to reflect specific additional conditions identified as part of the State section 401 certification process. The additional revisions and requirements listed below are set forth in connection with particular State, Indian lands and Federal facilities and only apply to the States, Indian lands and Federal facilities specifically referenced.

Region II

A. *Puerto Rico.* Puerto Rico 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 2 in the Commonwealth of Puerto Rico.

* * * * *

2. Part III of the permit are revised to read as follows:

[4] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

Part III. Special Conditions, Management Practices, Commonwealth Special Conditions, and Narrative Effluent Limitations.

* * * * *

C. Commonwealth Special Conditions

1. Prior to the construction of any treatment system of waters compose entirely of storm water, the permittee shall obtain the approval of the engineering report, plans and specifications from the Environment Quality Board (EQB) of Puerto Rico.

2. The permittee shall submit to EQB with copy to the Regional Office the following information regarding its storm water discharge(s) associated with industrial activity: The number of storm water discharges associated with industrial activity covered by this permit and a drawing indicating the drainage area of each storm water outfalls:

a. For construction activities that have begun on or before October 1, 1992, the permittee is required to submit the information listed above no later than November 15, 1992.

b. For construction activities that have begun after October 1, 1992, the permittee is required to submit the information listed above within forty five (45) days of submission of the NOI.

D. Narrative Effluent Limitations

1. All discharges covered by this Permit shall be free of oil sheen at all times.

2. The storm water discharges associated with industrial activity from construction activities covered by this permit will not cause violation to the applicable water quality standards.

* * * * *

3. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

A. Deadlines for Plan Preparation and Compliance

The plan shall: 1. Be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. For construction activities that have begun on or before October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. On or before November 1, 1992, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VI.G of this permit.

3. For construction activities that have begun after October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities. Within thirty (30) days of submission of the NOI, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. This certification should be signed by the person who fulfills the signatory requirements in accordance with Part VI.G of this permit.

* * * * *

C. *Keeping Plans Current.* The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B above. If events have occurred which require the modification of the Plan, the engineer who performs the corresponding revision must submit to EQB with copy to the Regional Office, a certification stating the modifications performed to the plan. As soon as the modifications performed to the Plan are implemented, the person who fulfills the signatory requirements in accordance with Part VI.G of this permit shall submit to EQB with copy to the Regional Office, a certification stating that the modifications of the Plan have been implemented.

* * * * *

D. Contents of Plan

* * * * *

2. *Controls.*

* * * * *

d. Approved State or Local Plans

* * * * *

(4) Compliance with the Plan requirements does not relieve the permittee of his responsibility to comply with the provisions of the Sediment and Erosion Control Plan (Plan CEST, as referred to in Spanish) required by EQB.

* * * * *

4. Part VI.N of the permit is revised to read as follows:

Part VI. Standard Permit Conditions

* * * * *

N. *Proper Operation and Maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit. Also, proper operation and maintenance includes, but is not limited to, the effective performance based on designed facility removals, adequate funding, effective management, qualified operator staffing, adequate training, adequate laboratory and process controls including appropriate quality assurance procedures.

Region VIII

B. *Colorado (Federal facilities and Indian lands).* There are no special conditions pursuant to Colorado 401 certification in this permit for storm water discharges associated with industrial activity from construction activities located on Indian lands in Colorado. Colorado 401 certification special permit conditions for storm water discharges associated with industrial activity from construction activities from Federal facilities is revised as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all Federal Facilities and Indian Lands administered by EPA Region 8 in the State of Colorado.

* * * * *

2. Part III of the permit is revised to read as follows:

Part III. Special Conditions

A. *Prohibition on non-storm water discharges.*

* * * * *

2.

* * * * *

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.5: Discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate that has not been contaminated by industrial activity and no chemicals have been added to it; naturally occurring springs which have not been altered by the industrial activity; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

* * * * *

B. Releases in Excess of Reportable Quantities

* * * * *

1.

* * * * *

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.3 of this permit to the appropriate EPA Regional Office at the address provided in Part V.C (addresses) of this permit and to the Colorado Water Quality Control Division at the following address: Colorado Department of Health, Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, Attention: Permits and Enforcement.

* * * * *

3. Part IV.B.2 of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

B. Signature and Plan Review

* * * * *

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system. Federal Facilities located on non-Indian lands in Colorado shall make plans available upon request to the Colorado Water Quality Control Division.

* * * * *

4. Part VII.A of the permit is revised to read as follows:

Part VII. Reopener Clause

* * * * *

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements. If EPA develops new regulations which specifically impact storm water permit requirements or there is a change in statute which imposes additional requirements, this permit may be reopened and modified (following administrative procedures) to include the appropriate requirements.

* * * * *

Region IX

C. *Arizona.* Arizona 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 9 in the State of Arizona, excluding all Indian lands.

* * * * *

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

F. Special NOI Requirements for the State of Arizona. NOIs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality P.O. Box 600, Phoenix, Arizona 85001–0600.

NOIs submitted to the State of Arizona shall include the well registration number if storm water associated with industrial activity is discharged to a dry well or an injection well.

* * * * *

3. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. *Compliance with Water Quality Standards of the State of Arizona.* Discharges authorized by this permit shall not cause or contribute to a violation of any applicable water quality standards of the State of Arizona (A.G. Rule No. R92–006).

* * * * *

4. Part VIII of the permit is revised to read as follows:

Part VIII. Termination of Coverage

* * * * *

C. *Special NOT Requirement for the State of Arizona.* NOTs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address:

Storm Water Coordinator, Arizona Department of Environmental Quality, P.O. Box 600, Phoenix, Arizona 85001–0600.

* * * * *

5. The following definition has been added to Part IX of the permit:

Part IX. Definitions

* * * * *

Significant sources of non-storm water includes, but is not limited to: Discharges which could cause or contribute to violations of water quality standards of the State of Arizona, and discharges which could include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

* * * * *

Region X

D. *Alaska.* Alaska 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 10 in the State of Alaska.

* * * * *

2. Part II.C of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

* * * * *

3. A copy of initial Notice of Intent (NOI), any NOI for the continuation of the general permit, and any Notice of Termination shall be submitted to the appropriate State regional office, attention Storm Water Coordinator, as follows:

Alaska Department of Environmental Conservation, Northern Regional Office, 1001 Noble Street, suite 350, Fairbanks, Alaska 99701, (907) 452–1714, Fax: 451–2187.

Alaska Department of Environmental Conservation, Southeastern Regional Office, 410 W. Willoughby, suite 105, Juneau, Alaska 99801, (907) 465–5350, Fax: 465–5362.

Alaska Department of Environmental Conservation, Southcentral Regional Office, 3601 "C" Street, suite 1334, Anchorage, Alaska 99503, (907) 563–6529, Fax: 562–4026.

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, 411 W. 4th Ave., suite 2C, Anchorage, Alaska 99502, (907) 278–8594, Fax: 272–0690.

4. With the NOI to the State, a brief description of the activities to be covered shall be submitted. This shall be on a single sheet and shall describe the area to be disturbed to the nearest acre, the primary pollutants expected from the activities and the type of treatment to be provided.

* * * * *

3. Part III.B.1.b is revised to read as follows:

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

* * * * *

B. *Releases in excess of Reportable Quantities.*

1.

* * * * *

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to the appropriate EPA Regional Office at the address provided in Part V.C (addresses) of this permit and to the appropriate State regional office (see section II.C for addresses;

* * * * *

4. Part IV.D.4 of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

D. *Contents of Plan.*

* * * * *

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month. Monthly inspections shall be conducted for areas finally until a Notice of Termination (NOT) has been submitted for the area.

* * * * *

E. *Idaho.* Idaho 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 10 in the State of Idaho.

* * * * *

2. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. All storm water shall be treated and disposed of in such a manner that the ground water standards of Idaho are not violated. Such standards are specified in Section 1.02299 of the "Idaho Water Quality Standards and Wastewater Treatment Requirements."

* * * * *

F. *Washington (Federal facilities and Indian lands).* Washington 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all Federal Facilities administered by EPA Region 10 in the State of Washington.

* * * * *

2. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. Washington State Standards

1. This permit does not authorize the violation of ground water standards (Chapter 173–200 WAC), surface water standards (Chapter 173–201 WAC), or sediment management standards (Chapter 173–204 WAC) of the State of Washington. The point of compliance with surface water standards shall be determined after consideration of the assignment of a dilution zone as allowed under Chapter 173–201 WAC. The point of compliance with ground water standards shall be determined by applying the provisions of Chapter 173–200 WAC. The point of compliance with sediment management standards shall be determined in accordance with Chapter 173–204 WAC.

2. Diversion of storm water discharges to ground water from existing discharges to surface water shall not be authorized by this permit if this causes a violation or the potential for violation of ground water standards (Chapter 173–200 WAC). Such discharges below the surface of the ground are also regulated by the Underground Injection Control Program (Chapter 173–218 WAC).

3. Washington Department of Ecology (WDOE) is currently developing a "Storm Water Pollution Prevention Plan" which will require facilities to assess the potential of their storm water discharges to violate the Washington State surface water, ground water, or sediment management standards. Those discharges with a high potential to violate standards will be required to develop and implement a monitoring program.

Upon issuance of the "Storm Water Pollution Prevention Plan" by WDOE, EPA may reopen this permit to require facilities to assess their storm water discharges and to require additional monitoring.

BILLING CODE 6560–50–M

Appendix C — NOI Form Instructions

See Reverse for Instructions

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under the NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section II of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Facility Operator Information

Name: Phone:

Address: Status of Owner/Operator:

City: State: ZIP Code:

II. Facility/Site Location Information

Name: Is the Facility Located on Indian Lands? (Y or N)

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

III. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If You are Filing as a Co-permittee, Enter Storm Water General Permit Number: Are There Existing Quantitative Data? (Y or N) Is the Facility Required to Submit Monitoring Data? (1, 2, or 3)

SIC or Designated Activity Code: Primary: 2nd: 3rd: 4th:

If This Facility is a Member of a Group Application, Enter Group Application Number:

If You Have Other Existing NPDES Permits, Enter Permit Numbers:

IV. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres): Is the Storm Water Pollution Prevention Plan in Compliance with State and/or Local Sediment and Erosion Plans? (Y or N)

V. Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Date:

Signature: _____

EPA Form 3510-6 (8-92)

Instructions - EPA Form 3510-6
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity
To Be Covered Under The NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under the NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, contact the Storm Water Hotline at (703) 821-4823.

Where To File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent
PO Box 1215
Newington, VA 22122

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Storm Water Hotline at (703) 821-4823.

Section I Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility.

F = Federal	M = Public (other than federal or state)
S = State	P = Private

Section II Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. If the facility or site lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Indicate whether the facility is located on Indian lands.

Section III Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water.

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate whether or not the owner or operator of the facility has existing quantitative data that represent the characteristics and concentration of pollutants in storm water discharges.

Indicate whether the facility is required to submit monitoring data by entering one of the following:

1 = Not required to submit monitoring data;
2 = Required to submit monitoring data;
3 = Not required to submit monitoring data; submitting certification for monitoring exclusion

Those facilities that must submit monitoring data (e.g., choice 2) are: Section 313 EPCRA facilities; primary metal industries; land disposal units/incinerators/BIFs; wood treatment facilities; facilities with coal pile runoff; and, battery reclaimers.

List, in descending order of significance, up to four 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section II of this application.

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, the following 2-character codes are to be used:

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If the facility listed in Section II has participated in Part 1 of an approved storm water group application and a group number has been assigned, enter the group application number in the space provided.

If there are other NPDES permits presently issued for the facility or site listed in Section II, list the permit numbers. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Section IV Additional Information Required for Construction Activities Only

Construction activities must complete Section IV in addition to Sections I through III. Only construction activities need to complete Section IV.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section V Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing , production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix D — NOT Form Instructions

Please See Instructions Before Completing This Form

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number: _____

Check Here if You are No Longer the Operator of the Facility: ☐

Check Here if the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ ZIP Code: _____

III. Facility/Site Location Information

Name: _____

Address: _____

City: _____ State: _____ ZIP Code: _____

Latitude: _____ Longitude: _____ Quarter: _____ Section: _____ Township: _____ Range: _____

IV. Certification: I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: _____ Date: _____

Signature: _____

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under the EPA issued National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Dicharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26 (b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination
P.O. Box 1185
Newington, VA 22122

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, call the Storm Water Hotline at (703) 821-4823.

PLEASE SEE REVERSE OF THIS FORM FOR FURTHER INSTRUCTIONS

EPA Form 3510-7 (8-92)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, contact the Storm Water Hotline at (703) 821-4823.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

[FR Doc. 92–21385 Filed 9–8–92; 8:45 am]
BILLING CODE 6560–50–C

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing , production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;.

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

federal register

Wednesday
September 9, 1992

Part III

Environmental Protection Agency

Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4202-5]

Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits.

SUMMARY: The Regional Administrators of Regions I, IV, VI, VIII, IX, and X (the "Regions" or the "Directors") are issuing final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity (except discharges from construction activity) in 11 States (Alaska, Arizona, Florida, Idaho, Louisiana, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, and Texas); the Territories of Johnston Atoll, Midway and Wake Islands; on Indian lands in Alaska, Arizona, California, Colorado, Florida, Idaho, Maine, Massachusetts, Mississippi, Montana, New Hampshire, Nevada, North Carolina, North Dakota, Utah, Washington, and Wyoming; from Federal facilities in Colorado, and Washington; and from Federal facilities and Indian lands in Louisiana, New Mexico, Oklahoma, and Texas.

These general permits establish Notice of Intent (NOI) requirements, prohibitions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with dischargers authorized by the permit. In addition, these general permits establish monitoring requirements for certain classes of facilities and a numeric effluent limitation for discharges of coal pile runoff subject to the general permits.

ADDRESSES: Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office. The addresses of the Regional Offices and the name and phone number of the Storm Water Regional Coordinator is provided in section IV.G of the Fact Sheet.

The index to the administrative records for these permits are available at the appropriate Regional Office. The complete administrative record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. Specific record information will be made available at the appropriate Regional Office as requested.

DATES: These general permits shall be effective on September 9, 1992. This effective date is necessary to provide appropriate dischargers with the opportunity to comply with the October 1, 1992 deadline for submitting an NPDES application for storm water discharges associated with industrial by submitting a Notice of Intent (NOI) to be covered by the permits.

Deadlines for submittal of Notices of Intent (NOIs) are provided in section IV.A.2 of the Fact Sheet and Part II.A of the general permits. Today's general permits also provide additional dates for compliance with the terms of the permit and for submitting monitoring data where required.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permits, contact the NPDES Storm Water Hotline at (703) 821-4823 or the appropriate EPA Regional Office. The name, address and phone number of the Regional Storm Water Coordinators are provided in section IV.G of the Fact Sheet.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Pollutants in Storm Water Discharges Associated With Industrial Activity
III. Coverage of General Permits
IV. Summary of Permit Conditions
A. Notification Requirements
1. Contents of NOIs
2. Deadlines
3. Additional Notification
4. Notice of Termination
B. Special Conditions
1. Prohibition on Non-Storm Water Discharges
2. Releases of Reportable Quantities of Hazardous Substances and Oil
C. Tailored Pollution Prevention Plan Requirements
1. Pollution Prevention Team
2. Description of Potential Pollution Sources
a. Drainage
b. Inventory of Exposed Materials
c. Significant Spills and Leaks
d. Non-storm Water Discharges
e. Sampling Data
f. Risk Identification and Summary of Potential Pollutant Sources
3. Measures and Controls
a. Good Housekeeping
b. Preventive Maintenance
c. Spill Prevention and Response Procedures
d. Inspections
e. Employee Training
f. Recordkeeping and Internal Reporting Procedures
g. Sediment and Erosion Control
h. Management of Runoff
4. Comprehensive Site Compliance Evaluation
D. Special Requirements
1. EPCRA Section 313
2. Salt Piles
3. Discharges to Large and Medium Municipal Separate Storm Sewer Systems
4. Coal Piles
E. Monitoring and Reporting Requirements
F. Regional Offices
G. Compliance Deadlines
V. Cost Estimates
VI. Economic Impact (Executive Order 12291)
VII. Paperwork Reduction Act
VIII. 401 Certification
IX. Regulatory Flexibility Act

I. Introduction

The Regional Administrators of the United States Environmental Protection Agency (EPA) are issuing final general permits for the majority of storm water discharges associated with industrial activity as follows:

Region I—For the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region IV—For the State of Florida; and for Indian lands located in Florida, Mississippi, and North Carolina.

Region VI—For the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—For the State of South Dakota; for Indian lands located in Colorado, Montana, South Dakota, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation in Colorado and New Mexico.

Region IX—For the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—For the States of Alaska and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

These general permits may authorize the majority of storm water discharges associated with industrial activity to waters of the United States, including discharges through large and medium municipal separate storm sewer systems and through other municipal separate

storm sewer systems. As discussed below, these permits do not authorize storm water discharges associated with industrial activity from construction activities [1] and several additional classes of storm water discharges.

This notice contains four appendices. Appendix A summarizes EPA's response to major comments received on the draft general permits published on August 16, 1991 (56 FR 40948). Appendix B provides the language of the final general permits. Except as provided in part XI of the permits, parts I through X apply to all permits. Part XI of the permit contains conditions which only apply in the State indicated. Appendix C is a copy of the Notice of Intent (NOI) form (and associated instructions) for dischargers to obtain coverage under the general permits. Appendix D is a copy of the Notice of Termination (NOT) form (and associated instructions) that can be used by dischargers wanting to notify EPA that their storm water discharges associated with industrial activity have been terminated or that the permittee has transferred operation of the facility.

On August 16, 1991 (56 FR 40948), EPA requested public comment on draft general permits forming the basis for today's final general permits. In addition to addressing those storm water discharges from industrial activity addressed in today's permits, the August 16, 1991, draft general permits addressed storm water discharges from construction activities. The permits in this notice only address storm water associated with industrial activity other than construction activities. Elsewhere in today's **Federal Register**, EPA is publishing NPDES permits for storm water discharges from construction industrial facilities.

EPA received more than 330 comments on the August 16, 1991, draft general permits. In addition, public hearings to discuss the draft general permits were held in Dallas, TX; Oklahoma City, OK; Baton Rouge, LA; Albuquerque, NM; Seattle, WA; Boise, ID; Juneau, AK; Pierre, SD; Phoenix, AZ; Orlando, FL; Tallahassee, FL; Augusta, ME; Boston, MA; and Mancheser, NH.

EPA is incorporating, by reference, portions of the detailed fact sheet for the draft general permits published on August 16, 1991, as part of the final fact sheet and statement of basis for today's final permit. The sections of the prior fact sheet being incorporated are section 1, Background; section 4, Summary of Options for Controlling Pollutants; and section 5, The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewers.

II. Pollutants in Storm Water Discharges Associated With Industrial Activity

The volume and quality of storm water discharges associated with industrial activity depend on a number of factors, including the industrial activities occurring at the facility, the nature of precipitation, and the degree of surface imperviousness. Rain water may pick up pollutants from structures and other surfaces as it drains from the land. In addition, sources of pollutants other than storm water, such as illicit connections,[2] spills, and other improperly dumped materials, may increase the pollutant loads discharged from separate storm sewers. The sources of pollutants in storm water discharges differ with the type of industry operation and specific facility features. For example, air emissions may be a significant source of pollutants at some facilities, material storage operations at others, and still other facilities may discharge storm water associated with industrial activity with relatively low levels of pollutants.

From 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP) to study runoff from commercial and residential areas. NURP included 28 projects across the Nation conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP program was to characterize the water quality of discharges from separate storm sewers that drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in NURP were analyzed for seven conventional pollutants and three metals. Table 1 summarizes the data in the NURP data base on concentrations for these 10 pollutants and fecal coliform. The data collected in NURP indicated that on an annual loading basis suspended solids in discharges from separate storm sewers draining runoff from residential, commercial, and light industrial areas are approximately an order of magnitude or more greater than effluent from sewage treatment plants receiving secondary treatment. The study also found that annual loadings of chemical oxygen demand (COD) are comparable to effluent from sewage treatment plants receiving secondary treatment. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent and that the short-term loadings associated with individual events will be high and may have shock loading effects on receiving water, such as sag in dissolved oxygen levels.

[1] Elsewhere in today's **Federal Register**, EPA is publishing final general permits for storm water discharges associated with industrial activity from construction sites in a number of States.

[2] Illicit connections are contributions of unpermitted nonstorm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings.

TABLE 1.—QUALITY CHARACTERISTICS OF RUNOFF FROM RESIDENTIAL AND COMMERCIAL AREAS

Constituent	Average residential or commercial site concentration	Weighted mean residential or commercial site concentration	NURP recommendations for load estimates
TSS	239 mg/l	180 mg/l	180–548 mg/l
BOD	12 mg/l	12 mg/l	12–19 mg/l
COD	94 mg/l	82 mg/l	82–178 mg/l
Total Phosphorus	0.5 mg/l	0.42 mg/l	0.42–0.88 mg/l
Soluble Phosphorus	0.15 mg/l	0.15 mg/l	0.15–0.28 mg/l
Total Kjeldahl Nitrogen	2.3 mg/l	1.90 mg/l	1.90–4.18 mg/l
Nitrate-Nitrite	1.37 mg/l	0.86 mg/l	0.86–2.21 mg/l
Total Copper	53 µg/l	43 µg/l	43–118 µg/l
Total Lead	238 µg/l	182 µg/l	182–443 µg/l
Total Zinc	353 µg/l	202 µg/l	202–633 µg/l
Fecal Coliform:			
Warm Weather	50,240 counts/100 gml	27,605 counts/100 ml	
Cold Weather	22,918 counts/100 gml	7,075 counts/100 ml	

Source: Developed from Results of the Nationwide Urban Runoff Program, Vol. 1—Final Report, EPA 1983.

NURP also involved monitoring 120 priority pollutants. Seventy-seven priority pollutants, including 14 inorganic and 63 organic pollutants, were detected in samples of storm water discharges from residential, commercial, and light industrial lands taken during NURP. Table 2 shows the priority pollutants detected in at least 10 percent of the discharge samples that were tested for priority pollutants. The NURP data also showed that a significant number of these samples exceeded various freshwater water quality criteria.

Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely important source of oil pollution to receiving waters,[3] with hydrocarbon levels in urban runoff typically being reported at a range of 2 mg/l to 10 mg/l. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time and can adversely affect benthic organisms.

TABLE 2.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10 PERCENT OF NURP SAMPLES

	Frequency of Detection (percent)
Metals and Inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated Aliphatics:	
Methane, dichloro-	11
Phenols and Cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate Esters:	
Phthalate, bis (2-ethylhexyl)	22
Polycyclic Aromatic Hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

[3] For example, see "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

Other studies have shown that many storm sewers contain illicit non-storm water discharges and that large amounts of wastes are disposed of improperly in storm sewers. Removal of these discharges presents opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain, in addition to illicit connections and improperly disposed wastes, toxics and conventional pollutants when material management practices allow exposure to storm water.

In some municipalities, illicit connections of sanitary, commercial, and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although NURP did not emphasize identification of illicit connections to storm sewers other than to ensure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health.

Studies have shown that illicit connections to storm sewers can create severe, widespread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes, and other buildings located in Washtenaw County, Michigan, and found that 14 percent of the buildings had improper storm drain connections. Illicit discharges were detected at a higher rate of 60 percent for automobile-related businesses, including service stations, automobile dealerships, car washes, body shops, and light industrial facilities. While some of the problems discovered in this study were due to improper plumbing or illegal connections, a majority were approved connections at the time they were built, but have since become unlawful discharges.

NURP and other studies of urban runoff insight on what can be considered background levels of pollutants for urban runoff, as these studies have focused primarily on monitoring runoff from residential, commercial, and light industrial areas. However, NURP concluded that the quality of urban runoff can be impacted adversely by several sources of pollutants that were not evaluated directly in the study and that are generally not reflected in the NURP data, such as illicit connections, construction site runoff, industrial site runoff, and illegal dumping.

For some industrial facilities, the types and concentrations of pollutants in storm water discharges are similar to the types and concentrations of pollutants generally found in storm water discharges from residential and commercial areas. However, storm water discharges from other industrial facilities have a significant potential for higher pollutant levels. In addition, pollutant loadings per unit area from some industrial facilities may be high because of a high degree of imperviousness.

Six activities can be identified as major potential sources of pollutants in storm water discharges associated with industrial activity: (1) Loading or unloading of dry bulk materials or liquids; (2) outdoor storage of raw materials or products; (3) outdoor process activities; (4) dust or particulate generating processes; (5) illicit connections or inappropriate management practices; and (6) waste disposal practices.[4] The potential for pollution from many of these activities may be influenced by the presence and use of toxic chemicals. These activities are discussed in more detail below.

1. Loading and unloading operations typically are performed along facility access roads and railways and at loading/unloading docks and terminals. These operations include pumping of liquids or gases from truck or rail car to a storage facility or vice versa, pneumatic transfer of dry chemicals to or from the loading or unloading vehicle, transfer by mechanical conveyor systems, and transfer of bags, boxes, drums, or other containers from vehicle by forklift trucks or other materials handling equipment. Material spills or losses may discharge directly to the storm drainage systems or may accumulate in soils or on surfaces and

[4] See "Best Management Practices: Useful Tools for Cleaning Up", Rogoshewski, P. 1982, Proceedings of the 1982 Hazardous Material Spills Conference; "Manual of Practice: On Site Identification of Illicit Connections", The Cadmus Group, 1990; "Design of Urban Runoff Quality Controls", American Society of Civil Engineers, 1988; "Urban Stormwater Quality Enhancement-Source Control, Retrofitting, and Combined Sewer Technology", Torno, American Society of Civil Engineers, 1989; "NPDES Best Management Practices Guidance Document", EPA, 1979; "Guidelines to Pollution Prevention: The Pesticide Formulating Industry", 1990, EPA/625/7-90/004; "Guides to Pollution Prevention: The Paint Manufacturing Industry", 1990, EPA/625/7-90/005; "Guides to Pollution Prevention: The Fabricated Metal Products Industry", 1990, EPA/625/7-90/006; and "Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity", EPA, 1991.

be washed away during a storm or facility washdown.

2. Outdoor storage activities include the storage of fuels, raw materials, byproducts, intermediates, final products and process residuals. Methods of material storage include using storage containers (e.g., drums or tanks), platforms or pads, bins, silos, boxes, or piles. Materials, containers, and material storage areas that are exposed to rainfall and/or runoff may contribute pollutants to storm water when solid materials wash off or materials dissolve into solution.

3. Other outdoor activities include certain types of manufacturing and commercial operations and land-disturbing operations. Although many manufacturing activities are performed indoors, some activities, such as equipment maintenance and/or cleaning, timber processing, rock crushing, vehicle maintenance and/or cleaning, and concrete mixing, typically occur outdoors. Processing operations may result in liquid spillage and losses of material solids to the drainage system or surrounding surfaces, or creation of dusts or mists, which can be deposited locally. Some outdoor industrial activities cause substantial physical disturbance of land surfaces that result in soil erosion by storm water. For example, disturbed land occurs in construction and mining. Disturbed land may result in soil losses and other pollutant loadings associated with increased runoff rates. Facilities whose major process activities are conducted indoors may still apply chemicals such as herbicides, pesticides, and fertilizer outdoors for a variety of purposes.

4. Dust or particulate generating processes include industrial activities with stack emissions or process dusts that settle on plant surfaces. Localized atmospheric deposition is a particular concern with heavy manufacturing industries. For example, monitoring of areas surrounding smelting industries has shown much higher levels of metals at sites nearest the smelter. Other industrial sites, such as mines, cement manufacturing, and refractories, generate significant levels of dusts.

5. Illicit connections or inappropriate management practices result in improper non-storm water discharges to storm sewer systems. The likelihood of illicit discharges to storm water collection systems is expected to be higher at older facilities, due to past practices, as well as for facilities that use high volumes of process water or dispose of significant amounts of liquid wastes, including process waste waters, cooling waters, and rinse waters.

Pollutants from non-storm water discharges to the storm sewer system of individual facilities are caused typically by a combination of improper connections, spills, improper dumping, and the belief that the absence of visible solids in a discharge is equivalent to the absence of pollution. Illicit connections are often associated with floor drains that are connected to separate storm sewers. Rinse waters used to clean or cool objects discharge to floor drains connected to separate storm sewers. Large amounts of rinse waters may originate from industries that use regular washdown procedures; for example, bottling plants use rinse waters for removing waste products, debris, and labels. Rinse waters can be used to cool materials by dipping, washing, or spraying objects with cool water, for example, rinse water is sometimes sprayed over the final products of a metal plating facility for cooling purposes. Condensate return lines of heat exchangers often discharge to floor drains. Heat exchangers, particularly those used under stressed conditions (such as exposure to corrosive fluids) such as in the metal finishing and electroplating industry, may develop pinhole leaks that result in contamination of condensate by process wastes. These and other non-storm water discharges to a storm sewer may be intentional, based on the belief that the discharge (condensate in the example previously discussed) does not contain pollutants, or they may be inadvertent, if the operator is unaware that a floor drain is connected to the storm sewer.

6. Waste management practices include temporary storage of waste materials, operating landfills, waste piles, and land application sites that involve land disposal. Outdoor waste treatment operations also include waste water and solid waste treatment and disposal processes, such as waste pumping, additions of treatment chemicals, mixing, aeration, clarification, and solids dewatering. Facilities often conduct some waste management on site.

Coal Pile Runoff

The following description of coal pile runoff is summarized from the "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category" (EPA-440/1-82/029), EPA, November 1982. A more complete description of coal pile runoff can be found in the development document.

The pollutants in coal pile runoff can be classified into specific types according to chemical characteristics. Each type relates to the pH of the coal pile drainage. The pH tends to be of an acidic nature, primarily as a result of the oxidation of iron sulfide in the presence of oxygen and water. The potential influence of pH on the ability of toxic and heavy metals to leach from coal piles is of particular concern. Many of the metals are amphoteric with regard to their solubility behavior. These factors affect acidity, pH, and the subsequent leaching of trace metals:

- Concentration and form of pyritic sulfur in coal;
- Size of the coal pile;
- Method of coal preparation and clearing prior to storage;
- Climatic conditions, including rainfall and temperature;
- Concentrations of calcium carbonate and other neutralizing substances in the coal;
- Concentration and form of trace metals in the coal; and
- The residence time of water in the coal pile.

Coal piles can generate runoff with low pH values, with the acid values being quite variable. The suspended solids levels can be significant, with levels of 2,500 mg/l not uncommon. Metals present in the greatest concentrations are copper, iron, aluminum, nickel, and zinc. Others present in trace amounts include chromium, cadmium, mercury, arsenic, selenium, and beryllium.[5]

III. Coverage of General Permits

These final general permits may authorize all new and existing discharges composed of storm water associated with industrial activity. To be authorized under today's general permit, the owner or operator of a facility with a storm water discharge associated with industrial activity must submit a Notice of Intent (NOI) to be covered, using an NOI form (or photocopy thereof) provided by the Director. Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit. Upon review of the NOI, the Director may deny coverage under this permit and require submittal of an application for an individual National Pollutant

[5] A more complete description of pollutants in coal pile runoff is provided in the "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category," (EPA-440/1-82/029), EPA, November 1982.

Discharge Elimination System (NPDES) permit.

Dischargers that have previously submitted an individual permit application or participated in a group application are not precluded from submitting an NOI to obtain coverage under today's general permits.

Seven types of storm water discharges associated with industrial activity are not authorized by and may not be covered by today's general permit. Each of these is discussed in turn below:

• Storm water discharges associated with industrial activity that are mixed with sources of non-storm water other than discharges that are either (1) in compliance with a different NPDES permit or (2) identified in the permit as being a class of non-storm water discharge that can be authorized by the permit and comply with the requirements of the permit.

• Storm water discharges associated with industrial activity that are subject to an existing effluent limitation guideline for storm water or a combination of storm water and process water; [6]

• Storm water discharges associated with industrial activity from facilities with an existing NPDES individual or general permit for the storm water discharges. Storm water discharges that are authorized by an existing NPDES individual or general permit may be authorized by this permit after the existing permit expires, provided that the permit did not establish numeric limitations for such discharges. In addition, storm water discharges that are not covered by an existing NPDES permit may be authorized by this permit even where other storm water discharges from the same facility are covered by a different NPDES permit;

• Storm water discharges associated with industrial activity from construction activities;[7]

• Storm water discharges associated with industrial activity that the Director has determined to be or may reasonably expect to be contributing to a violation of a water quality standard;

• Storm water discharges associated with industrial activity that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; and

• Storm water discharges associated with industrial activity from inactive mining, inactive landfills, or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified.

IV. Summary of Permit Conditions

The conditions of today's general permits have been designed to comply with the technology-based standards of the Clean Water Act (CWA). The general permits contain a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting quantities, a set of tailored requirements for developing and implementing storm water pollution prevention plans, monitoring requirements for selected discharges, and numeric effluent limitations for coal pile runoff.

A. Notification Requirements

General permits for storm water discharges associated with industrial activity must require the submittal of an NOI prior to the authorization of such discharges (see 40 CFR 122.28(b)(2)(i), April 2, 1992, [57 FR 11394]). Consistent with these regulatory requirements, today's general permits establish NOI requirements that operate instead of individual permit application requirements.

Dischargers submitting an NOI must use the form provided by the Director (or photocopy thereof). A copy of the NOI and accompanying instructions are provided in appendix C. NOI forms are also generally available from the Storm Water Hotline ((703) 821–4823) and appropriate EPA Regional offices (see the Regional Offices section of today's notice).

1. Contents of NOIs

The NOI must include the following information:

• Name, mailing address, and location of the facility for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in terms of the latitude and longitude of the facility to the nearest 15 seconds that the facility is located in;

• Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or activities provided by the facility or for hazardous waste treatment, storage or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage, a narrative identification of those activities;

• The operator's name, address, telephone number, and status as Federal, State, private, public, or other entity;

• The permit number of any NPDES permit for any discharge (including non-storm water discharges) from the site that is currently authorized by an NPDES permit;

• The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the receiving water(s) for the discharge through the municipal separate storm sewer;

• An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI);

• An indication as to whether the facility has previously participated in the group application process.[8] Where a facility has participated in a group application, the number EPA assigned to the group application shall be supplied; and

• For any facility that begins to discharge storm water associated with industrial activity after October 1, 1992, a certification that a storm water pollution prevention plan has been prepared for the facility in accordance with Part IV of this permit. (A copy of the plan should not be included with the NOI submission).

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements are provided in the instructions accompanying the NOI (see appendix C). Completed NOI forms must be submitted to the Director of the NPDES program in care of the following

[6] For the purpose of this permit, the following effluent limitations guidelines address storm water or a combination of storm water and process water: cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443). This permit may authorize storm water discharges associated with industrial activity that are not subject to an effluent limitation guideline even where a different storm water discharge at the facility is subject to an effluent limitation guideline.

[7] EPA is in the process of issuing separate general permits for storm water discharges associated with industrial activity from construction activities. In situations where construction activities occur at an existing industrial facility, or where industrial activities addressed by 40 CFR 122.26(b) (i) through (ix) or (xi), such as asphalt plants and concrete plants, are employed at a construction site, the storm water discharge associated with industrial activity from the industrial activity addressed by 40 CFR 122.26(b) (i) through (ix) or (xi) can be authorized by the permit addressed by this fact sheet.

[8] As discussed above, dischargers that have previously participated in a group application are not precluded from submitting an NOI to be covered by today's permits.

address: Storm Water Notices of Intent, P.O. Box 1215, Newington, VA 22122.

2. Deadlines

Except for the special circumstances discussed below, dischargers who intend to obtain coverage under today's general permit for a storm water discharge from an industrial activity that is in existence prior to October 1, 1992, must submit an NOI on or before October 1, 1992, and facilities that begin industrial activities after October 1, 1992, are required to submit an NOI at least 2 days prior to the commencement of the new industrial activity.

Oil and gas exploration, production, processing, or treatment operations or transmission facilities that are not required to submit a permit application as of October 1, 1992, in accordance with 40 CFR 122.26(c)(1)(iii) but that have a discharge after October 1, 1992, of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6 are required to submit an NOI within 14 calendar days of the first knowledge of such release.

Storm water discharges associated with industrial activity from any facility owned or operated by a municipality that has participated in a timely part 1 group application and where either the group application is rejected or the municipally owned or operated facility is denied participation in the group application by EPA must submit an NOI on or before the 180th day following the date on which the group is rejected or the denial is made, or on or before October 1, 1992, whichever is later. This deadline is consistent with section 1068(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

A discharger is not precluded from submitting an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, history of spills, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. Additional Notification

Operators of storm water discharges associated with industrial activity that discharge through a large or medium municipal separate storm sewer system [9] must, in addition to submitting an NOI to the Director, submit a copy of the NOI to the municipal operator of the system receiving the discharge.

4. Notice of Termination

Where a discharger is able to eliminate the storm water discharges associated with industrial activity from a facility, the discharger may submit a Notice of Termination (NOT) form (or photocopy thereof) provided by the Director. This will assist EPA in tracking the status of the discharger.

A copy of the NOT and instructions for completing the NOT are provided in appendix D of today's notice. The NOT form requires the following information:

- Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter;
- The name, address and telephone number of the operator addressed by the Notice of Termination;
- The NPDES permit number for the storm water discharge associated with industrial activity identified by the NOT;
- An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and
- The following certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

NOTs are to be sent to the Director of the NPDES program in care of the following address: Storm Water Notice of Termination, P.O. Box 1185, Newington, Virginia 22122.

The NOT must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOT (see appendix D).

B. Special Conditions

1. Prohibition on Non-Storm Water Discharges

Today's general permits do not authorize non-storm water discharges that are mixed with storm water except as provided below. Non-storm water discharges that can be authorized under today's permits include discharges from fire fighting activities; fire hydrant flushings; potable water sources, including waterline flushings; irrigation drainage; lawn watering; routine external building washdown without detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with storm water discharges associated with industrial activity.

To be authorized under the general permits, these sources of non-storm water (except flows from fire fighting activities) must be identified in the storm water pollution prevention plan prepared for the facility. (Plans and other plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or herbicides; for higher maintenance lawn areas, a plan could identify measures

[9] The terms large and medium municipal separate storm sewer systems (systems serving a population of 100,000 or more) are defined at 40 CFR 122.26(b)(4) and (7). Some of the cities and counties in which these systems are found are listed in Appendices F, G, H, and I to 40 CFR part 122. Other large and medium systems have been designated by EPA on a case-by-case basis.

such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing herbicide use with an integrated pest management program, introducing natural vegetation or more hardy species, and reducing water use (thereby reducing the volume of irrigation drainage).

Today's permits do not require pollution prevention measures to be identified and implemented for non-storm water flows from fire-fighting activities because these flows will generally be unplanned emergency situations where it is necessary to take immediate action to protect the public.

The prohibition on unpermitted non-storm water discharges in these permits ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by these permits. Where a storm water discharge is mixed with non-storm water that is not authorized by today's general permits or another NPDES permit, the discharger should submit the appropriate application forms (Forms 1, 2C, and/or 2E) to gain coverage of the non-storm water portion of the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

These general permits provide that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302 during a 24 hour period, the following actions must be taken:

- Any person in charge of the facility is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area, 202–426–2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302 as soon as they have knowledge of the discharge;
- The storm water pollution prevention plan for the facility must be modified within 14 calendar days of knowledge of the release to provide a description of the release, an account of the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and it must be modified where appropriate.
- The permittee must also submit to EPA within 14 calendar days of knowledge of the release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to modify the pollution prevention plan for the facility.

Anticipated discharges containing a hazardous substance in an amount equal to or in excess of reporting quantities are those caused by events occurring within the scope of the relevant operating system. Facilities that have more than one anticipated discharge per year containing a hazardous substance in an amount equal to or in excess of a reportable quantity are required to:

- Submit notifications for the first release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and
- Provide a written description in the storm water pollution prevention plan of the dates on which such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the release. In addition, the plan must be reviewed to identify measures to minimize such releases and the plan must be modified where appropriate.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a nonstorm water discharge (e.g., a spill of oil into a separate storm sewer), that discharge is not authorized by this permit and the discharger must report the discharge as required under 40 CFR 110, 40 CFR 117, or 40 CFR 302. In the event of a spill, the requirements of section 311 of the CWA and other applicable provisions of sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

C. Tailored Pollution Prevention Plan Requirements

All facilities covered by today's general permits for storm water discharges associated with industrial activity must prepare and implement a storm water pollution prevention plan. The storm water permits address pollution prevention plan requirements for a number of categories of industries, including: Baseline requirements for all industries; special requirements for certain facilities subject to Emergency Planning and Community Right-to-Know Act (EPCRA) section 313; special requirements for storm water discharges associated with industrial activity through large and medium municipal separate storm sewer systems; and special requirements for facilities with outdoor salt storage piles. These tailored requirements allow the implementation of site-specific measures that address features, activities, or priorities for control associated with the identified storm water discharges. This framework provides the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with the different types of industrial activity addressed by these permits. This approach also assures that facilities have the opportunity to identify procedures to prevent storm water pollution at a particular site that are appropriate, given processes employed, engineering aspects, functions, costs of controls, location, and age of the facility (as contemplated by 40 CFR 125.3). The approach taken also allows the flexibility to establish controls that can appropriately address different sources of pollutants at different facilities.

The pollution prevention approach adopted in today's general permits focuses on these two major objectives: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from the facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from the facility and to ensure compliance with the terms and conditions of this permit.

The storm water pollution prevention plan requirements in the general permit are intended to facilitate a process whereby the operator of the industrial facility thoroughly evaluates potential pollution sources at the site and selects and implements appropriate measures designed to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) Formation of a team of qualified plant personnel who will be responsible for preparing the plan and assisting the plant manager in its implementation, (2) assessment of potential storm water pollution sources, (3) selection and implementation of appropriate management practices and controls, and (4) periodic evaluation of the ability of the plan to prevent storm water pollution and comply with the terms and conditions of this permit.

EPA believes the pollution prevention approach is the most environmentally sound and cost-effective way to control the discharge of pollutants in storm water runoff from industrial facilities. This position is supported by the results of a comprehensive technical survey EPA completed in 1979.[10] The survey found that there are two classes of management practices industry uses to control the non-routine discharge of pollutants from sources such as storm water runoff, drainage from raw material storage and waste disposal areas, and discharges from places where spills or leaks have occurred. The first class of management practices includes those that are low in cost, applicable to a broad class of industries and substances, and generally are considered essential to a good pollution control program. Some examples of practices in this class are good housekeeping, employee training, and spill prevention procedures. The second class includes management practices that provide a second line of defense against the release of pollutants. This class addresses containment, mitigation, cleanup, and treatment.

Since publication of the 1979 survey, EPA has imposed management practices and controls in NPDES permits on a case-by-case basis. The Agency also has continued to review the appropriateness and effectiveness of such practices,[11] as well as the techniques used to prevent and contain oil spills.[12] Experience with these practices and controls has shown that they can be used in permits to reduce pollutant discharges in storm water in a cost-effective manner. EPA has developed guidance entitled "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices", EPA, 1992 to assist permittees in developing and implementing pollution prevention measures.

1. Pollution Prevention Team

As a first step in the process of developing and implementing a storm water pollution prevention plan, permittees must identify a qualified individual or team of individuals to be responsible for developing the plan and assisting the facility or plant manager in its implementation. When selecting members of the team, the plant manager should draw on the expertise of all relevant departments within the plant to ensure that all aspects of plant operations are considered when the plan is developed. The plan must clearly describe the responsibilities of each team member as they relate to specific components of the plan. In addition to enhancing the quality of communication between team members and other personnel, clear delineation of responsibilities will ensure that every aspect of the plan is addressed by a specified individual or group of individuals. Pollution Prevention Teams may consist of one individual where appropriate (e.g., in certain small businesses with limited storm water pollution potential).

2. Description of Potential Pollution Sources

Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute significant amounts of pollutants to storm water runoff or, during periods of dry weather, result in pollutant discharges through the separate storm sewers or storm water drainage systems that drain the facility. This assessment of storm water pollution risk will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Plans must describe the following elements:

a. Drainage. The plan must contain a map of the site that shows the pattern of storm water drainage, structural features that control pollutants in runoff,[13] surface water bodies (including wetlands), places where significant materials [14] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map also must show areas where the following activities take place: Fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal. For areas of the facility that generate storm water discharges with a reasonable potential to contain significant amounts of pollutants, the map must indicate the probable direction of storm water flow and the pollutants likely to be in the discharge. Flows with a significant potential to cause soil erosion also must be identified.

b. Inventory of exposed materials. Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must address materials that within 3 years prior to the effective date of the permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the methods and location of on-site storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in runoff; and any treatment the runoff receives before it is discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

c. Significant spills and leaks. The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under section 311 of CWA (see 40 CFR 110.10 and 117.21) or section 102 of the Comprehensive Environmental Response, Compensation and Liability

[10] See "NPDES Best Management Practices Guidance Document," U.S. EPA, December 1979, EPA-600/9-79-045.

[11] For example, see "Best Management Practices: Useful Tools for Cleaning Up", Thron, H. Rogoshewski, P., 1982, Proceedings of the 1982 Hazardous Material Spills Conference; "The Chemical Industries' Approach to Spill Prevention", Thompson, C., Goodier, J. 1980, Proceedings of the 1980 National Conference of Control of Hazardous Materials Spills; a series of EPA memorandum entitled "Best Management Practices in NPDES Permits—Information Memorandum", 1983, 1985, 1986, 1987, 1988; Review of Emergency Systems: Report to Congress", EPA, 1988; and "Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity", EPA, 1991.

[12] See for example, "The Oil Spill Prevention, Control and Countermeasures Program Task Force Report", EPA, 1988; and "Guidance Manual for the Development of an Accidental Spill Prevention Program", prepared by SAIC for EPA, 1988.

[13] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[14] Significant materials include, but are not limited to the following: raw materials; fuels; solvents, detergents, and plastic pellets; finished materials, such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products, such as ashes, slag, and sludge that have the potential to be released with storm water discharges. (See 40 CFR 122.26(b)(8)).

Act (CERCLA) (see 40 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

The listing should include a description of the causes of each spill or leak, the actions taken to respond to each release, and the actions taken to prevent similar such spills or leaks in the future. This effort will aid the facility operator as she or he examines existing spill prevention and response procedures and develops any additional procedures necessary to fulfill the requirements of part IV.D.3.c. of this permit.

d. Non-storm water discharges. Each pollution prevention plan must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water discharges. The certification must describe possible significant sources of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the on-site drainage points directly observed during the test or evaluation. Acceptable test or evaluation techniques include dye tests, television surveillance, observation of outfalls or other appropriate locations during dry weather, water balance calculations, and analysis of piping and drainage schematics[15].

Except for flows that originate from fire fighting activities, sources of non-storm water that are specifically identified in the permit as being eligible for authorization under the general permit must be identified in the plan. Pollution prevention plans must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water discharge.

EPA recognizes that certification may not be feasible where facility personnel do not have access to an outfall, manhole, or other point of access to the conduit that ultimately receives the discharge. In such cases, the plan must describe why certification was not feasible. Permittees who are not able to certify that discharges have been tested or evaluated must notify the Director in accordance with part VI.A. of the permit.

[15] In general, smoke tests should not be used for evaluating the discharge of non-storm water to a separate storm sewer as many sources of non-storm water typically pass through a trap that would limit the effectiveness of the smoke test.

e. Sampling data. Any existing data on the quality or quantity of storm water discharges from the facility must be described in the plan. These data may be useful for locating areas that have contributed pollutants to storm water. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

f. Risk identification and summary of potential pollutant sources. The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (i.e., biochemical oxygen demand, suspended solids, etc.) associated with each source.

3. Measures and Controls

Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

EPA emphasizes the implementation of pollution prevention measures and BMPs that reduce possible pollutant discharges at the source. Source reduction measures include, among others, preventive maintenance, chemical substitution, spill prevention, good housekeeping, training, and proper materials management. Where such practices are not appropriate to a particular source or do not effectively reduce pollutant discharges, EPA supports the use of source control measures and BMPs such as material segregation or covering, water diversion, and dust control. Like source reduction measures, source control measures and BMPs are intended to keep pollutants out of storm water. The remaining classes of BMPs, which involve recycling or treatment of storm water, allow the reuse of storm water or attempt to lower pollutant concentrations prior to discharge.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address one or more of the potential pollution sources identified in part IV.D.2. of the plan. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems. The portion of the plan that describes the measures and controls must address the following minimum components.

a. Good housekeeping. Good housekeeping involves using common sense to identify ways to maintain a clean and orderly facility and keep contaminants out of separate storm sewers. It includes establishing protocols to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. These protocols must be described in the plan and communicated to appropriate plant personnel.

b. Preventive maintenance. Permittees must develop a preventive maintenance program that involves regular inspection and maintenance of storm water management devices and other equipment and systems. The program description should identify the devices, equipment, and systems that will be inspected; provide a schedule for inspections and tests; and address appropriate adjustment, cleaning, repair, or replacement of devices, equipment, and systems. For storm water management devices such as catch basins and oil/water separators, the preventive maintenance program should provide for periodic removal of debris to ensure that the devices are operating efficiently. For other equipment and systems, the program should reveal and enable the correction of conditions that could cause breakdowns or failures that may result in the release of pollutants.

c. Spill prevention and response procedures. Based on an assessment of possible spill scenarios, permittees must

specify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and in the event of a spill enable proper and timely response. Areas and activities that typically pose a high risk for spills include loading and unloading areas, storage areas, process activities, and waste disposal activities. These activities and areas, and their accompanying drainage points, must be described in the plan. For a spill prevention and response program to be effective, employees should clearly understand the proper procedures and requirements and have the equipment necessary to respond to spills.

d. Inspections. In addition to or as part of the comprehensive site evaluation, qualified facility personnel must be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained.

e. Employee training. The pollution prevention plan must describe a program for informing personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. The training program should address topics such as good housekeeping, materials management, and spill response procedures. A schedule for conducting training must be provided in the plan. Where appropriate, contractor personnel also must be trained in relevant aspects of storm water pollution prevention.

f. Recordkeeping and internal reporting procedures. The pollution prevention plan must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. At a minimum, records must address spills, monitoring, and inspection and maintenance activities. The plan also must describe a system that enables timely reporting of storm water management-related information to appropriate plant personnel.

g. Sediment and erosion control. The pollution prevention plan must identify areas that, due to topography, activities, soils, cover materials, or other factors have a high potential for significant soil erosion. The plan must identify measures that will be implemented to limit erosion in these areas.

h. Management of runoff. The plan must contain a narrative evaluation of the appropriateness of traditional storm water management practices (i.e., practices other than those that control pollutant sources) that divert, infiltrate, reuse, or otherwise manage storm water runoff so as to reduce the discharge of pollutants. Appropriate measures may include, among others, vegetative swales, collection and reuse of storm water, inlet controls, snow management, infiltration devices, and wet detention/retention basins.

Based on the results of the evaluation, the plan must identify practices that the permittee determines are reasonable and appropriate for the facility. The plan also should describe the particular pollutant source area or activity to be controlled by each storm water management practice. Reasonable and appropriate practices must be implemented and maintained according to the provisions prescribed in the plan.

In selecting storm water management measures, it is important to consider the potential effects of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, facilities must also consider potential ground water pollution problems and take appropriate steps to avoid adversely impacting ground water quality. For example, if the water table is unusually high in an area, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

4. Comprehensive Site Compliance Evaluation

The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of the permit. The plan must indicate the frequency of such evaluation which in most cases must be at least once a year.[16] The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team.

Material handling and storage areas and other potential sources of pollution must be visually inspected for evidence of actual or potential pollutant discharges to the drainage system. Inspectors also must observe erosion controls and structural storm water management devices to ensure that each is operating correctly. Equipment needed to implement the pollution prevention plan, such as that used during spill response activities, must be inspected to confirm that it is in proper working order.

The results of each site inspection must be documented in a report signed by an authorized company official. The report must describe the scope of the inspection, the personnel making the inspection, the date(s) of the inspection, and any major observations relating to implementation of the storm water pollution prevention plan. Inspection reports must be retained for at least three years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources in part IV.D.2. and measures and controls in part IV.D.3 of the plan must be revised as appropriate within two weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

D. Special Requirements

1. EPCRA Section 313

Today's permits establish special requirements for certain permittees subject to reporting requirements under section 313 of the Emergency Planning and Community-Right-to-Know Act (EPCRA) (also known as title III of the Superfund Amendments and Reauthorization Act (SARA)). EPCRA section 313 requires operators of certain facilities that manufacture (including import), process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to any environmental media. Listed toxic chemicals include more than 300 chemicals listed at 40 CFR 372.

The criteria for facilities that must report under section 313 are given at 40 CFR 372.22. A facility is subject to the annual reporting provisions of section

[16] Where annual site inspections are shown in the plan to be impractical for inactive mining sites, due to remote location and inaccessibility, site inspections must be conducted at least once every three years. However, at least one inspection must take place before October 1, 1994. For mining sites that become inactive after October 1, 1994, the first site inspection must take place on the date two years after such a site becomes inactive

313 if it meets all three of the following criteria for a calendar year:

• It is included in Standard Industrial Classification (SIC) codes 20 through 39;

• It has 10 or more full-time employees; and

• It manufactures (including imports), processes, or otherwise uses a chemical listed in 40 CFR 372.65 in amounts greater than the "threshold" quantities specified in 40 CFR 372.25.

There are more than 300 individually listed Section 313 chemicals, as well as 20 categories of Toxic Release Inventory (TRI) chemicals for which reporting is required. EPA has the authority to add to and delete from this list. The Agency has identified approximately 175 chemicals that it is classifying for the purposes of this general permit as "Section 313 water priority chemicals". For the purposes of this general permit, section 313 water priority chemicals are defined as chemicals or chemical categories that (1) are listed at 40 CFR 372.65 pursuant to EPCRA section 313; (2) are manufactured, processed, or otherwise used at or above threshold levels at a facility subject to EPCRA section 313 reporting requirements; and (3) meet at least one of the following criteria: (i) Are listed in appendix D of 40 CFR part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic toxicity criteria. A list of the water priority chemicals is provided in addendum B to the permit in appendix B.

Summary of Special Requirements

The special requirements in today's permits for facilities subject to reporting requirements under EPCRA Section 313 for a water priority chemical state that storm water pollution prevention plans, in addition to the baseline requirements for plans, must contain special provisions addressing areas where Section 313 water priority chemicals are stored, processed, or otherwise handled. The permit provides that appropriate containment, drainage control, and/or diversionary structures must be provided for such areas. At a minimum, one of the following preventive systems or its equivalent must be used:

• Curbing, culverting, gutters, sewers, or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

• Roofs, covers, or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

In addition, the permit establishes requirements for priority areas of the facility. Priority areas of the facility including the following:

• Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals;

• Material storage areas for section 313 water priority chemicals other than liquids;

• Truck and rail car loading and unloading areas for liquid section 313 water priority chemicals; and

• Areas where section 313 water priority chemicals are transferred, processed, or otherwise handled.

The permit provides that site runoff from other industrial areas of the facility that may contain section 313 water priority chemicals or spills of section 313 water priority chemicals must incorporate the necessary drainage or other control features to prevent the discharge of spilled or improperly disposed material and to ensure the mitigation of pollutants in runoff or leachate. The permit also establishes special requirements for preventive maintenance and good housekeeping, facility security, and employee training.

Storm water pollution prevention plans for facilities subject to these special requirements must be reviewed by a Registered Professional Engineer (PE). The PE must be able to certify that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. The PE must personally examine the facility and be familiar with the requirements of today's permit before making a certification. The permit requires that a PE certification be made every three years. Where significant modifications are made to the facility, such as the addition of material handling areas or chemical storage units, permittees are required to obtain an additional PE certification as soon as practicable. The PE certifications do not relieve the discharger of the duty to prepare and implement fully a storm water pollution prevention plan that is in accordance with the permit.

Sampling requirements for storm water discharges from EPCRA section 313 are discussed below. Facilities should review monitoring data and evaluate pollution prevention measures suitable for reducing pollutants in discharges.

Requirements for Priority Areas

The permit provides that drainage from priority areas should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these must be manually activated. Flapper-type drain valves must not be used to drain containment areas, as these will not effectively control spills. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design. If facility drainage does not meet these requirements, the final discharge conveyance of all in-facility storm sewers must be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of section 313 water priority chemicals, return the spilled material or contaminated storm water to the facility. Records must be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

Additional special requirements are related to the types of industrial activities that occur within the priority area. These requirements are summarized below:

• *Liquid storage areas.* Where storm water comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals, the material and construction of tanks or containers used for the storage of a section 313 water priority chemical must be compatible with the material stored and conditions of storage, such as pressure and temperature. Liquid storage areas for section 313 water priority chemicals must be operated to minimize discharges of section 313 chemicals. Appropriate measures to minimize discharges of section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures. A strong spill contingency plan would typically contain, at a minimum, a description of response plans, personnel needs, and methods of mechanical containment (such as use of sorbants, booms, collection devices, etc.), steps to be taken for removal of spill chemicals or materials, and procedures to ensure access to and availability of sorbents and other equipment. The testing component of the plan would provide for conducting

integrity testing of storage tanks at set intervals such as once every five years, and conducting integrity and leak testing of valves and piping at a minimum frequency, such as once per year. In addition, a strong plan would include a written and actual commitment of manpower, equipment and materials required to comply with the permit and to expeditiously control and remove any quantity of spilled or leaked chemicals that may result in a toxic discharge.

• *Other material storage areas.* Material storage areas for section 313 water priority chemicals other than liquids that are subject to runoff, leaching, or wind must incorporate drainage or other control features to minimize the discharge of section 313 water priority chemicals by reducing storm water contact with section 313 water priority chemicals.

• *Truck and rail car loading and unloading areas.* Truck and rail car loading and unloading areas for liquid section 313 water priority chemicals must be operated to minimize discharges of section 313 water priority chemicals. Appropriate measures to minimize discharges of section 313 chemicals may include the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels, and filler nozzles) when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

• *Other transfer, process, or handling areas.* Processing equipment and materials handling equipment must be operated to minimize discharges of section 313 water priority chemicals. Materials used in piping and equipment must be compatible with the substances handled. Drainage from process and materials handling areas must minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents to prevent a discharge of section 313 water priority chemicals to the drainage system, and overhangs or door skirts to enclose trailer ends at truck loading/unloading docks must be provided as appropriate. Visual inspections or leak tests must be provided for overhead piping conveying section 313 water priority chemicals without secondary containment.

2. Salt Piles

Today's general permits contain special requirements for storm water discharges associated with industrial activity from salt storage facilities. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. This requirement only applies to runoff from storage piles discharged to waters of the United States. Facilities that collect all of the runoff from their salt piles and reuse it in their processes or discharge it subject to a separate NPDES permit do not need to enclose or cover their piles. Permittees must comply with this requirement as expeditiously as practicable, but in no event later than three years from the date of permit issuance.

3. Discharges to Large and Medium Separate Storm Water Systems

Permittees which discharge storm water associated with industrial activity through large or medium municipal separate storm water systems [17] are required to submit a signed copy of their NOI to the operator of the municipal separate storm sewer system.

Facilities covered by these permits must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions. In addition, permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more must make their pollution prevention plans available to the municipal operator of the system upon request by the municipal operator.

4. Coal Piles

Today's permits establish effluent limitations of 50 mg/1 total suspended solids and a pH range of 6.0–9.0 for coal pile runoff. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff associated with a 10 year, 24 hour rainfall event is not subject to the 50 mg/1 limitation for total suspended solids. Permittees must comply with this requirement as expeditiously as practicable, but in no event later than three years from the date of permit issuance.

E. Monitoring and Reporting Requirements

Today's permits establish discharge monitoring requirements for certain classes of industrial facilities. These monitoring requirements are summarized in Table 3. For the most part, special monitoring requirements are limited to discharges associated with specific industrial activities at facilities within the identified class, such as landfills or coal piles. Facilities with storm water discharges that are subject to monitoring requirements are not required to monitor storm water discharges that are not addressed by a monitoring requirement so long as the two discharges are segregated and the flows do not commingle.

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[17] Large and medium municipal separate storm sewer systems are systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system (see 40 CFR 122.26(b)(4) and (7) and appendices F through I to part 122).

Table 3. GENERAL PERMIT MONITORING REQUIREMENTS

Type of Facility	Type of Storm Water Discharge	Parameters	Monitoring Frequency	Reporting Frequency
EPCRA, Section 313 Facilities Subject to Reporting Requirements for Water Priority Chemicals	Storm water discharges that come into contact with any equipment, tank, container, or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled	Oil and Grease, BOD5, COD, TSS, Total Kjeldahl Nitrogen, Total Phosphorus, pH, acute whole effluent toxicity, any Section 313 water priority chemical for which the facility reports	Semi-annual	Annual
Primary Metal Industries (SIC 33)	All storm water discharges associated with industrial activity	Oil and Grease, COD, TSS, pH, acute whole effluent toxicity, Total Recoverable Lead, Total Recoverable Cadmium, Total Recoverable Copper, Total Recoverable Arsenic, Total Recoverable Chromium, and any pollutant limited in an effluent guideline to which the facility is subject	Semi-annual	Annual
Land Disposal Units/ Incinerators/ BIFs	Storm water discharges from active or inactive land disposal units without a stabilized cover that have received any waste from industrial facilities other than construction sites; and storm water discharges from incinerators and BIFs that burn hazardous waste	Ammonia, Total Recoverable Magnesium, Magnesium (dissolved), Total Kjeldahl Nitrogen, COD, TDS, TOC, Oil and Grease, pH, Total Recoverable Arsenic, Total Recoverable Barium, Total Recoverable Cadmium, Total Recoverable Chromium, Total Cyanide, Total Recoverable Lead, Total Mercury, Total Recoverable Selenium, Total Recoverable Silver, Acute Whole Effluent Toxicity	Semi-annual	Annual
Wood Treatment Facilities	Storm water discharges from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood	Oil and Grease, pH, COD, TSS	Semi-annual	Annual
	Facilities that use chlorophenolic formulations	Plus Pentachlorophenol and Acute Whole Effluent Toxicity		
	Facilities that use creosote formulations	Plus Acute Whole Effluent Toxicity		
	Facilities that use chromium-arsenic formulations	Plus Total Recoverable Arsenic, Total Recoverable Chromium, Total Recoverable Copper		

Table 3. GENERAL PERMIT MONITORING REQUIREMENTS

Type of Facility	Type of Storm Water Discharge	Parameters	Monitoring Frequency	Reporting Frequency
Industrial Facilities with Coal Piles	Storm water discharges from coal pile runoff	Oil and Grease, pH, TSS, Total Recoverable Copper, Total Recoverable Nickel, Total Recoverable Zinc	Semi-annual	Annual
Battery Reclaimers	Storm water discharges from areas for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation	Oil and Grease, COD, TSS, pH, Total Recoverable Copper, Total Recoverable Lead	Semi-annual	Annual
Airports (with over 50,000 flight operations per year)	Storm water discharges from aircraft or airport deicing areas	Oil and Grease, BOD5, COD, TSS, pH, and the primary ingredient used in the deicing materials	Annual	Retain onsite
Coal-fired Steam Electric Facilities	Storm water discharges from coal handling sites (other than runoff from coal piles which is not eligible for coverage under this permit)	Oil and Grease, pH, TSS, Total Recoverable Copper, Total Recoverable Nickel, Total Recoverable Zinc	Annual	Retain onsite
Animal Handling/ Meat Packing Facilities	Storm water discharges from animal handling areas, manure management areas, production waste management areas exposed to precipitation at meat packing plants, poultry packing plants, facilities that manufacture animal and marine fats and oils	BOD5, Oil and Grease, COD, TSS, Total Kjeldahl Nitrogen (TKN), Total Phosphorus, pH, Fecal Coliform	Annual	Retain onsite
Chemical and Allied Product Manufacturers/ Rubber Manufacturers (SIC 28 and 30)	Storm water discharges that come into contact with solid chemical storage piles	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Automobile Junkyards	Storm water discharges exposed to: (a) over 250 auto/truck bodies with drivelines, 250 drivelines, or any combination thereof (b) over 500 auto/truck units (c) over 100 units dismantled per year where automotive fluids are drained or stored	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite

Table 3. GENERAL PERMIT MONITORING REQUIREMENTS

Type of Facility	Type of Storm Water Discharge	Parameters	Monitoring Frequency	Reporting Frequency
Lime Manufacturing Facilities	Storm water discharges that have come into contact with lime storage piles	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Oil-fired Steam Electric Power Generating Facilities	Storm water discharges from oil handling sites	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Cement Manufacturing Facilities and Cement Kilns	All storm water discharges associated with industrial activity (except those from material storage piles that are not eligible for coverage under this permit)	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Ready-mix Concrete Facilities	All storm water discharges associated with industrial activity	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Ship Building and Repairing Facilities	All storm water discharges associated with industrial activity	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite

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Where a given storm water discharge is addressed by more than one class of monitoring requirements, then the monitoring requirements for the applicable classes of activities are additive. Monitoring requirements must be evaluated on a outfall-by-outfall basis. If a particular discharge fits under more than one set of monitoring requirements, the facility must comply with both sets of sampling requirements.

Discharges composed entirely of runoff from coal piles must be monitored in a manner that ensures that the runoff is not diluted or otherwise intermingled with storm water from other sources or other types of discharges. This is necessary to ensure that coal pile runoff complies with the numeric effluent limitations in today's permit.

As noted in Table 3, only those facilities required to conduct semiannual monitoring must report monitoring results to EPA on a regular basis. Other facilities required to conduct monitoring must only submit the results of their sampling data if the data are requested by EPA. Facilities that are not identified in Table 3 are not required to conduct discharge monitoring unless the Director provides written notice that monitoring is necessary.

All samples must be collected from the discharge resulting from a storm event greater than 0.1 inches in magnitude and that occurs at least 72 hours after the previously measurable (greater than 0.1 inch rainfall) storm event. A minimum of one grab sample may be taken for discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For all other discharges, data must be reported for both a grab sample and a composite sample. The grab sample must be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is practicable, a grab sample can be taken during the first hour of the discharge. In such cases the discharger must submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample must either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Composite samples do not have to analyzed for pH, cyanide, whole effluent toxicity, and oil and grease. Only grab samples need to be analyzed for these parameters where these parameters are specified. Samples must be analyzed in accordance with the analytic methods approved under 40 CFR 136.

The permit allows the use of substantially identical outfalls to reduce the monitoring burden on a facility. Permittees that intend to use this provision must justify and document in writing why one outfall is representative of others. All facilities must include the written justification in the facility storm water pollution prevention plan. Where a facility that is subject to semi-annual monitoring requirements (EPCRA section 313, waste disposal sites, wood preserving facilities, battery reclaimers, coal pile runoff, and primary metal facilities) does not monitor a substantially identical outfall, the permittee must submit the justification of why an outfall(s) is representative of others with the discharge monitoring report. Other facilities required to conduct monitoring under the permit (e.g. those with annual monitoring requirements) are not required to submit the justification unless it is requested by the Director. These facilities must keep the justification in the storm water pollution prevention plan.

The permit allows for temporary waivers from sampling based on adverse climatic conditions. This temporary sampling waiver is only intended to apply to insurmountable weather conditions such as drought or dangerous conditions such as lightning, flash flooding, or hurricanes. These events tend to be isolated incidents and should not be used as an excuse for not conducting sampling under more favorable conditions associated with other storm events. The sampling waiver is not intended to apply to difficult logistical conditions, such as remote facilities with few employees or discharge locations which are difficult to access.

The location for submittal of all reports is contained in the permit. Consistent with Office of Management and Budget Circular A-105, facilities located on certain Indian Lands in Arizona, Utah, New Mexico, Idaho, Nevada, and Colorado should note that permitting authority has been consolidated in one EPA Region where a reservation crosses the boundaries between the Regions. For example, all NPDES permitting for Navajo lands is handled by EPA Region IX. The permits require dischargers that must submit monitoring information annually to provide copies to receiving large or medium municipal separate storm sewer systems and States that have requested this information.

The permit requires retention of monitoring records for six years, since not all facilities who monitor will be required to submit the results annually. In addition, pollution prevention plans must be kept for the life of the permit.

F. Regional Offices

Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1251, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office:

CT, MA, ME, NH, RI, VT

United States EPA, Region I,
Water Management Division, (WCP-2109),
Storm Water Staff,
John F. Kennedy Federal Building, room 2209,
Boston, MA 02203.
Contact: Veronica Harrington, (617) 565-3525.

NJ, NY, PR, VI

United States EPA, Region II, Water Management Division, (2WM-WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278. Contact: Jose Rivera, (212) 262-2911.

AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division, (FPB-3), Storm Water Staff, 345 Courtland Street, NE., Atlanta, GA 30365. Contact: Chris Thomas, (404) 347-3012.

AR, LA, NM (except see Region IX for Navajo lands and see Region VIII for Ute Mountain Reservation land), OK, TX

United States EPA, Region VI, Water Management Division, (6W-EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202. Contact: Region VI Storm Water Hotline at (214) 655-7185.

CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM-C), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466. Contact: Vern Berry, (303) 293-1630.

Note—For Montana Indian Lands, please use the following address:

United States EPA, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620–0026. Contact: Paul Montgomery, (406) 449–5486.

AZ, CA, HI, NV, American Samoa, Guam, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID, Johnston Atoll, Midway and Wake Island

United States EPA, Region IX, Water Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105. Contact: Eugene Bromley, (415) 744–1906.

AK, ID (except see Region IX for Duck Valley Reservation lands), OR, WA

United States EPA, Region X, Water Management Division, (WD–134), Storm Water Staff, 1200 Sixth Street, Seattle, WA 98101. Contact: Steve Bubnick, (206) 553–8399.

G. Compliance Deadlines

For most permittees, today's permits establish deadlines of April 1, 1993 for development of pollution prevention plans and October 1, 1993 for compliance with the terms of the plan. Alternative deadlines are provided for facilities where industrial activities commence after October 1, 1992; certain oil and gas operations; and municipal operators of facilities that have participated in a timely part 1 group application where either the group application is rejected or the facility is denied participation in the group application by EPA.

For facilities where industrial activity commences after October 1, 1992, but on or before December 31, 1992, the storm water pollution prevention plan must be prepared and provide for compliance with the terms of the plan and the permit on or before 60 calendar days after the commencement of industrial activity. For facilities where industrial activity commence on or after January 1, 1993, the storm water pollution prevention plan must be prepared, and provide for compliance with the terms of the plan and the permit, on or before the date of submission of a NOI to be covered under this permit.

For storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992 has a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, the storm water pollution prevention plan must be prepared and must provide for compliance with the terms of the plan on or before the date 60 calendar days after the first knowledge of such release.

For storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely group application and where either the group application is rejected or the facility is denied participation in the group application by EPA, the pollution prevention plan must be prepared on or before the 365th day following the date on which the group is rejected or the denial is made, and must provide for compliance with the terms of the plan and this permit on or before the 545th day following the date on which the group is rejected or the denial is made.

The permits provide additional time for complying with the additional requirements for EPCRA section 313 facilities and for salt storage facilities. The portions of a plan addressing these additional requirements must provide for compliance with the plan on or before October 1, 1995. In addition, the permits provide that facilities with coal pile runoff are required to comply with the numeric effluent limitations of the permit by October 1, 1995. However, storm water pollution prevention plans for facilities subject to these additional requirements must be prepared by April 1, 1993 (or, for facilities that commence industrial activity after October 1, 1992, before the facility commences industrial activity) and provide for compliance with the baseline terms and conditions of the permit (other than the numeric effluent limitation) as expeditiously as practicable, but by no later than October 1, 1993 (or, for facilities that commence industrial activity after October 1, 1992, on or before 60 calendar days after the commencement of industrial activity).

V. Cost Estimates

1. Pollution Prevention Plan Implementation

Storm water pollution prevention plans for the majority of facilities will address relatively low cost baseline controls for the majority of industrial facilities. EPA's analysis of storm water pollution prevention plans indicates that the cost of developing and implementing the costs of these plans is variable and will depend on a number of the following factors: The size of the facility, the chemicals stored or used at a facility, the nature of the plant operations, and the plant designs (e.g., the processes used and layout of a plan), and the housekeeping measures employed. Table 4 provides estimates of the range of costs of preparing and implementing a storm water pollution prevention plan. It is expected that the low cost estimates provided in Table 4 are appropriate for the majority of smaller facilities. High cost estimates are also provided.

b. SARA title III facilities. Table 5 provides estimates of the range of costs of preparing and implementing a storm water pollution prevention plan for facilities subject to the special requirements for facilities subject to SARA Title III section 313 reporting requirements for chemicals classified as "Section 313 water priority chemicals". EPA expects the majority of facilities to have existing containment systems that meet the majority of the requirements of these permits. High cost estimates correspond to facilities that are expected to be required to undertake some actions to upgrade existing containment systems to meet the requirements of these permits.

TABLE 4.—SUMMARY OF ESTIMATED RANGES OF COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS WITH BASELINE REQUIREMENTS

	Low Costs		High Costs	
	First Year Costs	Annual Costs	First Year Costs	Annual Costs
Submittal of NOI	$14		$14	
Notification of Municipality	14		14	
Plan Preparation	1,518		76,153	
Plan Implementation	90	$294	35,400	$9,371

TABLE 4.—SUMMARY OF ESTIMATED RANGES OF COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS WITH BASELINE REQUIREMENTS—Continued

	Low Costs		High Costs	
	First Year Costs	Annual Costs	First Year Costs	Annual Costs
Comprehensive Site Compliance Evaluation/Plan Revision		267		8,875
Reportable Quantities	[1]	[1]	8,501	
Total	1,636	561	120,082	18,246

[1] No costs.

This table identifies estimated low and high costs to develop and implement storm water pollution prevention plans.

Low costs of implementing program components are zero where existing programs or procedures is assumed adequate.

Costs in 1992 dollars.

The estimated costs for plan preparation and plan revisions includes costs of preparing/revising plan to address baseline requirements and any applicable special requirements, such as EPCRA Section 313 requirements. However, the costs of implementing special requirements, such as those for EPCRA Section 313 facilities are not otherwise addressed in this table.

The high cost estimate for requirements to address reportable quantities of hazardous substances will occur in the year the reportable quantity release occurs and will not necessarily occur in the first year of permit compliance.

TABLE 5.—SUMMARY OF ESTIMATED ADDITIONAL COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS FOR FACILITIES SUBJECT TO SECTION 313 OF EPCRA FOR WATER PRIORITY CHEMICALS

	Low Costs		High Costs	
	Costs during first 3 years	Annual Costs	Costs during first 3 years	Annual Costs
Plan Preparation	$630			
Liquid Storage Areas			$11,200	
Material Storage Areas			560	
Loading Areas			21,000	
Process Areas			11,190	
Drainage/Runoff			7,750	
Housekeeping/Maintenance				$5,957
Facility Security			3,240	
Employee Training				1,403
PE Certification		53		1,000
Monitoring Costs		2,424		4,847
Toxicity Reduction				3,046
TOTALS	630	2,477	54,940	16,253

This table identifies estimated additional low and high costs to develop and implement storm water pollution prevention plans for EPCRA section 313 facilities subject to special conditions.

Low costs of implementing program components are zero where existing programs, procedures or security is assumed adequate.

The high costs for preparing pollution prevention plans to include EPCRA section 313 additional requirement were addressed as part of the estimated high costs for preparation of baseline pollution prevention plans (see Table 4).

PE Certification is only required once every three years. Cost shown if averaged over three year period.

Costs for toxicity reductions will only be incurred during the last two years of the permit. Thus, this cost has been averaged over a five year period.

2. Salt Storage Facilities

Salt pile covers or tarpaulins are anticipated to have a fixed cost of $400 and an annual cost of $160 for medium-sized piles and a fixed cost of $4,000 and an annual cost of $2,000 for very large piles. Structures such as salt domes are generally expected to have a fixed cost of between $30,000 for small piles ($70 to $80 per cubic yard) and $100,000 for larger piles ($18 per cubic yard) with costs depending on size and other construction parameters.

3. Coal Pile Runoff

The effluent limitations for coal pile runoff in the draft permits can be achieved by these two primary methods: limiting exposure to coal by use of covers or tarpaulins and collecting and treating the runoff. In some cases, coal pile runoff may be in compliance with the effluent limitations without covering of the pile or collection or treatment of the runoff. In these cases, the operator of the discharge would not have a control cost.

The effluent limitations for coal pile runoff in the draft permits can be achieved by limiting exposure of storm water to coal by use of covers or tarpaulins and storm water runon berms. The use of tarpaulins and berms to prevent exposure is expected to be practical for coal piles smaller than 30,000 cubic meters. EPA expects the majority of industrial facilities subject to the requirement will have coal piles smaller than 30,000 meters.

The cost of covering up to a 30,000 cubic meter coal pile with covers or tarpaulins is anticipated to cost approximately $0.70 per cubic yard, or $0.91 per cubic meter. For a 30,000 cubic meter pile the cost of tarpaulins alone would be $27,440. The cost of a berm to divert storm water runon that may flow under a covered pile and exit as

polluted runoff is expected to be $7 per linear foot of berm. For a 30,000 cubic meter coal pile that is twenty feet in height, it is anticipated that a 450 foot berm at a cost of $3,150 would be needed. Therefore, the total cost of tarpaulins and a berm to avert exposure of storm water to a coal pile 30,000 cubic meters in size would be $30,590.

For those facilities which manage coal piles greater than 30,000 cubic meters, EPA assumes that these facilities will use the technology specified in the steam/electric effluent guidance based upon costs indicated in the guidance. If facilities can not meet permit limits using this control technology and cannot afford another control technology, they have the opportunity of seeking an individual permit.

Table 6 provides estimates of the costs of treating coal pile runoff.[18] These costs are based on a consideration of a treatment train requiring equalization, pH adjustment, and settling, including the costs for impoundment (for equalization), a lime feed system and mixing tanks for pH adjustment, and a clarifier for settling. The costs for the impoundment area include diking and containment around each coal pile and associated sumps and pumps and piping from runoff areas to the impoundment area. The costs for land are not included. The lime feed system employed for pH adjustment includes a storage silo, shaker, feeder, and lime slurry storage tank, instrumentation, electrical connections, piping, and controls.

Additional costs may be incurred if a polymer system is needed. In this case, costs would include impoundment for equalization, a lime feed system, mixing tank, and polymer feed system for chemical precipitation, a clarifier for settling, and an acid feeder and mixing tank to readjust the pH within the range of 6 to 9. The equipment and system design, with the exception of the polymer feeder, acid feeder, and final mixing tank, are essentially the same as shown in Table 6. Two tanks are required for a treatment train with a polymer system, one for precipitation and another for final pH adjustment with acid. The cost of mixing is therefore twice that shown in Table 6. The polymer feed system includes storage hoppers, chemical feeder, solution tanks, solution pumps, interconnecting piping, electrical connections, and instrumentation. The costs of clarification are identical to that of Table 6. A treatment train with a polymer system requires the use of an acid addition system to readjust the pH within the range of 6 to 9. The components of this system include a lined acid storage tank, two feed pumps, an acid pH control loop, and associated piping, electrical connections, and instrumentation.

Additional information regarding the cost of these technologies can be found in "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category," (EPA–440/182/029), November 1982, EPA.

[18] The type and degree of treatment required to meet the effluent limitations of these permits vary depending on factors such as the amount of sulfur in the coal. This section describes a model treatment scheme for estimating costs for compliance with the effluent limitations. Dischargers may implement other less expensive treatment approaches to enable them to discharge in accordance with these limits where appropriate.

TABLE 6.—SUMMARY OF ESTIMATED COSTS FOR TREATMENT OF COAL PILE RUNOFF

	30,000 cubic meter coal pile	120,000 cubic meter coal pile
Impoundment:		
Installed Capital Cost ($)	6,850	6,850
Operation and Maintenance ($/year)	[1]	[1]
Lime Feed System:		
Installed Capital Cost ($)	138,800	255,700
Operation and Maintenance ($/year)	5,780	10,655
Energy Requirements (kwh/yr)	3.6×10**4	3.6×10**4
Land Requirements (ft**2)	5,000	5,000
Mixing Equipment:		
Installed Capital Cost ($)	65,750	91,320
Operation and Maintenance ($/year)	2,280	2,430
Energy Requirements (kwh/yr)	1.3×10**3	3.3×10**3
Land Requirements (ft**2)	2,000	2,000
Clarification:		
Installed Capital Cost ($)	182,650	237,450
Operation and Maintenance ($/year)	3,200	3,650
Energy Requirements (kwh/yr)	1.3×10**3	3.3×10**3
Land Requirements (acres)	0.1	0.1

[1] Negligible.

Source: "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category", (EPA–440/182/029), November 1982, EPA). Costs estimates are in 1992 dollars.

VI. Economic Impact (Executive Order 12291)

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been completed for all States, Indian lands and Federal facilities covered by today's general permits. The following summary indicates where additional permit requirements have been added as a result of the certification process and also provides a more detailed discussion of additional requirements for Maine, Louisiana, New Mexico, Oklahoma and Texas.

Region I

Maine: See the following and part XI.A for additional 401 conditions.

The State of Maine included the following requirements as conditions for Certification of the Storm Water General Permit. Test organisms for certain whole effluent toxicity testing requirements pertaining to discharges of storm water associated with industrial discharges shall include *Ceriodaphnia dubia* and *Salvelinus fontinalis* (Brook Trout). The EPA and the State of Maine currently agree to require that half of all freshwater vertebrate whole effluent toxicity testing for most individual permits, shall be conducted using the State's Brook Trout, *Salvelinus fontinalis* Chronic or Acute protocols. The remainder of the toxicity tests utilize the Region I, fathead minnow acute or chronic protocols.

The State of Maine includes the requirement for the substitution of the

State's protocols for the EPA's protocols, as part of the State Certification for each permit. The Region I EPA received a December 18, 1990, MOU from the State defining the freshwater vertebrate species substitution requirement. To expedite permit issuance, draft individual permits and fact sheets include the State's brook trout protocol based on the MOU. The Region does not object to the certification conditions requiring the use of the Maine protocols for the species *Ceriodaphnia dubia* and *Salvelinus fontinalis* (Brook Trout). The State of Maine shall provide the appropriate brook trout protocol.

Maine Indian lands: No 401 conditions.

Massachusetts: Indian lands only, no 401 conditions.

New Hampshire: no 401 conditions. New Hampshire: Indian lands only, no 401 conditions.

Region IV

Florida: no 401 conditions. Florida: Indian lands only, no 401 conditions (two separate permits for two different tribes).

Mississippi: Indian lands only, no 401 conditions.

North Carolina: Indian lands only, no 401 conditions.

Region VI

Louisiana: see the following and Part XI.B for 401 conditions. Louisiana Indian Lands: see the following and Part XI.B for 401 conditions.

As a condition for certification under Section 401 of the CWA, the State of Louisiana required inclusion of the following limitations necessary to insure compliance with State water quality standards. These limitations are required under Louisiana Annotated Code 33:IX.708 (LAC 33:IX.708). In accordance with a July 17, 1992, letter from the State clarifying certification requirements, the Oil and Gas Exploration and Production facility limitations will be effective on the effective date of the permit. Oil and gas exploration facilities in Louisiana have been subject to the LAC 33:IX.708 limitations since March 20, 1991. The general permit establishes a three year compliance date for facilities other than oil and gas exploration and production facilities; the General Limitations will become effective October 1, 1995. This compliance schedule is included to allow the facilities not currently regulated under NPDES or State discharge permits time to implement the pollution prevention plan components necessary to achieve the discharge limitations.

(1) General Limitations: Effective 10/1/95.

Parameter	Daily Maximum
Total Organic Carbon (TOC)	50 mg/l
Oil & Grease	15 mg/l

(2) Oil & Gas Exploration and Production Facilities: Effective 10/1/92.

Parameter	Daily Maximum
Chemical Oxygen Demand (COD)	100 mg/l
Total Organic Carbon (TOC)	50 mg/l
Oil & Grease	15 mg/l

Chlorides: (a) Maximum chloride concentration of the discharge shall not exceed two times the ambient concentration of the receiving water in brackish marsh areas.

(b) Maximum chloride concentration of the discharge shall not exceed 500 mg/l in freshwater or intermediate marsh areas and upland areas.

Monitoring requirements for Total Organic Carbon (TOC) and Oil and Grease have been added to all facilities required to monitor annually or semi-annually. Facilities without monitoring requirements must insure the pollution prevention plan developed in accordance with part IV will insure compliance with these effluent limitations. The definitions of brackish marsh, freshwater marsh, intermediate marsh, upland area, and saline marsh at LAC 33:IX.708 have been included in part X. of the permit.

New Mexico: See the following and part X.C for 401 conditions. New Mexico Indian lands (except Navajo lands and Ute Mountain Reservation lands): see the following and part X.C. for 401 conditions.

As a condition for certification under Section 401 of the CWA, the State of New Mexico required inclusion of the following conditions necessary to insure compliance with State water quality standards. These conditions apply only to permittees with facilities discharging into waters of the State of New Mexico designated by the latest edition of Water Quality Standards for Interstate and Intrastate Streams in New Mexico for use as a domestic water supply. A list of these waters as of June 29, 1991, is included with the final permit. For all discharges to domestic water supply waterbodies, the final permit establishes an annual monitoring requirement for all parameters for which the state has established a domestic water supply water quality standard. This testing requirement is in addition to any other annual or semi-annual monitoring required under the permit. Should any test result exceed the following action levels (the water quality standard), the permittee must submit the monitoring results to the State within 24 hours of receiving the test results from the laboratory. The parameters to be tested and the associated action levels are:

Parameter	Reportable Quantity Action Level
Dissolved arsenic	0.05 mg/l
Dissolved barium	1.0 mg/l
Dissolved cadmium	0.010 mg/l
Dissolved chromium	0.05 mg/l
Dissolved lead	0.05 mg/l
Total mercury	0.002 mg/l
Dissolved nitrate (as N)	10.0 mg/l
Dissolved selenium	0.05 mg/l
Dissolved silver	0.05 mg/l
Dissolved cyanide	0.2 mg/l
Dissolved uranium	5.0 mg/l
Radium-226 + radium-228	30.0 pCi/l

Results of the domestic water supply testing requirement will be used to evaluate whether a public health risk was present after mixing (dilution) with the stream and further determine if an individual or alternative general permit was necessary. To insure protection of domestic water supplies, this condition applies to all affected waterbodies within the State of New Mexico where EPA Region 6 is the permitting authority, including Indian Nations and Federal Facilities. The 24-hour report for discharges on Indian Nations must be sent directly to EPA Region 6, with a copy provided to the governing body of the Indian Nation.

Much of the State of New Mexico is characterized as arid or semi-arid, with long periods between rain events. Due to this climate pattern, characterized by seasonal precipitation and a build-up of pollutants on the ground between storm events, the State requested inclusion of a requirement for a minimum of 60 days between sampled events and a minimum of 150 hours since the previous measurable storm event. These requirements would insure the sampling results would be more representative of the quality of storm water discharges in the State. For consistency, this condition applies to all areas within the State of New Mexico where EPA Region 6 is the permitting authority, including Indian Nations and Federal Facilities.

Oklahoma: See the following and part XI.D for 401 conditions.

Oklahoma Indian lands: See the following and part XI.D for 401 conditions.

Under section 301 of the CWA and 40 CFR 122.44, EPA is required to include

permit conditions necessary to insure compliance with more stringent conditions of State law. On April 28, 1992, the Agency published a supplemental notice for the draft Oklahoma General permit in the **Federal Register** (57 FR 17909). This notice added a requirement based on the 1988 Oklahoma Water Quality Standards, prohibiting new point source discharges to several classes of high quality waterbodies of the State. On June 25, 1992, the Oklahoma Water Quality Standards were revised, modifying the discharge prohibition section upon which the April 28, 1992, proposed permit conditions were based. The final permit conditions reflect the requirements of Oklahoma Annotated Code Title 785, chapter 45 (OAC 785:45–5–25), effective June 25, 1992. Today's notice of the final permit also serves as final notice of the Agency's decision on the April 28, 1992, **Federal Register** Notice.

In order to comply with OAC 785:45–5–25, the permit will not authorize any new point source discharge of storm water associated with industrial activity to "new" point source discharges of storm water associated with industrial activity (those commencing after the June 25, 1992, effective date of the Oklahoma Water Quality Standards—OAC 785:45) to the following waters:

(i) Waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in appendix A of the Oklahoma Water Quality Standards;

(ii) Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in appendix A of the Oklahoma Water Quality Standards; and

(iii) Waterbodies located within the boundaries of Oklahoma Water Quality Standards appendix B areas which are specifically designated as "Outstanding Resource Waters" in appendix A of the Oklahoma Water Quality Standards.

In addition to this general permit exclusion on coverage, the Agency would like to emphasize that OAC 785:45–5–25 also prohibits the issuance of any NPDES discharge permit (other than for storm water runoff from temporary construction activity) for new point source discharges to ORWs or Scenic Rivers, that commences after June 25, 1992.

Outstanding Resource Waters and Scenic Rivers are located in the following river basins identified in Oklahoma Water Quality Standards.

Basin 1—Middle Arkansas River: Barren Fork and certain listed tributaries; and the Upper Illinois River above Barren Fork confluence and certain listed tributaries.

Basin 2—Lower Arkansas River: Lee Creek and certain listed tributaries.

Basin 4—Lower Red River: Upper Mountain Fork River and certain listed tributaries.

For specific applicability, or a complete listing affected waterbodies, permittees should refer to the Oklahoma Water Quality Standards, appendices A and B, or contact the Oklahoma Water Resources Board.

To address possible statutory changes regarding the "new discharge" prohibition, the following reopener clause has been added at the request of the State. "This permit may be reopened and modified if the State of Oklahoma adopts new or revises existing water quality requirements regarding the discharge of storm water."

Texas: See the following and part XI.E for 401 conditions. Texas Indian lands: See the following and part XI.E. for 401 conditions.

As a condition for certification under section 401 of the CWA, the State of Texas required inclusion of the following conditions necessary to insure compliance with State water quality standards.

The following effluent limitations are required under the Texas Water Quality Standards (31 TAC 319.22 and 319.23). All pollution prevention plans developed pursuant to this permit must enable the discharger to comply with the limitations listed below.

All Discharges to Inland Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/l), for discharges to inland waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

All Discharges to Tidal Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/1), for discharges to tidal waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.1	0.2	0.3
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.1	0.2	0.3
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

The definitions of "inland" and "tidal" waters has been included in part XI.E of the Texas permit. Inland waters are those not defined as tidal waters. Tidal waters include those waters of the Gulf of Mexico within the jurisdiction of the State of Texas, bays and estuaries thereto, and those portions of the river systems which are subject to the ebb and flow of the tides, and to the intrusion of marine waters.

Since the majority of discharges covered by this permit have never before been regulated by NPDES permit, a three year compliance schedule for the limitations has been included to allow dischargers an opportunity to develop and implement the pollution prevention plan controls necessary to achieve compliance. Unless already required under semi-annual or annual monitoring requirements of the permit, sampling for the hazardous metals listed above will not be required. The permittee will, however, be responsible for compliance with the discharge limitations at all times following the October 1, 1995, effective date of the limitations.

The Texas Surface Water Quality Standards also contain a whole effluent toxicity standard requiring all discharges to exhibit greater than 50% survival of the appropriate test organisms in 100% effluent for a 24-hour period (i.e. 24-hr LC50 > 100%). As a condition for certification, the State required modification of the toxicity test protocol contained in the permit to conform to that specified to demonstrate compliance with the State standard. The test protocol for the Texas general permit requires the use of a five dilution acute freshwater toxicity test, reporting of pass/fail on 50% or greater survival in the 100% effluent dilution, and reporting of pass/fail on statistically significant difference in toxicity between the control the 100% effluent dilution. In addition, the State required inclusion of acute toxicity testing for the chromium-arsenic formulations category of wood treatment facilities. The results of the toxicity testing will be used to demonstrate compliance with the State

water quality standard and identify discharges that will require more stringent pollution prevention plans and/or individual or alternative general permit coverage.

General Permits for EPA Region 6

With regard to reporting the results of any toxicity testing required under the permit, the permits for Louisiana, New Mexico, Oklahoma, and Texas have been modified to require the submittal of a summary of the results, with the full toxicity report retained by the permittee. The results are to include pass/fail information on 50% survival in the 100% dilution after 24 hours in addition to the pass/fail information on a statistically significant difference in toxicity between 100% effluent and the control. The format to be used is included as Tables in the final permit. The Texas permit also requires only submittal of the summary table, which are modified to include the five-dilution series test required as a condition for State certification. The net cost to the permittee is expected to be minimal, since the information necessary to determine 50% or greater survival in the 100% dilution is readily available from the results of the test used to determine a statistically significant difference between the control and the 100% dilution. No additional testing is required. The additional information gained will allow the permittee and the Agency to prioritize action on discharges exhibiting relatively greater toxicity (i.e. those showing greater than 50% lethality would be more toxic than those exhibiting only a statistically significant difference in survival). The use of simple test report summaries will reduce the report mailing cost and simplify completion of Discharge Monitoring Reports (DMRs) for the permittee; while also reducing the administrative burden on the permitting authority, both for review and document storage.

In addition to conditions required for State Section 401 certification, EPA Region 6 has made the following modifications to the Louisiana, New Mexico, Oklahoma, and Texas general permits. First, the area covered by each permit has been clarified to include all administered by EPA Region 6 in the appropriate State. This clarification was included to insure coverage on federal lands and Indian Nations. EPA Region 6 does not administer NPDES authority on Navajo Nation lands in New Mexico (administered by EPA Region 9) and Ute Mountain Tribal lands in New Mexico (administered by EPA Region 8).

Region VIII

South Dakota: No 401 conditions. South Dakota Indian Lands: No 401 conditions.

Montana Indian Lands: No 401 conditions.

North Dakota Indian lands: No 401 conditions.

Wyoming Indian lands: No 401 conditions.

Utah Indian lands (except the Goshute Reservation and Navajo reservation lands in Utah): No 401 conditions.

Colorado federal facilities: See Part XI.F for 401 conditions.

Colorado Indian lands and New Mexico Indian lands (including only the Navajo Reservation lands and Ute Mountain Reservation lands located in Colorado and New Mexico): See part XI.F for 401 conditions.

Region IX

Arizona: See part XI.G for 401 conditions. Arizona Indian lands (including Navajo reservation lands in Utah and New Mexico): No 401 conditions. California Indian lands: No 401 conditions. Nevada Indian lands (including the Goshute Territory in Utah and the Duck Valley reservation lands in Idaho): No 401 conditions. Johnston Atoll: No 401 conditions. Midway and Wake Island: No 401 conditions.

Region X

Alaska: See part XI.H for 401 conditions. Alaska Indian lands: No 401 conditions. Idaho: See part XI.I for 401 conditions. Idaho Indian lands (except the Duck Valley reservation lands in Nevada and Idaho): No 401 conditions. Washington Indian lands: See part XI.J for 401 conditions. Washington federal facilities: See part XI.J for 401 conditions.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permits provide small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: August 28, 1992.

Patricia Meaney,

Acting Regional Administrator, Region I.

Dated: August 28, 1992.

Patrick M. Tobin,

Acting Regional Administrator, Region IV.

Dated: August 27, 1992.

B.J. Wynne,

Regional Administrator, Region VI.

Dated: August 28, 1992.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

Dated: August 28, 1992.

Daniel W. McGovern,

Regional Administrator, Region IX.

Dated: August 27, 1992.

Dana Rasmussen,

Regional Administrator, Region X.

Appendix A—Summary of Responses to Public Comments on the August 16, 1991 Draft General Permits

Definition of Storm Water Discharge Associated With Industrial Activity

Some commenters on the August 16, 1991 draft general permits expressed or suggested confusion over the scope of the regulatory definition of "storm water discharge associated with industrial activity" which the Agency had promulgated on November 16, 1990 (55 FR 47990). In EPA's view, however, while the August 16, 1991 notice did not request comments on modifying the regulatory definition, the Agency believes that it is appropriate to add a preface to today's general permit that clarifies the NPDES regulatory framework for storm water discharges associated with industrial activity. In addition, the Agency has corrected several typographical errors and inadvertent omissions to the text of the definition of "storm water discharge associated with industrial activity" in the "Definitions" section of today's general permits.

Coverage Issues

Consistent with Tier I of United States Environmental Protection Agency's (EPA) long-term permitting strategy, the August 16, 1991 draft general permits were intended to allow the majority of storm water discharges associated with

industrial activity (located in the State for which the permit was issued) the opportunity to obtain coverage. However, the draft permits provided four limitations on coverage. The draft permits proposed to exclude certain storm water discharges associated with industrial activity, including those (1) that storm water effluent limitations guidelines cover; (2) that an existing National Pollutant Discharge Elimination System (NPDES) permit authorizes; (3) that the Director designates as causing or expected to cause a water quality standard violation; and (4) that originate from inactive mining or oil and gas operations on Federal lands where an operator cannot be identified.

Several commenters urged EPA to provide maximum opportunities for facilities with storm water discharges associated with industrial activity to obtain coverage under the general permits. A number of commenters were concerned that several provisions of the August 16, 1991 draft permits could be interpreted to mean that if one storm water discharge at a facility was ineligible for coverage under the general permit, then any remaining storm water discharges on site would also be ineligible.

In response, EPA intends that the limitations on coverage be applied on a discharge-by-discharge basis, as opposed to a facility-by-facility basis. In response to concerns raised in the comments, the Agency has clarified two provisions of the permit to reflect this concept. The first provision addresses storm water discharges that are subject to an effluent limitation guideline.[19] The Agency wants to clarify that if a facility has multiple storm water discharges, with one or more storm water discharges subject to an effluent limitation guideline and one or more discharges not subject to an effluent limitation guideline, then the discharge(s) that are not subject to an effluent limitation guideline may obtain coverage under today's permits. However, the discharges from the facility that are subject to an effluent limitation guideline may not be covered by today's permits because today's permits do not incorporate the limitations for these discharges.

The second provision in the August 16, 1991 draft general permits addressed storm water discharges associated with industrial activity from facilities with an existing NPDES permit. The Agency notes that this language was somewhat ambiguous, in that it could apply to storm water discharges with an existing NPDES permit or to facilities with an existing NPDES permit. Thus, today's permits have been clarified to provide that only storm water discharges that are authorized by a different NPDES permit cannot be authorized by today's permit.

One commenter indicated that the proposed general permit language implied that coverage under the general permit would be permanently restricted for facilities that are currently permitted under the NPDES program for their storm water discharges.

In response, EPA has clarified today's general permits to provide that for storm water discharges currently subject to an individual NPDES permit, dischargers may apply for coverage under the general permit when the existing permit expires, provided that the existing individual permit does not contain numeric effluent limitations. Facilities with existing NPDES permits for storm water discharges that have established numeric limits for these discharges are generally not eligible for coverage under the general permit.

One commenter requested that EPA clarify that a given industrial facility may be issued two separate NPDES permits, one for process wastewater and another for storm water. In response, EPA wants to clarify that facilities with an existing NPDES permit for process wastewaters and/or other non-storm water discharges are allowed to obtain coverage for their storm water discharges under today's general permits.

Two commenters expressed confusion regarding the exclusion of inactive and abandoned mining and oil and gas operations on Federal lands from coverage under the draft general permit. These commenters thought that EPA was exempting such sites from regulation under the November 16, 1990 rule by excluding these sites from coverage under the general permit.

In response, the Agency explained in the August 16, 1991 draft permits that it is developing a distinct set of general permits that more appropriately control pollutants from inactive mining and inactive oil and gas operations on Federal lands where an operator cannot be identified due to the unique nature of these types of storm water discharges. EPA wishes to reaffirm that today's general permits do not provide coverage for storm water discharges from these inactive sites because an alternate draft general permit is currently being developed. Such discharges do, however, remain subject to the requirement to submit a NPDES permit application.

The Department of the Interior, which has extensive land management responsibilities, requested that storm water discharges from inactive landfills on Federal lands where an operator cannot be identified be addressed in a similar manner as inactive mining and inactive oil and gas operations on Federal lands. The commenter indicated that the significant number and geographic distribution of such sites on Federal lands favored an approach that was similar to controlling storm water from inactive mines and oil and gas operations on Federal lands. The commenter also indicated that NPDES requirements should be coordinated with ongoing efforts by Federal land managers to address inactive landfills, and that the best way to accomplish this is to issue different general permits tailored for these discharges. In response, EPA has excluded from coverage under today's permit those storm water discharges from inactive landfills on Federal lands where an operator cannot be identified. The Agency will address these discharges in conjunction with distinct permitting efforts addressing storm water discharges from inactive mining operations and inactive oil and gas operations on Federal lands.

One commenter thought that EPA was requiring facilities with storm water discharges associated with industrial activity to obtain coverage under the general permit, and was precluding dischargers from submitting individual permit applications or participated in appropriate group applications.

The Agency wants to clarify that by encouraging the use of general permits to address storm water discharges associated with industrial activity, and August 16, 1991 proposal was not limiting the application options to Notice of Intents (NOIs) and coverage under a general permit. The submittal of an NOI to be covered by a general permit is only one of three application options for storm water discharges associated with industrial activity identified by the November 16, 1990, NPDES storm water application regulations.

A number of commenters expressed confusion as to whether they must apply for coverage under today's general

[19] For the purposes of this permit, the following effluent limitations guidelines address storm water or a combination of storm water and process water: cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric power generation (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt (40 CFR 443).

permit if a group application has already been submitted. EPA wishes to clarify that while facilities that had participated in approved and completed group applications are not required to obtain coverage under today's general permit, they do have the option to do so.

Requiring an Individual Permit Application

The August 16, 1991 draft general permit provided that EPA may require the submission of an individual permit application at any time during the term of the permit. The draft permit further provided that where EPA requests an individual permit application and an owner or operator fails to submit a timely application, the coverage of the permit must be terminated on the date the application is due.

Several commenters questioned EPA's authority to terminate permit coverage. They believed that EPA must specify requirements for permit coverage termination, such as an adjudicatory process that would allow the permittee a formal appeal. Additionally, one commenter was concerned with the discretionary authority granted to EPA in requiring individual permit applications and felt that certain guidelines should be set forth.

In response, today's permits reflect 40 CFR 122.28(b)(3) (as amended on April 2, 1992, (57 FR 11412)), which establish procedures for EPA to require a discharger authorized by a general permit to apply for and obtain an individual permit and for any interested person to petition the Director to require an individual permit. EPA also has broad authority under Section 308 of the Clean Water Act (CWA) to require information, such as individual applications.

Where the discharger fails to submit a timely application, such a failure would constitute noncompliance by the permittee with a permit condition and would constitute grounds for permit termination (see 40 CFR 122.64). EPA would follow the applicable procedures in 40 CFR 124 in terminating permit coverage. In addition, 40 CFR 124.52 provides guidelines for EPA to determine that a facility required covered by a general permit be required to obtain an individual permit.

This discretionary authority is critical because it allows the Director to identify facilities that may be significant contributors to water pollution or facilities that have other site-specific conditions that would be better addressed under an individual permit. In general, EPA will make decisions on terminating coverage under the general permit in a manner that is consistent with the goals and objectives of the Agency's four-tiered, long-term permitting strategy for storm water discharges associated with industrial activity (see April 2, 1992, (57 FR 11394)).

One commenter disagreed with the statement in the draft general permit that storm water discharges associated with industrial activity that are not authorized by the general permit or another NPDES permit are not in compliance with the CWA. This commenter stated that the simple submission of an individual permit application or participation in an approved group application should satisfy the discharger's legal obligations under the CWA. While timely submittal of an individual permit application or participation in an approved group application constitutes compliance with EPA's storm water permit application regulations, it does not, by itself, provide for compliance with the CWA requirement that storm water discharges associated with industrial activity to waters of the United States be authorized by an NPDES permit.

NOI Requirements

The August 16, 1991 draft permits included a requirement that each discharger submit an NOI to be authorized to discharge under the permits. Under the August 16, 1991 draft permits, NOIs had to provide the name, mailing address, and location of the facility for which notification was submitted; up to four 4-digit SIC codes describing the facility; the operator's name, address, and telephone number; the latitude and longitude of the facility; the name of the receiving water or, if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer; and existing sampling data.

A number of commenters on the August 16, 1991 draft general permits indicated that NOI requirements were generally less burdensome than individual permit applications and that NOIs are a useful tool in the permitting process. A number of commenters indicated that a standardized NOI form would be extremely useful and would ease burdens on the regulated community. In response, the Agency has developed a standardized NOI form, which is included in Appendix C of today's notice. Copies of the NOI form are available from EPA Regional Offices (see the **ADDRESSES** section of today's notice) or from the Storm Water Hotline at (703) 821–4823.

Some commenters noted that the information required in the NOI was adequate, sufficient, and/or appropriate. However, commenters raised several concerns with specific requirements of the NOI. Several commenters suggested that NOIs should require additional information describing the facility. These commenters suggested a number of additional information requirements, including descriptions of raw materials that are received by the facility; materials that are produced or processed by the facility; raw materials that are used or stored at the facility in substantial amounts; approximate amounts of materials at the facility that fall under the above categories each year; how these materials are handled; any precautions taken to prevent pollutants in storm water runoff; and the size of the facility and a characterization of the surrounding area. The commenters indicated that this information would assist EPA in identifying priority facilities. Several of these commenters indicated that the limited information in an NOI is not sufficient to support further conclusions or determinations on when and whether Tier II–IV permits should be required or other evaluations of the risks posed by storm water discharges from various industrial categories.

In response, the Agency notes that it will use information from a number of sources to evaluate appropriate Tier II, III, and IV permits. For example, the Agency will use information from group applications and from monitoring data collected pursuant to today's permit to assist in the development of Tier III (industry-specific) permits. The Agency can use information in section 305(b) reports, along with information from other sources, to develop Tier II (watershed) permits. In addition, the Agency will review individual permit applications, information from municipal operators of large and medium municipal separate storm sewer systems, and other information to develop Tier IV (individual) permits. In addition, today's permits require facilities to develop storm water pollution prevention plans that contain more detailed, facility-specific information, which the Agency can request for review. Given these other sources of information and the initial status of program development, the Agency does not believe that such additional information is necessary in NOIs at this time. The Agency is requiring that dischargers provide the permit number of any NPDES permit for other discharges from the facility and the group application number if the facility has participated in a group application. Obtaining this information will allow the Agency to coordinate permitting and compliance monitoring

efforts associated with other discharges with actions taken with respect to today's permits. Obtaining the permit numbers of non-storm water NPDES permits will allow EPA to have access to information about a permittee's activities with a minimal burden placed on the discharger and EPA. This information will be particularly useful in identifying priorities for storm water permit issuance and in developing Tier II, III, and IV permits.

One commenter suggested that EPA provide expanded instructions to assist facilities in accurately determining their Standard Industrial Classification (SIC) code(s), their locations by latitude and longitude, and the names of the receiving waters. In response, EPA notes that the NOI only requires dischargers to provide a latitude and longitude where a street address for the site is not available. In addition, EPA has provided additional guidance on obtaining this type of information in the "Guidance Manual for the Preparation of NPDES Permit Applications for Storm Water Discharges Associated with Industrial Activity," April 1991, EPA-505/8-91-002. This manual is available from the National Technology Information Service (NTIS) by calling (703) 487-4650 (NTIS publication number PB-92114578, $35.00). EPA believes that identifying the longitude and latitude of a site presents a minimal burden to a small number of dischargers.

One commenter raised concerns about being required to submit sampling data that have been collected by a facility without the intention of having the data submitted in order to evaluate potential problems. They were concerned that such data may not be reliable, and in some cases may be meaningless. Other commenters suggested that the requirement to submit quantitative data be limited to the previous three years. One mining company suggested that EPA delete the requirement to submit existing quantitative data because processing and classifying the data would impose a substantial burden on Agency resources.

Based on additional consideration of this provision, the NOI requirements for today's permits do not require the submittal of existing quantitative data (sampling data), but rather require dischargers to indicate whether they have sampling data available describing their storm water discharges. As discussed below, the Agency believes that these data can serve useful purposes, and is requiring facilities to maintain records of existing data in their storm water pollution prevention plans. The Agency believes that this approach will provide dischargers with an opportunity to explain problems with data quality. The Agency has made this change to reduce the administrative burdens associated with submitting and handling NOIs. The Agency notes that it can request this information from the discharger where appropriate.

One commenter recommended that the NOI be used to cross-check with other requirements and available data. In response, EPA is requiring that NOIs include the number of any NPDES permit for any discharge (including non-storm water discharges) from the site that is currently authorized by an NPDES permit. In addition, dischargers are required to indicate whether the facility has previously participated in the group application process. EPA believes that this information will greatly assist in its efforts to cross-check other information regarding the facility.

Several commenters requested that EPA clarify whether a pollution prevention plan must be included in the NOI. In response, the Agency has modified the language in today's permits to clarify that dischargers are not required to submit a pollution prevention plan when they submit an NOI.

One commenter indicated that dischargers should only have to submit information required in the NOI if that information is available. In response, the Agency believes that the information required in the NOIs by today's permits will not impose excessive burdens on dischargers. The Agency believes that the information required in the NOIs is appropriate given the goals and functions of these permits. For example EPA must know where the industrial facility is located in order to conduct site visits. The street address of the facility, or, where it is not available the facility's latitude and longitude (or section, township, and range), can be used to identify the site location. The SIC codes that best represent the principal products made or activities conducted by the facility will give EPA an indication of the nature of the industrial activity at the facility. An alternative indicator of the industrial activity is required for classes of facilities that do not have SIC codes that accurately describe the principal products or services provided (e.g. hazardous waste treatment, storage or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage). This information gives an indication of the pollution potential of the facility and is necessary to evaluate oversight and enforcement priorities for followup actions by EPA. In addition, this information can be used to identify particular classes of discharges where industry-specific general permits may be appropriate or where individual permits may be necessary. Today's permits require up to four SIC codes to characterize facilities that conduct multiple activities that are addressed by more than one SIC code. The operator's name, address, and telephone number are necessary to support communications with the permittee and to allow EPA to request information or provide guidance. The permit number(s) of additional NPDES permit(s) for any discharge(s) (including non-storm water discharges) from the site that are currently authorized by an NPDES permit will allow EPA to coordinate oversight and compliance monitoring activities taken under today's permits, such as inspections, with other actions taken pursuant to other NPDES permits. The name of the receiving water(s) will allow EPA to identify discharges to impaired, sensitive water bodies, or high-value water resources that require additional oversight and compliance evaluation. Permittees that discharge to a large or medium municipal separate storm water permits require the applicant to provide the name of the municipal operator of the storm sewer. The name of the municipal operator of the storm sewer provides EPA with the opportunity to coordinate compliance monitoring activities and the identification of priority discharges with municipalities. An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges informs EPA of additional data to review in characterizing the nature of the discharge. An indication of whether the facility has previously participated in the group application process allows EPA to implement the group application process better and eliminates redundancy or overlap between that process and coverage with general permits. The certification that a storm water pollution prevention plan has been prepared for the facility in accordance with the permit ensures that plans for new facilities have been developed and assists the Agency's compliance monitoring efforts.

One commenter indicated that facilities such as remote oil and gas operations may not have mailing addresses. In response, the Agency has modified today's permits so that where a mailing address for a site is not

available, the location can be described in terms of the latitude and longitude of the facility.

One commenter suggested that it would be more reasonable to allow permittees to be automatically covered by a renewed general permit. EPA disagrees with this comment. The Agency believes that it is appropriate for permittees to reapply every five years under a general permit in the same manner as they would with an individual permit application, and does not believe that the requirement to resubmit an NOI every five years creates excessive burdens on dischargers. This information also allows EPA to update its record of permittees.

One commenter indicated that identification of Department of Defense (DOD) facilities by a single SIC code may present a problem because there may not be an appropriate code or several activities may be taking place at different portions of the installation. In response, the Agency wants to clarify that the NOIs associated with today's permits provide for up to four SIC codes that best describe the facility. In general, a Federal facility, such as a DOD installation, that has an industrial activity on the facility should use the SIC code that would describe the same specific industrial activity at a private facility. The Agency also notes that some DOD bases or installations will have different industrial activities at multiple locations at the installation. In such cases, the facility should submit one NOI for each location conducting a different industrial activity.

One commenter recommended that in addition to the signature by a responsible corporate officer (as defined by 40 CFR 122.22) the person having overall responsibility for environmental matters should be required to sign the NOI. The commenter indicated that this information would simplify EPA's efforts to contact a permittee. In response, EPA is concerned that such a requirement may cause confusion among dischargers during the initial application process. The Agency notes that today's permits require permittees to develop storm water pollution prevention plans that provide for a description of a storm water pollution prevention team. This requirement is intended to provide a clear description of personnel that are responsible for implementing permit requirements. Therefore, the Agency does not believe that it is necessary to require the person having overall responsibility for environmental matters to sign the NOI.

NOI Deadlines

In the August 16, 1991 draft general permits, EPA proposed that NOIs to obtain coverage under the permits be submitted within 180 days of the date of issuance of the general permits or at least 30 days prior to the commencement of construction of a new storm water discharge associated with industrial activity. Subsequent to the August 16, 1991 notice, EPA extended the regulatory deadlines for submitting individual permit applications (see November 5, 1991 (56 FR 56549)) and part 2 of group applications (see April 2, 1992 (57 FR 11394)) for storm water discharges associated with industrial activity to October 1, 1992.

Today's final general permits provide that NOIs for storm water discharges associated with industrial activity from industrial facilities existing on or before October 1, 1992, must be submitted on or before October 1, 1992. The Agency has selected the October 1, 1992 date to provide consistency with the deadlines for submitting individual permit applications and Part 2 of group applications. Using the October 1, 1992 deadline will minimize confusion regarding these deadlines, particularly where EPA issues permits for different States on different dates. In addition, the October 1, 1992 deadline provides an equitable framework for complying with permit application requirements.

Today's permits provide that facilities with industrial activity addressed by the storm water program that begin to operate after October 1, 1992, must submit an NOI at least 2 days prior to the commencement of the industrial activity at the facility. The Agency believes that this short time period is appropriate for new discharges or new sources which begin operation after October 1, 1992 because development of a storm water pollution prevention plan and submittal of an NOI can be anticipated and planned for prior to the initiation of operations.

Several commenters requested clarification of whether a new NOI must be submitted where the operator of the discharge changes. In response, 40 CFR 122.61 requires that permittees notify EPA when a permit is transferred to a new owner or operator. In addition, 40 CFR 122.28(b)(2)(i) requires that dischargers seeking coverage under a general permit submit an NOI. The Agency considers an operator change at a facility to be analogous to a new discharger seeking coverage under the permit, and has clarified in today's permits that where an operator of a facility with a discharge covered by the permit changes, the new operator of the facility must submit an NOI at least 2 days prior to the change.

One commenter requested that EPA clarify that not all oil and gas operations are required to obtain NPDES permit coverage for their storm water discharges associated with industrial activity and asked EPA to clarify the deadlines for submitting an NOI for those facilities that are required to obtain NPDES permit coverage.

In response, section 402(1)(2) of the CWA provides that EPA shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities if the storm water discharge is not contaminated by contact with, or does not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. EPA's regulations at 40 CFR 122.26(a)(2) codify this provision, and today's permit does not attempt to require coverage for discharges that are excluded under the CWA from the NPDES program. EPA's regulations at 40 CFR 122.26(c)(1)(iii) state that the operator of an oil and gas operation is not required to submit a permit application for their storm water discharge associated with industrial activity unless the facility has a discharge of storm water resulting in the release of oil or a hazardous substance that exceeds the reporting quantities established under 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6 or contributes to a violation of a water quality standard.

The Agency wants to clarify that oil and gas operations that discharge contaminated storm water at any time between November 16, 1987 and October 1, 1992, and that are currently not authorized by an NPDES permit, must submit an NOI, an individual permit application, or participate in an approved group application by no later than October 1, 1992. The Agency also wants to clarify that facilities that evaluate their storm water discharge after a release of a reportable quantity of oil or a hazardous substance that occurs after October 1, 1992, and determine that their storm water discharge is contaminated must either submit an NOI to be covered by today's permits within 14 days of their first knowledge of the release or submit an individual permit application. This provision does not require operators of oil and gas operations to submit an NOI where they do not have a contaminated storm water discharge. Operators of oil and gas operations that release a reportable quantity of oil or a hazardous

substance in a storm water discharge who do not believe that their storm water discharge is contaminated may submit an individual permit application in accordance with the requirements of 40 CFR 122.26(c)(1)(iii).

EPA believes the 14-day time frame is appropriate because of the risk associated with such facilities. The Agency also notes that facilities with a reportable quantity release of a hazardous substance or oil are required to notify the National Response Center (NRC) as soon as they know of the release, and that the facility should have the information necessary for submitting an NOI readily on hand.

Some commenters requested clarification of whether dischargers that missed the deadlines for submitting an NOI may ultimately obtain general permit coverage. A number of these commenters were particularly concerned about dischargers unaware of the requirement to obtain an NPDES permit for their discharge by October 1, 1992. These commenters urged EPA to provide flexibility in allowing them to submit an NOI to be authorized to discharge under the general permit after the deadlines specified in the general permit.

In response, EPA recognizes that there will be situations where it will be appropriate to allow a discharge to be authorized under the general permit after the deadline for submitting an NOI. For example, some facilities may only become aware of the general permit or that their storm water discharge must be authorized by an NPDES permit after the deadline for submitting an NOI has passed. The Agency recognizes that the NPDES storm water program is relatively new, at least in terms of implementation activities, and the application deadlines have changed on several occasions, which may have confused some dischargers. While ignorance of NPDES storm water requirements is *not* a shield from enforcement for discharging without a permit, the Agency recognizes the administrative advantages in allowing an existing discharger to obtain coverage under the general permit.

In response to these concerns, today's permits clarify that a discharger that misses either the October 1, 1992 deadline or the 48-hour deadline for facilities that commence construction after October 1, 1992, is not precluded from submitting an NOI and being authorized to discharge under the general permits at a later date. EPA wants to clarify that where a discharger has submitted an NOI after the deadlines specified in the permit, the Agency has the authority and reserves the right to bring appropriate enforcement actions.

Notice of Termination

Some commenters noted that facilities with "paragraph (xi)" storm water discharges could eliminate their storm water discharges associated with industrial activity by eliminating exposure of material to storm water. In addition, several commenters indicated that a facility can change industrial activity or otherwise discontinue industrial activity and can eliminate its storm water discharge associated with industrial activity where significant materials no longer remain exposed to storm water. Some of these commenters requested that EPA provide a mechanism for reporting to EPA when storm water discharges associated with industrial activity at a facility have been eliminated.

In response, the Agency wants to clarify that the regulatory definition of storm water discharge associated with industrial activity is provided at 40 CFR 122.26(b)(14). Paragraph (xi) of the regulatory definition provides that facilities under Standard Industrial Classification (SIC) codes 20, 21, 22, 23, 2434, 25, 265, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, or 4211–25 which are not otherwise addressed by other categories of the definition have a storm water discharge associated with industrial activity only where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.[20]

In response to these concerns, today's permits have been modified to allow permittees to submit a Notice of Termination (NOT) to EPA indicating that the storm water discharges associated with industrial activity from their facility have been eliminated.

Non-Storm Water Discharges

The August 16, 1991 draft permit required all discharges covered by the permits to be composed entirely of storm water and discharges of material other than storm water to be in compliance with a different NPDES permit issued for the non-storm water discharge. EPA indicated that it was taking this approach because these general permits were not intended to authorize process wastewater discharges.

A number of commenters strongly supported the prohibition or noted that it appeared reasonable. However, a number of comments addressing this provision raised technical concerns that certain non-storm water discharges are commonly allowed to discharge via a separate storm sewer or are otherwise mixed with storm water discharges. These commenters indicated that some classes of nonstorm water discharges could not easily be separated from drainage or separate storm sewer systems and that separating such discharges from storm sewer systems usually would not provide any environmental benefits. Some of these commenters maintained that a strict prohibition on non-storm water discharges would significantly limit the number of facilities obtaining coverage under the general permit.

In response to these comments, EPA believes that it is important to retain a modified version of this provision in the permit to clarify that certain non-storm water discharges, such as process waste waters or wastes improperly disposed through a storm drain, are not authorized by today's general permits for storm water discharges. However, today's permits provide for two sets of circumstances where storm water discharges that are mixed with storm water may be authorized by this permit.

Consistent with the proposal, today's permit authorizes storm water discharges associated with industrial activity that are mixed with non-storm water discharges in compliance with a different NPDES permit. However, the monitoring requirements and compliance point for numeric limitations for the non-storm water discharge must be addressed in the permit for the non-storm water discharge. In addition, the Agency also recognizes that discharging some classes of non-storm water via separate storm sewers or otherwise mixed with storm water discharges is largely unavoidable and/or poses little if any environmental risk. Therefore, the Agency has clarified that today's permits authorize storm water discharges associated with industrial activity that are mixed with discharges from firefighting activities, fire hydrant flushing, potable water sources including waterline flushings, landscape irrigation drainage, routine exterior building washdown which does not use

[20] The exclusion contained in paragraph (xi) was, however, vacated and remanded to EPA for further proceedings. *NRDC* v. *EPA*, No. 90–70671 (9th Cir., June 4, 1992). EPA interprets the effect of the Court's remand as requiring the Agency to conduct further proceedings to address the Court's decision. Thus, EPA will not require that facilities identified by paragraph (xi) without exposure to submit storm water applications until the Agency has had the opportunity to complete additional proceedings in a manner consistent with the Ninth Circuit decision and the provisions of section 402(p)(2)(B) of the CWA.

detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and detergents are not used, air conditioning condensate (but not including cooling water from cooling towers, heat exchangers or other sources), springs, uncontaminated ground water, and foundation or footing drains where flows are not contaminated with process materials such as solvents provided that the non-storm water component of the discharge is identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.

As a general matter, EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified and implemented, they can be effectively controlled under today's permit. The Agency also notes that it can request individual permit applications for such discharges where appropriate and necessary. The Agency is not requiring that flows from firefighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence. The Agency notes that the approach in today's permits taken for non-storm water discharges is parallel to the approach taken for non-storm water discharges to large and medium municipal separate storm sewer systems in its November 16, 1990 rulemaking (55 FR 47990). The non-storm water discharges addressed in today's permits are similar to those addressed in the November 16, 1990 rulemaking, although several modifications to the list have been made that provide additional clarity and that recognize the industrial nature of facilities covered by today's permits. The modifications also reflect the generally higher degree of control that industrial facilities can exercise over the generation of non-storm water discharges on a site. For example, routine exterior building washdown that does not use detergents and pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used have been specified in today's permits to specifically identify nonstorm water discharges that are commonly expected from industrial sites. The reference to spills is to ensure that washwaters used to clean spills are not flushed to the storm sewer and directly to waters of the United States.

Releases of Reportable Quantities of Hazardous Substances

The August 16, 1991 draft general permits provided that the permits would not relieve the permittee of reporting requirements for releases of hazardous substances in excess of reportable quantities established under 40 CFR 117 and 40 CFR 302. The draft permits further provided that discharges of hazardous substances in storm water discharges are to be minimized in accordance with the applicable storm water pollution prevention plan and can in no case contain a hazardous substance equal to or in excess of a reportable quantity.

A number of commenters strongly supported the prohibition, or noted that it appeared reasonable. However, several other commenters indicated that the prohibition on releases of hazardous substances in excess of reportable quantities acted as a series of effluent limitations and that the Agency had not established such limitations consistent with the technology-based or water quality-based standards of the CWA. These commenters indicated that the reportable quantities established under 40 CFR 117 and 40 CFR 302 were not developed as numeric effluent limitations under the NPDES program. One of these commenters indicated that some hazardous substances still had reportable quantities of 1 pound that had been originally established by Congress. However, a number of the commenters that objected to the prohibition as a perceived effluent limitation agreed that the reporting of such discharges was appropriate and that a facility with such a discharge should not be exempt from liability provisions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the CWA. Some of these commenters also noted that the use of best management practices aimed at preventing and/or cleaning up the release, instead of numeric end-of-pipe limitations, is the most effective way to address these discharges.

In response, the Agency has modified this provision in today's permits to provide additional consistency with the reporting requirements for releases of hazardous substances and oil in excess of reporting quantities at 40 CFR 110, 40 CFR 117, and 40 CFR 302, to provide clarification that the Agency does not intend for the prohibition on releases in excess of reporting quantities to act as numeric effluent limitations, and to address such releases in a manner consistent with the approach taken in today's permits with respect to pollution prevention plan implementation.

Today's permits require that the discharge of hazardous substances or oil in the storm water discharge(s) from a facility must be minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302 occurs during a 24-hour period, the permittee must:

- Notify the National Response Center (NRC) as soon as he or she has knowledge of the discharge;
- Notify the appropriate EPA Regional Office within 14 calendar days of knowledge of the release. The notice must contain a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to identify measures to prevent the reoccurrence of such releases and to respond to such releases as needed; and
- Modify the storm water pollution prevention plan for the facility within 14 days of knowledge of the release to describe the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed and where appropriate modified by the permittee to identify measures to prevent the reoccurrence of such releases and to respond to such releases as needed.

The Agency has clarified that today's permits do not authorize the discharge of hazards substances or oil resulting from an on-site spill of non-storm water materials. This is consistent with CWA and CERCLA requirements for hazardous substances and oil for anticipated intermittent point source discharges at 40 CFR 117.12(d)(i).[21]

The Agency believes that this approach will result in the same objectives as the approach in the August 16, 1991 draft permits (i.e., to provide the Agency with information that allows for considering whether an individual permit is appropriate), while minimizing confusion and concerns regarding the provision. Further, this approach

[21] 40 CFR 117.12(d)(2)(i) excludes discharges that are continuous or anticipated intermittent discharges from a point source, identified in an NPDES permit from reporting requirements if the discharge of the hazardous substance results from the contamination of storm water, provided that the storm water is not contaminated by an on-site spill of a hazardous substance.

provides additional flexibility for implementing appropriate pollution prevention measures. The Agency also believes that ample enforcement authority under the CWA and CERCLA exists for addressing releases of hazardous substances in excess of reportable quantities and that the approach taken in today's permits complements those authorities.

One discharger raised concerns that the prohibition implied that discharges of a hazardous substance up to an applicable reportable quantity was acceptable and that a permittee was not required to do anything unless such a release occurred. In response, EPA does not intend to imply that discharges of hazardous substances up to an applicable reportable quantity are acceptable in the sense that a discharger should do nothing until discharging a hazardous substance or oil in excess of a reportable quantity. The Agency notes that any point source discharge of pollutants to waters of the United States without a permit is prohibited under section 301 of the CWA. In addition, today's permits do not establish numeric effluent limitations for such storm water discharges from industrial activities (except for coal pile runoff). Rather, the permits requires dischargers to develop and implement best management practices and pollution prevention measures to reduce and/or control pollutants in the discharge even in cases where the discharge does not contain hazardous substances or contains hazardous substances at levels significantly lower than reportable quantities.

Pollution Prevention Plan Requirements

At the heart of the August 16, 1991 draft permits were flexible requirements for site-specific storm water pollution prevention plans to be developed and implemented to minimize and control pollutants in storm water discharges. The Agency adopted this approach in order to address adequately the variable storm water management/pollution prevention opportunities at different types of industrial facilities.

In general, many commenters supported requiring storm water pollution prevention plans to achieve Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements in lieu of numeric limitations. Many of these commenters indicated that pollution prevention measures (e.g., source reduction measures and elimination of pollutant sources) were for many industrial facilities the most practicable and cost-effective approaches to reducing pollutants in storm water discharges.

A number of commenters supported the flexibility that the proposed requirements provided for developing tailored plans and pollution prevention strategies. Some of these commenters indicated that this approach allowed facilities to use their own expertise and knowledge of the facilities and that industrial operators were in the best position to develop and implement storm water pollution prevention strategies. Other commenters noted that it was essential for facilities to take the lead role in determining requirements that are reasonable and necessary for their facility. Others urged the Agency to maintain flexibility to address unique industry-specific or facility-specific conditions. Several commenters indicated that they believed that broad effluent limitations or national performance standards for pollution prevention requirements were not appropriate at this time and that industry should be given flexibility to establish specific pollution prevention measures for their facilities.

One commenter indicated that based on experience at industrial sites, the most effective means of controlling pollutants in storm water was the requirement for each permittee to develop and implement a pollution prevention plan. This commenter indicated that the plan requirements in the August 16, 1991 proposal appeared to be both effective and enforceable, as well as easily understood by the people responsible for complying with the general permit.

Several commenters indicated that requirements to develop and implement storm water pollution prevention measures should be limited to a subset of all facilities with storm water discharges associated with industrial activity. One commenter, while noting that pollution prevention measures can be effective in some cases, indicated that industrial facilities should have the option of preparing a pollution prevention plan or meeting a numeric effluent limitation or other performance standard. This commenter alternatively suggested that only facilities that have been shown to contribute significantly to storm water-related impacts on receiving waters should be required to comply with requirements to develop a plan. Another commenter suggested that numeric limitations be provided as a floor. The commenter further suggested that facilities should not be required to implement pollution prevention measures for storm water discharges that contain pollutants at levels lower than the concentrations provided in the numeric limitation. One commenter indicated that permittees should only be required to develop pollution prevention plans if monitoring data shows that these are appropriate or necessary. A mining company indicated that runoff from an industrial facility may actually be of better quality than the receiving water and that a blanket requirement that all facilities with storm water discharges associated with industrial activity prepare plans is not appropriate.

In response, EPA notes that the CWA requires NPDES permits for storm water discharges associated with industrial activity (see section 402(p)(2)(B)). In addition, the CWA requires NPDES permits for storm water discharges that are significant contributors of pollutants to waters of the United States or that contribute to a violation of a water quality standard (see section 402(p)(2)(E) of the CWA). All NPDES permits for storm water discharges associated with industrial activity must, at a minimum, establish BAT/BCT requirements (see section 402(p)(3) of the CWA). Thus, consistent with the requirements of the CWA, the requirements in today's permits to develop and implement storm water pollution prevention plans apply to all permittees whether the Agency has made a showing that a facility is contributing to a water quality impact or not, or whether pollutants in the discharge from a facility exceed the concentrations in discharges from surrounding land uses.

The Agency believes that Congress establishes this technology-based framework because it was aware of the technical and administrative difficulties of making a showing that a single facility is a significant contributor to specific water quality impacts and it determined that mandatory minimum pollution control requirements were appropriate for industrial facilities with storm water discharges. Today's permit establishes BAT/BCT requirements in terms of requirements to develop and implement storm water pollution prevention plans.[22] These requirements apply to all permittees.

The Agency notes that the requirement to develop and implement storm water pollution prevention plans is not the only option the Agency had for establishing BAT/BCT requirements, and that many NPDES permits incorporate numeric limitations to reflect application of BAT/BCT requirements. However, the Agency

[22] In addition, today's permits establish a numeric effluent limitation for coal pile runoff.

currently does not have sufficient data to develop appropriate numeric effluent limitations for all of the varied sources of storm water discharges associated with industrial activity covered by these permits. The Agency also notes that facilities covered by today's permits have varied potential for having many different pollutants in their storm water discharges. While today's permits do not provide permittees with the option of meeting a numeric effluent limitation in lieu of developing and implementing pollution prevention measures, the Agency notes that facilities that wish to pursue numeric effluent limitations for their storm water discharges may submit data sufficient to support the development of such limitations either through the individual or group permit application process.

One commenter thought plans should not be required where facilities do not have a previous history of spills or any materials on site to create a spill. In response, EPA wants to clarify that spills are only one potential source of pollutants in storm water discharges. Other major potential sources of pollutants in storm water discharges associated with industrial activity include the following: loading and unloading of materials; outdoor storage of raw materials or products; outdoor process activities; dust or particulate generating processes; illicit connections or management practices; waste disposal; and vehicle maintenance.[23] The requirements for storm water pollution prevention plans in today's permits have been designed to address these sources of pollutants as well as spills. The potential for spills at a facility is only one factor that pollution prevention plans should address.

One commenter suggested that facilities should be allowed to have a Registered Professional Engineer (PE) conduct a site review to identify pollutant sources and establish a schedule for elimination of those sources as an alternative to implementing a pollution prevention plan. EPA has not adopted this approach in today's permit. Perhaps most importantly, EPA needs well documented plans to conduct its own review of the adequacy of pollution prevention measures and is concerned that a PE certification without an accompanying plan may be inadequate for this purpose. While PE certifications can play an important role in pollution prevention strategies, the Agency also has concerns that a PE evaluation, by itself; may not ensure successful elimination of all potential sources of pollutants to storm water. The Agency believes that PE certifications are best suited for evaluations of structural controls, spill prevention and response measures, and the effectiveness of comprehensive pollution prevention plans. For many facilities, however, complying with today's permits means relying on nonstructural controls as part of a comprehensive plan. In addition, the Agency believes that this approach would create unnecessary confusion regarding the requirements of the permit.

Several commenters urged EPA to ensure that requirements for developing and implementing storm water pollution prevention plans were feasible, particularly for small businesses. Some commenters suggested that a less resource-intensive approach should be developed for smaller facilities. Other commenters indicated that they thought the requirements for plans were too complex or burdensome, particularly for small businesses and small municipalities with industrial facilities.[24] A few commenters suggested that EPA delete some of the components of the plan or phase in some plan requirements to ease the burden of development and implementation of plans. Others suggested that facility size should be considered when developing the plan.

EPA agrees that the varying sizes and complexities of facilities should be reflected in the storm water pollution prevention plans. This is one reason that EPA favors having each permittee develop and implement site-specific storm water pollution prevention plans under today's general permits. EPA believes that today's permits generally provide flexibility for those smaller facilities which have smaller potential for contributing pollutants to storm water to develop and implement less complex, and less costly, plans than larger, more complex facilities.

EPA does not agree, however, that some of the components of the plan should be deleted for smaller facilities. EPA believes that all of the components for the plans required by today's permits are essential for reducing pollutants in storm water discharges and cannot be selectively deleted or phased in without hindering the effectiveness of the overall pollution prevention efforts. Therefore, EPA has determined that all components of the storm water pollution prevention plan required under today's permits are necessary to reflect BAT/BCT. The pollution prevention plan requirements of today's permits can be described in terms of four components. In addition, some facilities are required to conduct discharge monitoring.

The first component, formation of a pollution prevention team is critical to identifying individual responsibilities and ensuring accountability for implementing plans. The formation of the Team formalizes the identification of responsibilities and is not expected to incur significant costs in and of itself. The role of the Team will depend on the engineering aspects of the application of various types of control techniques identified in the plan and the processes employed at the facility.

Successful plan implementation must be based on adequate identification of pollutant sources. The second component of the plan, description of pollutant sources, is achievable because it is based on the information that should generally either be readily available from the normal business practices of the facility (e.g. materials inventories) or from standard evaluations or observations. The costs of these descriptions depend on such factors as the nature of the process employed, the age of the equipment and facilities, and the engineering aspects of the application of various types of control techniques.

The third component of the plan is identifying and implementing measures and controls. The costs of complying with other measures and controls of the plan depend on the nature of the process employed, the age of the equipment and facilities, and the engineering aspects of the application of various types of control techniques. Good housekeeping, preventive maintenance, spill prevention and response, inspections, employee training, and recordkeeping and internal reporting have been identified as measures that are broadly applicable to all industry types and acitivities [25] and are achievable through good engineering practices. The Agency has identified a number of methods for testing or evaluating the presence of non-storm water discharges, such as inspecting outfalls during dry weather conditions, conducting dye testing, and evaluating accurate schematics

[23] A more complete discussion of these potential pollutant sources can be found in the section 3 of the August 16, 1991 draft fact sheets (56 FR 40965).

[24] Subsequent to the August 16, 1991 proposal, EPA has reserved the regulatory deadlines for storm water discharges associated with industrial activities from facilities that are owned or operated by a municipality with a population of 100,000 or less, other than discharges from airports, powerplants or uncontrolled sanitary landfills (see April 2, 1992, (57 FR 11409)).

[25] See "NPDES Best Management Practices Guidance Document," EPA, 1979 and "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity," EPA, 1991.

available for meeting this requirement. Where a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges is not feasible, today's permits do not require a certification, provided that the storm water pollution prevention plan indicates why the certification is not feasible and identifies potentially significant sources of non-storm water at the site, and the discharger notifies EPA. Today's permits require permittees to identify structural, vegetative, and/or stabilization measures to limit erosion and in a narrative consideration evaluating the appropriateness of traditional storm water management practices used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The flexibility of these provisions will ensure that attainable practices are implemented based on an consideration of the costs of the measures and the application of the control techniques to a given facility.

The fourth component of the plan are comprehensive site compliance evaluations. The requirements for these evaluations include annual inspections of the facility, which are consistent with practices at well run facilities. In addition, the permit establishes targeted monitoring requirements for selected industrial activities. These monitoring requirements, which are authorized by section 308 of the CWA, are necessary to ensure compliance with the requirements of today's permits and to protect water quality. Monitoring requirements have been kept at a low frequency and apply only to targeted activities to limit cost of these requirements.

The Agency has developed specific guidance to assist facilities in developing plans that comply with the requirements of today's permits (see "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, 1992). This guidance contains worksheets, checklists, and model forms that should significantly reduce the burdens of smaller facilities and help assist in the development of plans under today's permits in an achievable manner.

Several commenters indicated that the pollution prevention requirements in the August 16, 1991 draft permits were directed too heavily towards "traditional" industry and may not be the most cost-effective requirements for their facilities. Some of these commenters indicated that some facilities would be better off pursuing group applications or submitting individual applications.

In response, as discussed above, EPA believes that all of the components for the plans required by today's permits are essential and cannot be selectively deleted or phased in without hindering the effectiveness of the overall storm water pollution prevention efforts at a facility. However, the Agency notes that it has built considerable flexibility into today's pollution prevention plan requirements. Under today's permits, while permittees must comply with all applicable components of the plan, facilities can focus most heavily on those pollution prevention measures that will most effectively reduce pollutants to storm water discharges from their industrial activities. The Agency believes that the requirements in today's permits can be tailored for the different types of industrial facilities that generate storm water discharges associated with industrial activity. The Agency also wants to clarify that today's permits do not preclude operators of storm water discharges associated with industrial activity from continuing participation in an approved group application where they are already an approved member or submitting an individual application where they believe that the requirements of today's permits are not appropriate for their discharges.

One commenter noted that the requirements in the August 16, 1991 draft permits appeared reasonable, but that permit writers should have additional discretionary authority to waive some of the components of the general permit. In response, the Agency notes that today's permits do provide considerable flexibility in developing site-specific pollution prevention plans. Again, the Agency wants to clarify its view that all components of a storm water pollution prevention plan outlined in today's permits are needed to comply with the BAT/BCT standards of the CWA.

Industry comments regarding the level of specificity of requirements were mixed. A number of commenters commended the Agency on its efforts to promote flexibility in storm water management. Some industrial commenters urged EPA to provide greater detail in plan requirements or additional technical guidance to assist them in developing site specific plans and to allow facilities to better determine whether they are in compliance with the permit. One commenter noted that additional technical guidance could greatly reduce the burdens on small industries because facilities could then prepare their plans without the significant expense of an outside consultant.

In response to these concerns, the Agency has rearranged and reordered the requirements of the pollution prevention plans in today's permits and clarified several points found confusing by commenters. These changes have been made to simplify preparation and implementation of plans and to minimize confusion. As mentioned above, the Agency has also developed specific guidance to assist facilities in developing plans that comply with the requirements of today's permits (see "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices", EPA 1992). This guidance contains worksheets, checklists and model forms which should assist facilities which are not using outside consultants to develop plans under today's permits in an achievable manner.

Other commenters urged EPA to specify the objectives of the plans without prescribing the means by which the objectives must be achieved (e.g., to establish guidelines for pollution prevention measures, but to not specify how they will be achieved). In response, the Agency has considered the issue of the appropriate balance between flexibility and specifying requirements, and believes that the approach taken in today's permits is appropriate, (e.g. to identify specific classes of measures that must be addressed in a pollution prevention plan, but to provide sufficient flexibility in meeting such requirements as good housekeeping, preventive maintenance, spill prevention and response procedures, and employee training, so that specific procedures or actions are not prescribed). Today's permits require the development of plans that identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the facility and describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges. Today's permits identify specific components that the plan must address, including requirements for a pollution prevention team, description of potential pollutant sources, measures and controls appropriate for the facility, and comprehensive site compliance evaluations.

Other commenters indicated that several provisions of the August 16, 1991 general permits (such as certain recordkeeping provisions) appeared to be redundant. In response, today's

permits have been modified to eliminate any such redundancy.

One environmental group, while noting that the concepts identified in the plan were sound and important and supporting the idea of having industrial facilities create well-targeted plans that contain the identified elements, indicated its belief that the approach was far too open-ended to ensure that any given facility will go beyond "business as usual" in preventing pollutants to its storm water discharges. The commenter urged the Agency to require specific practices or preventive actions or specific menus of practices. The commenter suggested that the requirements for traditional storm water controls and sediment and erosion practices should at a minimum contain both a Best Management Practices (BMP) menu and a minimum number of practices that each facility must select from the menu.

In response, the Agency disagrees with this commenter, and believes that today's permits establish requirements with a reasonable amount of specificity that will result in substantial reduction in the discharge of pollutants in storm water. As discussed above, the permit establishes a prohibition on the discharge of most non-storm water discharges, specific requirements for releases of hazardous substances, and requirements for the development and implementation of storm water pollution prevention plans. The provisions for pollution prevention plans require that permittees specifically address eight different types of measures and controls, as well as meet requirements for a pollution prevention team, identify potential pollutant sources, conduct comprehensive site compliance evaluations, and meet special requirements for specific industry categories.

The Agency has not established a menu of traditional storm water controls and sediment and erosion practices because the significant variability in facilities covered by today's permits precludes the identification of universal standards or practices that are appropriate or can be implemented by all permittees. For examples, small facilities where the entire facility is covered by impervious structures may not have areas where significant erosion occurs, and may have limited space for traditional storm water measures. Other facilities may have extensive areas with significant erosion potential and/or more opportunities for traditional storm water management measures.

However, the permit has been modified to provide that plans must contain a narrative consideration of the appropriateness of traditional storm water management practices used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan must provide that measures determined to be reasonable and appropriate shall be implemented and maintained. The permit specifies that appropriate measures may include vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. With respect to sediment and erosion controls, the permit has been modified to provide that the plan must identify structural, vegetative, and/or stabilization measures to be used to limit erosion in areas with a high potential for significant soil erosion. The Agency believes that the additional clarity added to these provisions ensures that the permit is not too open-ended and that permittees will implement reasonable and appropriate storm water management measures and measures to limit erosion in areas that have a high potential for significant soil erosion.

In addition, the guidance manual "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992 identifies a number of specific storm water management measures and sediment and erosion controls that can be used to satisfy these requirements and discusses their general applicability to industrial sites. Storm water management measures addressed in the document include flow diversion practices; water reuse; vegetative practices, such as flow attention by use of open vegetated swales and natural depressions; infiltration of runoff on site via filter strips, swales, level spreaders, infiltration trenches, concrete grids, and modular pavement; and sequential systems (which combine several practices). Sediment and erosion practices discussed in the manual include the use of mulching, matting, temporary seeding, permanent seeding, permanent planting, sodding, chemical stabilization, interceptor dikes and swales, pipe slope drains, subsurface drains, filter fences, gravel or stone filter berms, storm drain inlet protection, sediment traps, sediment basins, outlet protection, check dams, and gradient terraces.

One commenter indicated that the permits should clarify the specific factors, including processes employed, engineering aspects, functions, costs of controls, location, and age of facility, that permittees should take into account when developing pollution prevention measures.

In response, today's permits require that permittees consider the relevant BAT and BCT factors when developing and implementing storm water pollution prevention plans. The following factors are to be considered when evaluating BAT requirements: the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and non-water quality environmental impacts (including energy requirements). The following factors are to be considered when evaluating BCT requirements; the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; and non-water quality environmental impacts (including energy requirements).

Other commenters suggested that similar plans, such as Spill Prevention Control and Countermeasure (SPCC) or BMP plans, could substitute as storm water pollution prevention plans. There were numerous comments on consistency with other plans, specifically expressing a concern about duplication of permitting. Many commenters argued that it was not effective to have three different plans covering safety, storm water pollution prevention, and/or SPCC. They felt that these plans should be consolidated.

Other program plans and requirements such as those listed by commenters contain provisions that meet some elements of the storm water pollution plan, but none, either alone or in conjunction with others, specifically addresses storm water concerns or the requirements for plans in today's general permits. EPA does, however, encourage facilities to use applicable practices and provisions from existing plans when developing their storm water pollution prevention plans. During the development of the storm water pollution prevention plan, EPA believes the use and incorporation of other

existing plans will help reduce the burdens associated with their development and implementation.

Pollution Prevention Team

The August 16, 1991 draft general permits contained a provision requiring that plans identify a pollution prevention committee of individuals within the plant organization who are responsible for developing the pollution prevention plan and assisting the plant manager in its implementation, maintenance, and revision.

In today's permits, the Agency has changed the name of the committee to "Pollution Prevention Team." The Agency believes that the term "Team" will better convey the purposes of the provision.

A number of commenters requested that the Agency simplify requirements for small businesses to implement pollution prevention committees. Some commenters indicated that many small businesses may only have one person dedicated to all aspects of environmental and safety and health regulatory compliance, or that facility owners or operators address regulatory compliance matters.

In response, the Agency believes that it is critical for plans to identify those employees who will be responsible for implementing the various provisions identified in the plan. EPA agrees that the storm water pollution prevention committee size will vary based on the facility size and complexity. The Agency agrees that in some situations it will be appropriate for the "Team" to be comprised of one employee. Today's permits have been clarified to reflect that the team or committee may be comprised of one employee where appropriate.

Several commenters indicated that because many facilities already have individuals who are responsible for environmental compliance, the creation of a pollution control committee only adds another layer to a compliance strategy. Several commenters indicated that the committee may interfere with the facility manager and that the facility manager should have ultimate responsibility and accountability for the content and implementation of the storm water pollution prevention plan.

The Agency agrees that many facilities have already identified individuals responsible for environmental compliance and that often the facility manager should have ultimate responsibility and accountability for the content and implementation of the plan. The Agency believes that it is important that the plan specifically identify those individuals responsible for developing the pollution prevention plan and having specific roles in its implementation, maintenance and revision. The Agency believes that the commenters' situation is a fairly common practice among industrial facilities and that today's permits are designed along compatible principles intended to identify such individuals and their relationships to others who have critical roles in implementing measures identified in pollution prevention plans. The Agency believes that identifying a pollution prevention team will ensure the structure and organization necessary for successful plan implementation. The Agency strongly recommends that individuals who have already been identified as being responsible for environmental compliance at industrial facilities be given central roles in Pollution Prevention Teams. The Agency does not intend the Pollution Prevention Team in any way to interfere with the facility manager, but rather to assist the facility manager in developing and implementing the plan. In addition, the Agency anticipates that in many instances the plant manager or his/her equivalent will be a prominent member of the Pollution Prevention Team. EPA disagrees that the requirement to identify the Team in the plan will create undue burdens on facilities where responsible individuals have already been identified, since such individuals should generally play a major role on the Team.

One commenter indicated that the pollution prevention committee/team should not be required to "address all aspects of the facility storm water pollution prevention plan." The Agency disagrees with this comment; it is critical that responsibility be assigned for implementing each activity identified in the plan.

One commenter indicated that the pollution prevention committee is unnecessary and noted that most individual NPDES permits do not require such committees. In response, the Agency believes that a pollution prevention team is necessary for the successful implementation of a source control-oriented pollution prevention-based approach. The Agency agrees that most individual permits for process wastewaters do not require the identification of pollution prevention measures. However, most individual permits for process wastewaters take a different approach to regulating pollutant discharges, that of numeric effluent limitations, and do not focus on comprehensive source controls.

Description of Potential Pollutant Sources

The August 16, 1991 draft general permits contained provisions requiring that plans contain certain information to assist in identifying and characterizing potential sources that may contribute pollutants to storm water discharges. The pollutant source identification requirements in the August 16, 1991 draft permits addressed requirements for a site map, a topographic map, a narrative description of significant materials used at the site, a lost of spills and leaks, an estimate of the types of pollutants likely to be present in the storm water, and a summary of sampling data.

Several industry commenters agreed that successful pollution prevention strategies must be based on an accurate understanding of the pollution potential of the site being considered.

Some commenters felt that the requirement for the plan to include a topographic map was too burdensome. They indicated that a topographic map would not be useful and suggested that a site map would be adequate. In response to these comments, the Agency is concerned about the confusion with respect to how facilities intend to use the topographic map. As a result, to simplify these requirements, today's permits do not specifically require the inclusion of a topographic map. The Agency believes that a site map indicating an outline of the drainage area of each storm water outfall, and other appropriate information,[26] will generally serve the purposes that a topographic map would be used for in the context of pollution prevention plan. The agency also notes that under the August 16, 1991 draft general permits facilities could utilize a site map as an alternative to a topographic map, thus today's permits do not constitute a significant change.

One commenter indicated that it would be difficult to delineate off-site portions of the drainage areas of some outfalls. The commenter suggested that they only be required to show the parts of the drainage that are on site. In response, the Agency has clarified in today's permits that only the portions of

[26] In today's permits, drainage site maps must indicate an outline of the portions of the drainage area of each storm water outfall, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks have occurred, and locations of the fueling stations, vehicle and equipment maintenance and/or cleaning area, loading/unloading area, locations used for treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

the drainage area within the facility's boundaries need to be identified.

A number of commenters indicated that certain industrial activities, such as loading and unloading operations, may occur under covered areas such as in buildings or loading docks with sufficient cover to prevent exposure to precipitation and that spills are not normally exposed to storm water. One commenter requested that EPA clarify that the list of significant spills and leaks should be confined to those materials that cannot be fully cleaned and removed and could potentially come in contact with storm water. Another commenter suggested that EPA only require spill information for areas to be covered by the general permit. One commenter suggested that the listing of spills and leaks should not include releases to impervious surfaces that are automatically drained to waste treatment sumps and that do not go to storm drains, or to impervious surfaces that are cleaned up without any chemicals entering a storm drain. Another commenter suggested that spills and leaks into secondary containment structures should not be listed, as the presence of a secondary containment system gives adequate notice that care is exercised, and that this requirement was unnecessary and unduly burdensome.

In response, EPA recognizes that some spills, such as those that occur inside buildings that drain to a sanitary sewer, are not potential sources of pollution to storm water discharges, and thus do not need to be identified in the storm water pollution prevention plan. However, the agency believes that spills to sumps or secondary containment areas that receive storm water discharges should generally be identified in the storm water pollution prevention plan because such devices can overflow during large or repeated storm events, or storm water may be drained and discharged from such devices. The Agency also believes that it is important to identify spills that occur on impervious surfaces that are exposed to precipitation or that otherwise drain to a storm drain even when the spill is cleaned up before any of it enters a storm drain. Listing such events provides an indication of potential pollutant sources that may occur in the future, and helps direct priorities for developing and implementing spill response measures. In response to the concerns raised in these comments, the Agency has limited this provision to significant spills and leaks at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility.

One commenter recommended that spill prevention and response procedures be deleted because EPCRA and the Resources Conservation Recovery Act (RCRA) already address accidental releases. Another commenter suggested that the list of spills be deleted and that the need for such a list is adequately addressed by reportable quantities, as spills of such size must be reported and are already on file with the government.

In response, the Agency wants to clarify that the central reason for requiring this information in the pollution prevention plan is to ensure that dischargers adequately consider potential sources of pollution when identifying and implementing storm water pollution prevention measures. The Agency believes that such site evaluation is critical for appropriate implementation of storm water pollution prevention measures. Similarly, such information provides EPA with a better basis for reviewing and evaluating the adequacy of specific plans. The Agency also notes that the spill reporting measures under the other statutes identified above have limited scope and objectives, and in general, do not specifically consider the potential of pollutant discharges in storm water or controls for such pollutant discharges in a comprehensive manner.[27] [28] The Agency also notes that spill reporting requirements have been developed under section 311 of the CWA and under section 102 of CERCLA. However, the Agency notes that these requirements only apply to releases of hazardous substances or oil in excess of reportable quantities, and that this reporting requirement focuses primarily on emergency response to such incidents. These reporting requirements do not address releases of materials that are not classified as hazardous substances or oil, or releases of hazardous substances or oil that are less than reporting quantities. The Agency believes that many spills, leaks, and releases that are not considered to be reportable quantities of a hazardous substance can still contribute significant amounts of pollutants to storm water discharges.

One commenter indicated that numerous local, State, and/or Federal spill reporting requirements already in place require spill reporting and recommended that any spill reports prepared in accordance with these existing spill reporting regulations be referenced or attached to the storm water plan.

In response, the Agency agrees that these spill reports can, in some cases, provide useful information for identifying potential pollutant sources, and encourages permittees to review such information when developing and modifying plans. However, the Agency is not specifically requiring that such information be included in the plan in order to allow the permittee to best determine the appropriate form of such information.

One commenter requested clarification of whether the term "significant spills" included spills that were not in excess of reporting quantities established under section 311 of the CWA or section 102 of CERCLA. In response, EPA notes that the definition section of the permit contains a definition of "significant spills" that includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4). The Agency believes that it is appropriate to include certain releases that are not releases of oil or hazardous substances in excess of reportable quantities for several reasons. The materials that are considered hazardous substances do not identify all materials that can cause water quality impacts. In addition, discharges of hazardous substances in amounts less than reportable quantities can cause water quality impacts. Other significant spills include spills that could potentially add significant amounts of pollutants. Such listing should address other materials in addition to materials that are listed as hazardous substance or as oil. In addition, instances of chronically repeated smaller spills can constitute significant spills if such spills, taken together, add significant amounts of pollutants to storm water discharges.

Another commenter requested that EPA clarify whether the list of spills

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[27] Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986), requires operators of certain facilities that manufacture, import, process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to the environment. Only those facilities that manufacture, import, process, or otherwise use a listed toxic chemical in excess of applicable threshold quantities of the chemical, have a primary SIC code of 20 through 39, and have 10 or more full-time employees must report. Section 313 of EPCRA focuses on the annual reporting of releases, and not on the control of such releases.

[28] Subtitle C of the Resources Conservation and Recovery Act (RCRA) authorizes EPA to establish requirements for facilities that generate, transport, or treat, store or dispose of materials that meet the regulatory definition of hazardous wastes. The RCRA Subtitle C regulations include requirements for certain generators and treatment, storage, and disposal facilities to develop and implement contingency plans and emergency procedures to minimize hazards to human health or the environment from fires, explosions, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water. In general, RCRA does not address materials that are not considered to be wastes, and does not address wastes that are not regulated as hazardous wastes.

needed to be updated to identify significant spills and leaks that occur after the effective date of the permit. In response, the Agency wants to clarify that plans are to be updated to address significant spills and leaks that occur during the term of the permit. This information is necessary to ensure that major potential sources of pollution to storm water discharges are identified.

One commenter indicated that existing quantitative data describing the concentration of pollutants in storm water discharges may be unrepresentative of typical events and good sampling protocols may not have been used. The commenter indicated that the discharger may have conducted the sampling in order to evaluate potential problems without intending to submit the data.

In response, the Agency believes that existing quantitative data can in many cases be a useful, readily available source of information to identify potential pollutant sources. The Agency recognizes that often the discharger did not intend to submit such data, but believes that such data can still be useful for evaluating potential pollutant sources. The Agency also recommends that, where possible, dischargers provide a description of procedures and protocols that were used when collecting and analyzing samples. This type of information can be useful in evaluating the validity and accuracy of the data. It should also be emphasized again that EPA is not requiring this data to be submitted with the NOI. Rather, today's permits provide only that such data be identified in the NOI and made available only when the permitting authority requests it.

One commenter requested clarification of whether sampling data collected during the term of the permit must be summarized in the plan. In response, EPA is clarifying that sampling data collected during the term of the permits must be summarized in the storm water pollution prevention plan.

One commenter urged the Agency to examine requirements for the narrative description of significant materials that have been treated, stored, or disposed. The commenter suggested that a requirement for a materials storage and handling report for all chemicals and compounds listed for the facility's effluent guidelines under the NPDES program and for other chemicals used and byproducts formed at the site be added to the narrative description of significant materials and to the risk identification and assessment/material inventory portion of the permit.

In response, the Agency wants to clarify that the inventory of exposed materials is intended to address materials that potentially may be exposed to precipitation, including chemicals used and byproducts formed at the site that may be exposed to precipitation. Among the items that should be included on the inventory area materials related to chemicals or compounds listed in effluent limitations guidelines to which the facility is subject or chemicals or compounds specifically controlled or limited in any other NPDES permit for the facility should be addressed to the extent that such materials may be exposed to precipitation.

One commenter suggested that a current list and description of materials is adequate; a description of materials that may have been exposed to storm water and the management practices in the past three years is excessive. However, another commenter indicated that a three year period for this requirement was too short, and that many sites have been used for purposes other than those for which the sites are currently operated. This commenter suggested that any historical activities at the site that now contribute to storm water pollution should be identified.

In response, the Agency agrees that past activities may result in pollutant sources for present storm water discharges, and that it is appropriate to address materials that may have been exposed to storm water in the past three years. EPA believes that the three year period is reasonable and does not impose excessive burdens for collecting information on permittees. The Agency notes that the three year period is consistent with similar requirements for individual applications for storm water discharges associated with industrial activity at 40 CFR 122.26(c)(1)(i) (B) and (D) and general NPDES records retention requirements under 40 CFR 122.21(p) and 40 CFR 112.7(d)(8).

The August 16, 1991 draft permits proposed that the plan provide a prediction of flow and an estimate of the types of pollutants likely to be present in the storm water for areas of the plant that generate storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants. Several commenters requested clarification of what constitutes a "reasonable potential for containing significant amounts of pollutants." One commenter recommended that the "reasonable potential" language be removed.

In response, EPA believes that permittees can evaluate whether areas of the facility have a reasonable potential for containing significant amounts of pollutants based on a consideration of structures and activities in that area of the facility. Activities such as loading and unloading of materials, outdoor storage of raw materials or products, outdoor process activities, outdoor equipment or vehicle maintenance activities, dust or particulate generating processes, illicit connections or management practices, and waste disposal will generally have a reasonable potential for containing significant amounts of pollutants in storm water discharges. Process or storage equipment which is exposed to precipitation or structures such as metal roofs can have a reasonable potential for containing significant amounts of pollutants. Significant amounts of pollutants would include pollutant concentrations or unit loadings above those typically found in runoff from areas where there is no industrial activity or other significant sources of pollutants exposed to precipitation and minimal potential for deposition of pollutants, or that had potential to adversely affect water quality. EPA is retaining the "reasonable potential" language, but has modified the requirement to limit it only to areas of the facility with a potential for contributing pollutants to storm water discharges.

One commenter indicated that the requirement to predict the total quantity of pollutants likely to be in storm water discharges is unreasonable, and could not accurately be based on one sample per year. Several commenters also recommended that a facility be required to make data estimates only when there has been a demonstration that a facility's storm water will be contaminated.

In response, the Agency wants to clarify that an estimate of the total quantity of pollutants likely to be in storm water discharges is not required by this provision. Rather, the intent of the language used in the August 16, 1991 draft permits was to require dischargers to identify the types of pollutants likely to be present in storm water discharges associated with industrial activity. Today's permits have been modified to clarify this point. Since today's permits do not require all facilities to sample their storm water discharge, the Agency believes that this provision has additional importance in ensuring that information in the plan is evaluated and potential pollutant sources and pollutants are identified. EPA believes that it is consistent with the objectives of a preventive strategy that pollution prevention measures be implemented in situations where there is a potential for a facility's storm water to contain a particular pollutant. For example, spill prevention measures and/or good housekeeping measures, which prevent pollutants from getting pollutants into

storm water, can be appropriate where spills have not occurred or where good housekeeping is currently preventing pollutants from entering the storm water. Thus, EPA does not agree with the comments that all dischargers should be required to identify pollutants in storm water only when there has been a demonstration that such pollutants are present. Today's permits establish monitoring requirements for targeted industrial activities to provide more detailed information regarding the nature and extent of pollutants in storm water discharges from these facilities.

One commenter indicated that the requirements to provide drainage maps, a narrative description of material management practices and control measures, and a history of significant spills were too extensive, and that some dischargers would find it preferable to submit individual permit applications. In response, the Agency has considered the burdens associated with developing such information and believes that the requirements are necessary to begin to identify potential pollutant sources. The Agency does not believe that the pollutant source identification requirements in today's permits are excessive. Much of the information required in the description of potential pollutant sources, such as the inventory of exposed materials, can be obtained from facility records, or site inspections. A list of significant spills and leaks can be obtained from facility maintenance records, reporting records and discussions with employees. EPA expects that many facilities will have existing site maps indicating the major features of the facility or will be able to develop such maps based on site inspections. Plant managers or other employees should be readily able to develop descriptions of potential pollutant sources and use best professional judgement in evaluating the pollution potential of the various activities. A prediction of the direction of flow can be based on site topography and simple observations of drainage patterns. The identification of the types of pollutants likely to be present in storm water discharges associated with industrial activity can be based on knowledge of the plant activities and processes. EPA has issued technical guidance that will provide permittees with additional assistance in complying with these requirements. EPA also notes that the source identification requirements in today's permits are comparable with the source identification requirements in individual permit applications. In addition, the individual permit applications requirements for storm water discharges require the submittal of sampling data, whereas today's general permits do not require dischargers to sample their storm water discharges as part of the NOI application.

Measures and Controls

The August 16, 1991 draft general permits requested comments on eleven baseline pollution prevention measures. The measures addressed pollution prevention committees; risk identification and assessment/material inventory; preventive maintenance; good housekeeping; spill prevention and response procedures; storm water management; sediment and erosion prevention; employee training; visual inspections; recordkeeping and internal reporting procedures; and non-storm water discharges. As discussed earlier in today's notice, these requirements have been rearranged and reordered to provide additional clarity and minimize confusion.

One commenter suggested that the permit specifically require and pollutant generating material to be completely sheltered from precipitation and wind. In response, the Agency recognizes that covering or sheltering pollutant generating material can be an effective means of reducing pollutants in storm water discharges. However, the Agency recognizes that in some situations, this may not be the most cost-effective approach to controlling pollutants. For example, the Agency has defined an effluent limitation guideline for coal pile runoff from steam electric facilities that is typically met by collecting and treating the runoff rather than covering the piles. Thus, the Agency is not prepared at this time to mandate that all pollutant generating material be completely sheltered from precipitation and wind.

One commenter indicated that EPA has not shown that existing plant maintenance practices and recordkeeping are insufficient. In response, NPDES permits for storm water discharges associated with industrial activity must establish conditions in accordance with the CWA, and the Agency does not have the burden of showing that existing plant maintenance practices and recordkeeping are insufficient to establish today's permit requirements. In fact, the Agency has considered typical industry practices at well operated facilities when establishing the requirements in today's permits. The Agency believes that plant maintenance practices and recordkeeping are an important component to a storm water pollution prevention strategy. The Agency recognizes that some facilities will have adequate maintenance practices and recordkeeping that have been successful in preventing pollutant discharges in storm water. Under today's permits, these facilities are only required to document such practices in a pollution prevention plan and continue them.

Several commenters indicated that requirements such as good housekeeping should be limited to areas with a tangible connection to the storm water discharge. In other words, the pollution prevention requirements should not apply to indoor locations with no potential to contribute pollutants to storm water discharges. In response, the Agency agrees with this commenter. The Agency notes that under the August 16, 1991 draft permits, priorities for controls in a plan were to reflect identified potential sources of pollutants at the facility. Where indoor activities are not a potential source of pollutants, good housekeeping measures do not have to be addressed for such areas. The Agency has clarified today's permits with regard to this point.

One commenter suggested that the inventory of types of material handled should be limited to those materials that could impact storm water. In response, the Agency has clarified today's permits to provide that the inventory of materials handled at the site is limited to materials that potentially may be exposed to precipitation.

One commenter suggested that oil and gas operations in arid areas should not be required to develop certain plan components, such as the certification for non-storm water discharges, risk identification, and assessment/material inventory, because such operations do not have conventional storm drains and facilities have little potential to discharge to navigable waters.

In response, EPA notes that a facility that does not have a storm water discharge associated with industrial activity is not required to obtain permit coverage. However, storm water discharges associated with industrial activity that occur as the result of infrequent storms or as the result of overflowing detention ponds must be authorized by an NPDES permit. The Agency believes that pollution prevention measures identified in today's permits are appropriate because they will reduce the potential for sources to contribute pollutants to storm water under various climatic conditions, including arid conditions. Pollution prevention activities such as risk identification, and developing an assessment/material inventory are important in arid regions to identify

potential sources of pollutants to storm water. Improper non-storm water discharges to storm water conveyances can occur in arid conditions since most sources of non-storm water are not related to precipitation events but rather are related to process waters from other sources such as wash waters or produced waters. The Agency also wants to clarify that dischargers may seek alternative permit requirements by submitting an individual permit application or participating in a group application.

One commenter indicated that the requirement to perform a "risk assessment" was not realistic for small businesses. In response, the Agency noted that different commenters appeared to be interpreting the requirement for a risk assessment differently, with some facilities apparently assuming that extensive monitoring and evaluation would be required. In an effort to minimize confusion, the language in today's permits has been modified by removing the term "assessment" from the risk identification section. This provision does not require a formal risk assessment, but rather requires a narrative description of the potential pollutant sources at specified material handling areas (loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust or particulate generating processing, and on-site water disposal practices), an identification of significant potential sources of pollutants at the site, and, for each potential source, an identification of pollutants of concern.

Several industry commenters requested that the requirements for storm water management be clarified. In response, today's permits have been modified to explain that storm water management measures are used to divert, contain, reuse, or otherwise manage storm water runoff in manner that reduces pollutants in storm water discharges from the site. In addition, the permit has been modified to list several classes of typically used storm water management measures: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

One commenter suggested that EPA define a criterion for determining whether the use of traditional storm water management measures are reasonable and appropriate. When evaluating whether the use of traditional storm water management measures are reasonable and appropriate, dischargers should evaluate the costs of the measure, the potential pollutants removed, and the potential for ground water impacts.

EPA requested comments on providing facilities that reuse substantially all storm water with an exemption from certain storm water pollution prevention plan requirements. Several commenters supported this option, arguing that by reducing discharge volumes facilities pose less environmental risk.

EPA believes that the collection of storm water for later uses, such as irrigation, dust control, or process water, can in some cases reduce the immediate potential for pollutants to be discharged to waters of the United States by decreasing the amount of storm water that is directly discharged. In addition, the use of storm water at a facility can reduce the demand on other water supplies and/or reduce energy consumption. However, the Agency notes that some forms of storm water reuse lead to the ultimate discharge of the pollutants in the storm water to waters of the United States. For example, use of storm water for dust control, lawn irrigation, or washings in outdoor areas may result in pollutants migrating to waters of the United States via wind deposition or subsequent storm events. Use of storm water for cooling water may allow pollutants to pass through a process and be discharged to waters of the United States. In such cases, pollution prevention measures prior to reuse are still appropriate. Therefore, EPA has decided against adopting an exemption based on water reuse.

EPA encourages facilities to incorporate storm water reuse as a site-specific pollution prevention practice where such practices will result in the reduction of the discharge of pollutants to waters of the United States. Today's general permits have been modified to specifically list storm water reuse as a potential practice related to the management of runoff. The Agency believes that this approach will allow facilities employing storm water reuse management practices as part of their pollution prevention plans to minimize the costs associated with storm water management measures where appropriate water reuse is the most cost effective storm water management measure.

The August 16, 1991 draft permits provided that permittees are to certify that the facility's storm water discharge (or conveyance) has been tested for the presence of non-storm water discharges. This provision is similar to a provision in the requirements for individual permit applications that requires a certification that all outfalls have been tested or evaluated for the presence of non-storm water discharges (see 40 CFR 122.26(c)(1)(i)(C)).

One commenter recommended that the certification requirement for non-storm water discharges be consistent with the language used for individual permit applications for storm water discharges. Another commenter suggested that permits should allow certifications based on evaluations other than testing (as provided in the individual permit application requirements). One commenter indicated that requiring permittees to check for and remedy possible entrance of non-storm water discharges could be more efficient and less costly than other tests.

In response, the November 16, 1990 permit application regulations require applicants to certify that storm water discharges be tested or evaluated for the presences of non-storm water discharges. In the August 16, 1991 draft permits, the Agency inadvertently limited the certification to testing, and did not specify evaluation as a method for certification, although such evaluations were discussed earlier in the fact sheet. The Agency has modified today's permits to make them more consistent with the November 16, 1990 permit application requirements by providing that a facility may certify based on an evaluation of illicit connections.

Two commenters raised concerns that the requirement for facilities to certify that they have tested for the presence of non-storm water discharges to storm sewers could be onerous, particularly to very small businesses. The commenters indicated that some facility operators may not be able to locate floor plans, drainage maps, and other materials required to identify and remedy illicit connections.

In response, as discussed above, the Agency has modified today's permits to clarify that permittees may either test or evaluate their facility for the presence of non-storm water discharges. This approach provides flexibility for complying with the certification requirement and does not require permittees to locate floor plans, or drainage maps where they can inspect storm water discharge points or conduct evaluations on another basis. The Agency believes that most facilities can evaluate or test for the presence of non-

storm water discharges in a manner that is not onerous or overly costly. For example, at many facilities, the discharger can observe for flow in downstream portions of storm drains during dry weather conditions when sources that generate non-storm water are operating or when water from a hose or other source is added to potential entry ways, such as floor drains, to the storm sewer system.[29] Today's permits also provides that where a certification is not feasible, a certification is not required, provided that the storm water pollution prevention plan indicates why the certification is not feasible and identifies potential significant sources of non-storm water at the site, and that the discharger notifies EPA.

One commenter suggested that the permits contain a limited waiver for small businesses faced with the costs of removing illicit connections. Another commenter suggested that costs to correct improper connections may be prohibitive for small businesses. In response, the CWA requires that point source discharges of pollutants to waters of the United States are illegal except as authorized by an NPDES permit. EPA cannot waive this requirement for small businesses. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit that establishes appropriate technology-based and water quality-based requirements are in violation of the CWA. Today's permit only establishes requirements for a specific set of non-storm water discharges. Addressing requirements for other classes of non-storm water discharges in today's permits is beyond the scope of today's permits. Although today's permits authorize several specific classes of non-storm water discharges that are in compliance with pollution prevention measures, today's permits cannot authorize all non-storm water discharges from small businesses. Thus, facilities with non-storm water discharges to their storm water conveyance system that are not authorized by today's permit are required to either obtain an NPDES permit for such discharge or eliminate the discharge.

One commenter noted that EPA does not require discharge permits for "total retention" systems and requested that EPA define a design storm to determine whether a retention system could qualify. The commenter noted that the limitations in several effluent guidelines for storm water do not apply to discharges resulting from a storm event greater than the 25-year, 24-hour event. EPA would like to clarify that any point source discharge of storm water associated with industrial activity to waters of the United States (including those through a municipal separate storm sewer system to waters of the United States) legally requires a discharge permit. This includes any potential discharge from a retention or detention device, regardless of the size of the storm. Discharges as a result of a catastrophic event could be subject to enforcement discretion by the permitting authority, in consultation with the State water quality agency. The Agency recognizes that several effluent limitations guidelines for classes of storm water do not apply to discharges resulting from events of greater magnitude than a specified design storm. This is primarily because these guidelines are based on a consideration of treatment techniques which typically involve collection and storage of the storm water prior to treatment. The design storm threshold in the guidelines allows dischargers to design the storage units necessary in the treatment system. The requirements in today's permits for storm water pollution prevention plans do not require the discharger to provide storage for storm water. Rather, the pollution prevention measures that are identified in today's permits can be implemented regardless of storm size, and therefore, an exemption for discharges that exceed a specific design storm is not necessary.

One commenter requested clarification of who certifies that storm water discharges have been tested for the presence of non-storm water discharge and how the certification is made. In response, part V.G of today's permits specify signatory requirements for certifications, including the certification regarding non-storm water discharges.

One commenter suggested that EPA should specify a frequency for testing storm sewers for illicit connections and recommended a frequency of more than once per year. In response, the Agency believes that conducting the testing or evaluation required by today's permits once per permit term may be appropriate for some facilities where new sources of non-water are not added at the facility. Thus, today's permits do not establish a frequency of testing of once per year.

One commenter suggested that smoke tests should be listed as a method for identifying non-storm water discharges to separate storm sewers. In response, the Agency has specifically not listed smoke tests because of the potential to misapply such tests in evaluating the presence of non-storm water discharges to storm sewers. Smoke testing (blowing smoke from a downstream point in a pipe up through the pipe) can be a useful technique for detecting storm drains to sanitary sewers. However, smoke tests are often ineffective at finding non-storm water discharges to separate storm sewers. This is because line traps which are intended to block sewer gas (and will prevent the passage of smoke) are commonly used on non-storm water drain systems. (Line traps are less frequently used on storm drains).

Several commenters requested clarification on which employees require training. One commenter indicated that some industrial facilities would have large numbers of clerical and administrative personnel who would have no opportunity to create or abate storm water pollution. The Agency agrees with this commenter. Today's permit has been modified to provide that employee training programs are to inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan.

Several commenters recommended that the pollution prevention measures used for the construction industry be used for the mining industry. In response, while many of the land disturbing operations and subsequent stabization measures at mining sites are similar to practices and activities at construction sites, the Agency notes possible differences between the two classes of activities, such as the greater use of toxic chemicals at some classes of mining sites. The Agency also notes that there is an overlap between the types of controls the August 16, 1991 draft permits required for construction sites and those required for other industrial activities, particularly with respect to erosion and sediment measures and storm water management (or maanagement of runoff) measures. The Agency notes that the greater

[29] A more complete discussion of methods to identify illicit connections can be found in the draft "Manual of Practice: Identification of Illicit Connections," U.S. EPA, September 1990.

overlap between measures used at mining sites and those used at construction sites generally involves erosion and sediment measures and storm water management measures. The Agency believes that the requirements in today's permits are appropriate for storm water discharges from mining operations that are covered by today's permits, and recommends that where such operations are similar to construction activities plans emphasize sediment and erosion controls and storm water management measures. Again, the Agency wants to clarify that dischargers may seek alternative permit requirements by submitting an individual permit application or participating in a group application.

A number of State and local agencies indicated that they generally opposed diverting storm water to sewage treatment plants as an option for preventing pollutants in storm water. These commenters indicated that efforts should be focussed on controlling pollutants in storm water at the source, and that the option should be limited to discharges containing significant amounts of pollutants. Treatment plants serving a separate sanitary sewer system were not designed to handle the large amounts of storm water volume that can be produced in an urban area. These commenters requested that EPA clarify that wastewater treatment agencies have authority to approve or reject any application to introduce storm water into the sanitary sewer system. In response, the Agency notes that diversion of storm water discharges to sewage treatment plants was only raised as an option for consideration in the fact sheet to the August 16, 1991 draft permits. Today's permits do not specifically require permittees to discharge their storm water to sewage plants. As noted in the August 16, 1991 notice, such diversion must be coordinated with the operators of the sewage treatment plant and the collection system to avoid worsening any existing problems with either combined sewer overflows (CSOs), basement flooding, or wet weather operation of the treatment plant. The Agency agrees the operators of treatment plants (or operators of collection systems) typically have authority to approve or reject the introduction of storm water into the sanitary sewer system.

Comprehensive Site Compliance Evaluation/Monitoring

The August 16, 1991 draft permits provided that storm water pollution prevention plans are to include provisions for qualified plant personnel to inspect designated equipment and plant areas. In addition, the August 16, 1991 draft permits required an annual site inspection to verify that the description of potential pollutant sources in the plan is up to date and accurate and that the pollution prevention measures identified in the plan are being implemented and are adequate.

On April 2, 1992, (57 FR 11394) EPA published final regulatory modifications at 40 CFR 122.44(i)(4) that require NPDES permits for storm water discharges associated with industrial activity to require, at a minimum, the discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. In addition, the April 2, 1992 regulations provide that NPDES permits for storm water discharges associated with industrial activity must require the discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification stating that the facility is in compliance with the plan and the permit and identifying any incidents of noncompliance. Such reports and certification must be signed in accordance with 40 CFR 122.22. The April 2, 1992 regulatory modifications were made in response to comments generally indicating that site inspections are an appropriate tool for assisting in evaluating compliance with pollution prevention measures for storm water discharges.

A number of commenters on the August 16, 1991 notice supported the use of inspections to ensure compliance with storm water pollution prevention plan requirements. Some commenters indicated that routine inspections and maintenance by qualified persons, along with adequate records of such inspections, were critical to ensuring adequate and properly implemented pollution prevention measures.

Several commenters encouraged EPA to require annual, in-depth inspections of facilities to identify the potential for pollutants to enter drainage systems. Some of these commenters suggested that more frequent but less comprehensive inspections could supplement the detailed annual inspection and would ensure that potential pollution sources of significant concern are detected. However, several commenters requested that EPA clarify the differences between the two inspection provisions of the August 16, 1991 draft permits. Several of these commenters indicated that the requirements appeared to be duplicative and suggested that EPA eliminate one of the inspection requirements.

In response, the Agency has renamed the term "site inspection" as used in the context of annual inspections to be "Comprehensive Site Compliance Evaluation" to clarify the difference between comprehensive, in-depth evaluations of all areas of the facility that generate storm water associated with industrial activity and more frequent, less comprehensive inspections that may focus specifically on one or two potential pollutant sources, such as inspecting drip pans for accumulation of materials.

The requirements in today's permits for comprehensive site compliance evaluations are consistent with the minimum requirements at 40 CFR 122.44(i)(4) for inspections in NPDES permits for storm water discharges. Evaluations conducted under this provision are to be based on in-depth inspections and are to evaluate the discharger's compliance with its storm water pollution prevention plan and with today's permits. As part of these evaluations, the portions of the site that generate storm water discharges associated with industrial activity must be inspected for potential pollutant sources and for the effectiveness of controls developed as part of the storm water pollution prevention plan. The pollution prevention plan for the facility must be revised where necessary to address the findings and reflect the recommendations of the inspection. Additionally, an annual certification must be prepared indicating that the storm water pollution prevention plan was evaluated as part of an inspection, that the plan is adequate for control of facility storm water discharges, and that the facility is in compliance with the plan.

In addition to the requirements for comprehensive site compliance evaluations, today's permits also require inspections of designated equipment and areas of the facility. This requirement recognizes that periodic routine inspections of certain equipment or areas of the facility are appropriate pollution prevention measures. The Agency has included this provision of the permit separately to ensure that facilities conduct more frequent inspections of certain activities (e.g., leak detection measures for specified equipment or daily or weekly

walkthroughs to ensure good housekeeping) without the burdens of a more intensive comprehensive site compliance evaluation.

Several commenters requested clarification of what constituted qualified personnel for the purpose of conducting comprehensive site compliance evaluations and inspections. In response, the Agency is hesitant to define specific plant officials that must conduct either comprehensive site compliance evaluations or more frequent inspections. The Agency believes that qualified personnel must have sufficient technical abilities to conduct the inspection or evaluation. With respect to inspections, the personnel conducting the inspection must be aware of the goals of the inspection. (For example, personnel inspecting a site to ensure that good housekeeping practices are being implemented must be able to identify potential sources of pollutants associated with poor housekeeping efforts. Personnel inspecting spill response procedures must be able to evaluate the readiness, accessibility, and adequacy of equipment necessary to respond to potential spills.)

In addition, the personnel conducting the inspection must be familiar enough with the portion of the industrial process being inspected to appropriately accomplish the goals of the inspection. With respect to comprehensive site compliance evaluations, the personnel conducting the evaluation must be knowledgeable of the contents and objectives of the facility's storm water pollution prevention plan and the permit. In addition, the personnel must have sufficient knowledge of the operations at the facility to evaluate the effectiveness of pollution prevention measures and to identify potential sources of pollutants to storm water discharges. In addition, the personnel should generally be key members of the storm water pollution prevention team identified in the plan.

Some commenters expressed concerns about monitoring or inspection requirements for inactive mining sites. The April 2, 1992 rule provides that NPDES permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer (PE) that the facility is in compliance with the permit, or alternative requirements. Today's permits provide that where annual site inspections are shown in the plan to be impracticable for inactive mining sites due to remote location and inaccessibility of the site, comprehensive site compliance evaluations are to be conducted at least once every three years. EPA has selected this lesser frequency in response to comments that inactive mining operations are often in remote areas that are not necessarily supported by infrastructure that allows easy access.

A number of commenters urged EPA to require that a PE be required to certify that plans "be prepared in accordance with good engineering practices". Some of these commenters urged the Agency to model PE certification requirements after similar requirements under Spill Prevention Countermeasure and Containment (SPCC) requirements at 40 CFR 112.3. In response, the Agency recognizes that a PE certification can be a useful tool, particularly when evaluating the pollutant removal abilities of structural controls or of spill control/response procedures. However, EPA is concerned about requiring PE certifications at this time for all facilities with storm water discharges associated with industrial activity. The Agency recognizes that today's permits cover a significant range of industrial facilities that will emphasize different components of pollution prevention strategies. PE certifications may not be useful for some types of facilities because they manage minimum amounts of toxic chemicals or other potential pollution generating materials, and have limited opportunities for structural controls, storm water management or erosion control. The Agency does recognize, as discussed below in the context of special requirements of EPCRA section 313 facilities, that such PE certification requirements can be useful tools in ensuring that targeted facilities have adequate and appropriate storm water pollution prevention measures in place.

One commenter recommended a minimum frequency of inspection of once per three years, as this frequency is consistent with SPCC requirements. In response, the Agency disagrees with this comment for a number of reasons. First, the NPDES regulations at 40 CFR 122.44(i)(2) require, at a minimum, annual inspections of facilities with storm water discharges associated with industrial activity. Second, it should be noted that SPCC requirements primarily focus on preventing and containing major spills. These requirements rely on structural controls such as secondary containment, which are generally less likely to change with time than typical storm water pollution controls, such as material handling practices. Third, there is a wide variety of potential pollutant sources to storm water discharges, such as material handling activities and loading/unloading activities, that can significantly change with time at an industrial facility.

Additional Requirements for EPCRA Section 313 Facilities

EPA identified storm water discharges associated with industrial activity from facilities that are subject to reporting requirements under EPCRA section 313 for water priority chemicals as priority discharges for targeted special requirements in the August 16, 1991 draft general permits. The Agency requested comments on two major approaches for developing special requirements for storm water discharges associated with industrial activity from these facilities. Under the first approach, Option A, the general permit would establish special semi-annual monitoring requirements, special pollution prevention requirements, including secondary containment for targeted areas, and a whole effluent toxicity (WET) effluent limitation. Under the second approach, Option B, the general permits would establish a WET limitation, and special monitoring requirements at a frequency of greater than twice per year. Under Option B, the general permit would not contain special pollution prevention plan requirements.

Targeting EPCRA Section 313 Facilities

A number of commenters addressed the issue of whether storm water discharges from facilities subject to reporting requirements under EPCRA section 313 for water priority chemicals should be subject to special conditions. A number of commenters generally supported the Agency's efforts to target priority industries for more specific permit requirements. Some of these commenters indicated that special requirements for EPCRA section 313 facilities were appropriate because of the toxic nature of chemicals handled by the facilities and the significant amounts of chemicals handled by these facilities. Several commenters suggested that the special requirements should apply to all facilities which manage toxic chemicals, regardless of whether they are subject to EPCRA section 313.

However, some commenters questioned the appropriateness of targeting storm water discharges from EPCRA section 313 facilities for special requirements. A major concern of these facilities was that facilities subject to FPCRA section 313 requirements do not necessarily have significant amounts of

toxic chemicals in their storm water discharges. Some of these commenters suggested that EPA be required to demonstrate that these facilities have more pollutants in their storm water discharges than other classes of industries or that special requirements should be triggered where sampling of storm water indicates that releases are occurring.

In response, the Agency believes that the additional pollution prevention plan requirements in today's permits are appropriate for facilities with large amounts of EPCRA section 313 water priority chemicals for several reasons. First, the Agency has identified leaks and spills of toxic chemicals associated with material management practices as a major potential source of pollutants in storm water discharges (see August 16, 1991, (56 FR 40980)). Based on a number of studies, the Agency believes that storage systems, truck and rail transfer facilities, and other process areas where significant amounts of toxic chemicals are used and exposed to precipitation may release pollutants if basic accepted engineering practices are not employed. For example, FPA's "Hazardous Waste Tank Risk Analysis", EPA, 1986, indicates that the principal causes of reported tank failures are external corrosion, installation problems, structural failure, spills, and overfills due to operator errors, and ancillary equipment failure, and that inadequate practices, including those observed at the time of the study, lead to a substantial probability of releases to the environment from such tank failures. The analysis indicated that the major causes of releases from tank systems are usually unrelated to the characteristics of the material stored in the tanks. The analysis also indicated that inadequate management practices allow significant releases to continue undetected until the release becomes obvious. Information from the Spill Prevention Control and Countermeasure (SPCC) data base and the Pollution Incident Reporting System (PIRS) data base indicates that operator error, structural failures, and corrosion were both significant causes of releases for aboveground tanks and failures of ancillary equipment is a significant cause of releases from above ground systems. These data bases indicate that 85 percent to 90 percent of more than 2,000 reported incidents of the spills of oil or hazardous substances from ancillary equipment resulted from failures of piping systems (including failures of pumps, flanges, couplings, interconnecting hoses, and valves). Some of the most significant sources of pollutants at these facilities can be attributed to intermittent events, such as significant spills or leaks. The Agency believes that a preventive approach that does not wait for large spills or leaks to occur is the most sensible approach and is consistent with the goals of the CWA as well as the pollution prevention emphasis of the storm water program.

Second, the Agency believes that the management practices identified in the additional requirements for EPCRA 313 facilities are typically employed at well operated facilities that use large amounts of toxic chemicals. The Agency notes that industry practices have been developed in response to concerns about spills and other health and safety issues. Based on the Agency's evaluation of material management practices, the Agency believes that it is appropriate to identify specific types of management practices that reflect the best available technology for facilities which use large amounts of toxic materials. Today's permits are intended to reflect the Best Available Technology Economically Achievable. The Agency believes that the additional requirements in today's permits for EPCRA section 313 facilities are consistent with the purposes, objectives, and content of a significant number of industry standards.[30] In addition, these requirements are consistent with practices identified under other regulatory programs for the management of other materials, such as the SPCC program for oil and tank requirements under subtitle C of RCRA for hazardous wastes.[31] Many industry commenters indicated that, typically, well run industrial facilities with large amounts of toxic materials already conduct the practices identified in the August 16, 1991 draft permits. Although many of these commenters argued that permit conditions addressing these controls were not necessary because facilities are already conducting these practices, the Agency believes that facilities with large amounts of toxic chemicals generally do take extra precautions in handling their chemicals, and that the special requirements for EPCRA section 313 represents the best available technology currently being used at these facilities.

The Agency has selected the universe of facilities subject to the EPCRA section 313 program reporting requirements to represent a "front end" of the toxics program to which EPA is already committed. This class of facilities is appropriate for targeting for better controls for routine toxics releases and improved industrial practices to prevent and respond to releases involving toxics. The Agency already has substantial data base which identifies facilities subject to these requirements and the type and amount of toxic chemicals which are manufactured, processed or otherwise used at these facilities. EPA will continue to evaluate the appropriateness of applying these special types of requirements to other facilities as more information becomes available.

A number of commenters noted that special measures for managing toxic chemicals were already being conducted by many industrial facilities. For example, one commenter speculated that heightened public scrutiny of EPCRA section 313 facilities has lead to enhanced reporting and training which has already been implemented to decrease contamination. Another trade association thought EPCRA section 313 facilities pose a lower risk because storage of large amounts of the section 313 substances is typically subject to careful controls, including secondary containment, that would prevent the possibility of storm water contamination. This commenter indicated that such facilities generally maintain control programs that include release prevention procedures, training in pollution prevention, spill prevention and cleanup, and other appropriate management practices. Several of these commenters assumed that EPA was targeting EPCRA section 313 facilities because the Agency believed that they were not careful with the materials they handle.

[30] Examples of industry standards evaluated in this rulemaking include ASME/ANSI B31.3 (Chemical Plant and Petroleum Refinery Piping); ASME/ANSI B96.1 (Welded Aluminum-Alloy Storage Tanks); ASME/ANSI B96.1 (Welded Aluminum-Alloy Storage Tanks); NFPA 30 (Flammable and Combustible Liquid Codes); NACE Recommended Practice (Standard Recommended Practice—Control of External Corrosion on Metallic Buried, Partially Buried or Submerged Liquid Storage Systems); API Standard 620 (Recommended Rules for Design and Construction of Large, Welded, Low-Pressure Storage Tanks); API Standard 650 (Welded Steel Tanks for Oil Storage); API Recommended Practice 651 (Cathodic Protection of Above-Ground Petroleum Storage Tanks); API Recommended Practice 652 (Lining of Above-Ground Petroleum Storage Tank Bottoms); API Standard 653 (Tank Inspection, Repair, Alteration, and Reconstruction); and API 2008 (Safe Operation of Inland Bulk Plants).

[31] Examples of requirements under other Federal programs evaluated in this rulemaking include: underground storage tank requirements (40 CFR 280); Occupational Safety and Health Administration general safety and health regulations for flammable and combustible surrounding tanks (49 CFR 1910) Department of Transportation requirements for oil pipelines (49 CFR 195); the Department of Interior requirements for the containment and collection of oil discharges from offshore drilling (30 CFR 250).

In response, as discussed in more detail above, the Agency agrees with the commenters to the extent that it believes that the management practices identified in the additional requirements for EPCRA section 313 facilities are typically employed at well operated facilities that manufacture, process or otherwise use large amounts of toxic chemicals. However, the Agency disagrees with the commenters to the extent that they are contending that the additional requirements in today's permits for EPCRA section 313 facilities (facilities that manufacture, process or otherwise use large amounts of toxic chemicals) are not appropriate. Rather, as discussed above, the Agency believes that the additional requirements for EPCRA section 313 facilities represents the Best Available Technology Economically Achievable for these facilities, and therefore are appropriate for technology-based permits for these facilities.

Some commenters suggest that special requirements be limited to storm water discharges from facilities that are subject to EPCRA section 312. EPCRA section 312 applies to any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act. EPCRA section 312 establishes reporting requirements for facilities with hazardous chemicals present at the facility in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the threshold planning quantity (TPQ) for an extremely hazardous substance as defined in 40 CFR part 355 (see 40 CFR 370.20). In addition, EPCRA reporting requirements apply to facilities where a local emergency planning committee has requested the submittal of a MSDS. EPCRA section 313 establishes threshold amounts for the purposes of reporting of 25,000 pounds of toxic chemical manufactured (including imported) or processed at a facility during a calendar year or 10,000 pounds of a toxic chemical otherwise used at a facility during a calendar year. These commenters noted that the applicability of EPCRA section 313 is based on the amount of toxic chemical manufactured, processed or otherwise used per year, and that it was possible for some facilities to meet this requirement with a relatively low average inventory level of perhaps less than 500 pounds.

In response, the Agency believes that the threshold established by EPCRA section 313 represents a group of facilities that is better for targeting the special requirements of today's permit than EPCRA section 312. Although facilities that are subject to EPCRA section 313 may have less than 10,000 pounds on site at any one time, these facilities receive and handle significant amounts of toxic chemicals during the course of a year. In addition, EPCRA section 312 applies to any facility in any SIC code required to prepare MSDSs, whereas EPCRA section 313 applicability is limited to facilities with a primary SIC code of 20 through 39. EPCRA section 312 applies to a much broader class of facilities, including many not subject to storm water permit requirements. The Agency believes that establishing special requirements for EPCRA section 312 facilities would create additional confusion among facilities which are subject to EPCRA section 312 requirements, but do not have storm water discharges associated with industrial activity. Furthermore, the amount of hazardous chemicals present at a facility which triggers section 312 requirements may be quite low, as noted above. Thus, section 313 facilities may not be appreciably different from section 312 facilities in terms of the level of chemicals present at any one time.

A number of commenters that objected to certain special requirements for all EPCRA section 313 facilities suggested that any facility (regardless if they are subject to EPCRA section 313) that has had a release of a hazardous substance or oil in excess of reportable quantities under 40 CFR parts 110, 117 or 302 should be subject to special requirements because of their proven history of releases. Other commenters indicated that only those facilities that have reported releases of EPCRA section 313 chemicals in their storm water should be subject to special conditions and that the Agency should shield or exempt from special requirements those facilities that report zero or de minimis releases. However, other commenters indicated that many of the facilities that are currently reporting zero or small releases of toxic chemicals via their storm water discharges have not monitored pollutants in their storm water discharge.

EPA disagrees with these commenters. First, the Agency believes that large spills or releases that are generally associated with releases of a hazardous substance or oil in excess of reportable quantities under 40 CFR parts 110, 117 or 302 are only one potential source of pollutants at EPCRA section 313 facilities. Other potential sources of pollutants at these facilities include chronic leaks, smaller spills, management of containers and storage and/or use of chemicals in solid form. These potential sources can contribute significant amounts of pollutants that are nonetheless below reportable quantities under 40 CFR parts 110, 117 or 302. Second, as discussed above, some of the most significant sources of pollutants at facilities identified in the SPCC and PIRS data bases can be attributed to intermittent events, and will not necessarily be identified by periodic monitoring. Without monitoring data, releases of toxic chemicals could go unreported, and therefore a report of zero release may not reflect the true pollutant potential of the storm water discharge. Today's permits establish semi-annual monitoring requirements for certain facilities subject to EPCRA section 313. However, this low monitoring frequency, while appropriate for the limited purposes articulated in today's notice, are not intended to sufficiently identify relatively infrequent intermittent releases in a manner that would ensure that other controls are not necessary to minimize the discharge of toxic chemicals in storm water discharges. Rather, such low-frequency monitoring requirements are only a part of a more comprehensive approach to controlling toxic pollutants in storm water discharges from EPCRA section 313 facilities. Similarly, regulations developed under EPCRA section 313 allow facility operators to estimate the amount of toxic chemicals in storm water without the use of monitoring data. Such estimates, while appropriate for developing the TRI data, do not provide adequate safeguards that toxic chemicals are not being released in storm water discharges. Third, conditions at EPCRA section 313 facilities can change with time, and operator errors, structural failures, and corrosion can lead to failures of process, handling and storage equipment used for EPCRA water priority chemicals which result in the release of toxic chemicals to storm water discharges. Such releases can continue undetected until the release becomes obvious [32] and are not necessarily linked to past releases. The Agency believes that a preventive approach that does not wait for spills or other releases to occur is the most sensible approach and is consistent with the goals of the CWA as well as the pollution prevention emphasis of the

[32] See "Hazardous Waste Tank Risk Analysis", EPA, 1986.

storm water program. Fourth, the Agency believes that management practices identified in the additional requirements for EPCRA section 313 facilities are representative of well operated facilities that use large amounts of toxic chemicals even though a facility may not have had a release of a hazardous substance or oil in excess of reportable quantities.

One commenter indicated that the Toxics Release Inventory (TRI) database for 1989 indicated that only 6 percent (88 of 1,470 facilities reporting storm water discharges) of the EPCRA section 313 facilities reported releases of more than 1,000 pounds per year of toxic chemicals in their storm water during the previous reporting year. This commenter speculated that facilities that reported these releases already had an NPDES permit because they otherwise would not have conducted the monitoring required to support the release estimates.

In response, EPA recognizes that 6 percent per year of the EPCRA section 313 facilities that reported toxic chemicals in storm water reported releases of over 1,000 pounds per year of toxic materials in their storm water. However, the Agency strongly disagrees with the commenter that this is an indication that EPCRA section 313 facilities represent a low risk as a class. First, the Agency believes that the release of less than 1,000 pounds of toxic chemicals via storm water can be very significant, and that the 1,000 pound of toxic chemical threshold limit does not represent acceptable levels of pollutants in releases. Many of the EPCRA section 313 water priority chemicals can have significant toxic effects at low concentrations, even though the total amount of toxic chemical released annually is less than 1,000 pounds. In addition, facilities can have intermittent releases of toxic chemicals of less than 1,000 pounds such as spills or concentrated leaks that can have significant water quality impacts. Facilities that have released low levels of toxic chemicals one year can have significantly larger releases in subsequent years due to spills, leaks which have developed from older equipment, or changes in management practices. Thus, over a longer time period, such as five or ten years, more than six percent of the facilities may have releases of greater than 1,000 pounds per year of toxic chemicals reported in their storm water discharges. The Agency does not believe that 6 percent of the facilities is a trivial number when considering such large releases of toxic chemicals. The Agency also recognizes that many, if not most, EPCRA section 313 facilities did not have actual monitoring data to establish their 1989 estimates of releases of toxic chemicals to storm water. The Agency believes that this could have caused significant under reporting of toxic chemical releases. The Agency does not agree with the commenter's argument that only those facilities which monitored their storm water discharges prior to 1989 pursuant to an NPDES permit are of concern. The Agency remains concerned about the potential for releases from facilities that have not been required to monitor their storm water discharges in the past.

Some commenters indicated that Congress or EPA may expand the criteria for coverage under EPCRA section 313 after the permits were issued. These commenters requested that EPA clarify what storm water general permit requirements would apply to facilities that would not be subject to EPCRA section 313 requirement at the time of permit issuance, but, due to the change in defining the EPCRA section 313 universe, would be subject to EPCRA section 313 requirements in the future. Applicability to EPCRA section 313 could change in 3 ways: (1#) The threshold amount of toxic chemicals required to trigger reporting could change; (2) requirements could be expanded to facilities other than those classified as SIC 20–39; and (3) specific chemicals or classes of chemicals could be added or deleted from the list of toxic chemicals.

EPA intends to base applicability of the special requirements for storm water discharges associated with industrial activity from EPCRA section 313 facilities on the date of permit issuance. Thus, if the applicability of EPCRA section 313 requirements is expanded to include facilities that use less than current threshold amounts, additional chemicals, or facilities other than those classified as SIC code 20–39, the special requirements in today's general permits would not apply to those additional facilities.

If, on the other hand, the applicability of EPCRA section 313 reporting requirements are restricted (e.g. a chemical is deleted from the list of toxic chemicals, the threshold amount of chemicals is raised, or facilities within SIC 20–39 are exempted), the Agency wants to clarify that it will not require facilities which are not subject to reporting requirements under the newly restricted requirements under EPCRA section 313 to comply with the special requirements for storm water discharges in today's permits. While the Agency recognizes that discharges from these facilities were considered in developing today's permits, it believes that this approach will minimize confusion and address concerns that special requirements would no longer be required at such facilities. The agency also notes that it may consider the factors that lead to the decision to restrict reporting requirements under EPCRA section 313 in the same manner as it would with respect to the special requirements of today's permits.

Other commenters requested that EPA clarify the applicability of the special requirements in the storm water general permits for facilities that met the threshold requirements of EPCRA section 313 during some years, but did not meet the requirements in other years (even though the EPCRA section 313 thresholds did not change). One commenter indicated that continuing special NPDES requirements for facilities that have reduced their use of EPCRA section 313 chemicals removed the incentive for the facility to reduce their toxic chemicals.

In response, EPA wants to clarify that permittees that had to report releases under EPCRA section 313, but during the term of the permit have modified their industrial practices such that they no longer manufacture, process or otherwise use EPCRA section 313 water priority chemicals onsite in amounts that exceed the applicable thresholds under EPCRA section 313, are not subject to the special requirements of today's permit after reductions in use have been made. The Agency also wants to clarify that facilities that meet the EPCRA section 313 thresholds for the first time during the term of the permit will be required to comply with the additional requirements in today's permits for EPCRA section 313 facilities three years after the date they are first required to report under EPCRA section 313.

Some commenters expressed a considerable amount of confusion regarding whether the additional requirements applied to materials other than section 313 water priority chemicals. For example, a number of commenters indicated that containment and other special requirements were inappropriate for products which were not made of section 313 chemicals, such as products made of polystyrene materials. Some of these commenters correctly indicated that many polystyrene products are intended to be exposed to water and water resources.

The Agency wants to clarify that the special requirements in today's permits

for facilities that are subject to EPCRA section 313 reporting requirements only apply to areas of the facilities where EPCRA section 313 chemicals are managed. With respect to products made of polystyrene, the Agency wants to clarify that the feedstock for polystyrene, styrene, is a EPCRA section 313 chemical. However, polystyrene, which results from the polymerization of the monomer styrene, is not a EPCRA section 313 water priority chemical. The Agency notes there are significant chemical and physical differences between polystyrene and its monomer, styrene. The Agency agrees that polystyrene has much less potential to contribute pollutants to waters of the United States (other than in the form of floatables such as litter or improperly disposed pellets) then styrene, and believes that styrene should be managed in a way to eliminate contamination to storm water.

One commenter indicated that many facilities are required to report under section 313 because they have ammonia refrigeration systems or chlorine used for disinfection, and the nature of the use of these chemicals poses a very limited potential for discharge of pollutants through storm water. In response, the Agency notes that significant spills or releases of such materials can result in significant water quality impacts. As discussed in more detail below, the Agency believes the Agency has added sufficient flexibility to the requirements of today's permits to allow facilities to develop and implement pollution prevention strategies that are appropriate and are not overly burdensome for such situations.

One commenter noted that some facilities may use one or more section 313 water priority chemicals in excess of the 10,000 pound threshold, but use other section 313 water priority chemicals in amounts of less than the threshold. The commenter requested that EPA clarify if the special requirements for managing EPCRA section 313 apply to all parts of the facility where any toxic chemical is managed, or only those parts of the facility where section 313 water priority chemicals that the facility must report for (e.g. those toxic chemicals managed in amounts in excess of 10,000 pounds) are used. In response, the Agency want to clarify that the special requirements for EPCRA section 313 facilities in today's permits only apply to those portions of a facility where toxic chemicals that a facility must report releases for under EPCRA section 313 are managed. The Agency notes however, that the other baseline requirements of today's permits apply to other parts of the facility that generate storm water discharges associated with industrial activity.

Some commenters expressed concern that the special requirements placed unnecessary burdens on facilities that manage their toxic materials indoors. Other commenters suggested that EPA provide incentives for industries to eliminate exposure of raw materials and EPCRA section 313 toxic chemicals to precipitation.

In response, the special requirements for storm water pollution prevention plans at facilities that are subject to EPCRA section 313 for section 313 water priority chemicals primarily focus on areas of the facility where equipment used for the management, storage and processing of section 313 water priority chemicals is exposed to precipitation or can otherwise contribute pollutants to a storm drainage system. The Agency believes that the burdens associated with the requirements of today's permit are significantly reduced for facilities that manage (including loading and unloading activities) their toxic chemicals in buildings or under cover such that there is no exposure to precipitation and where the floor drainage in the building is known to be segregated from the storm water collection system. The Agency believes that this approach provides incentives for facilities to manage toxic chemicals in a way that ensures there is no exposure to precipitation.

EPCRA Section 313 Facilities: Types of Controls

With respect to the two approaches for establishing permit conditions, Options A and B, commenters expressed a wide diversity of opinions. Some commenters favored the design standards approach of Option A. These commenters provided a number of reasons for this support. Some commenters indicated that secondary containment and other measures are an essential part of storm water management at facilities that use large amounts of toxic materials. Some commenters stated that this approach would encourage facilities to develop additional measures to control potential releases of materials into storm water. Other commenters indicated that this approach would reward companies that have already installed such controls by reducing monitoring and reporting requirements. Other commenters indicated that this approach promoted pollution prevention measures and provided a check on runoff before it is discharged. Another commenter indicated that requirements for containing storm water and monitoring each discharge event were necessary to ensure water quality standards were met. One commenter indicated that design standards were necessary because the acute WET limitation, by itself, underestimated the true environmental risks of storm water discharges.

A number of commenters favored the performance standards approach of Option B. These commenters indicated that performance standards provide flexibility to industry, and allowed industry to pursue the most cost-effective control approach. Some of these commenters felt that this approach would better allow for consideration of local or facility specific factors in developing controls. One commenter thought performance standards were the best way to encourage innovative approaches. Some of the commenters indicated that the compliance obligations under either of the two proposed options could be substantial. Some commenters indicated that this approach would allow some industrial facilities to avoid the costs of secondary containment. Several commenters indicated that they viewed design standards as inefficient, ineffective methods for reducing pollutants.

In addition, some commenters urged the Agency to adopt an alternative approach. A number of commenters expressed their belief that both approaches were excessive or otherwise inappropriate. Some commenters indicated that they thought that pollution prevention measures (without a WET limitation) were adequate, and that an effluent limitation defeated the purpose of a plan to eliminate or reduce sources of pollutants. Several commenters suggested that dischargers be given the opportunity to select either a performance standard or design standards, and that this approach provided flexibility while at the same time recognizing the advantages of both approaches. One commenter favored voluntary measures as providing the utmost flexibility and representing the lowest cost approach.

After consideration of these comments, the Agency has decided to adopt an approach that is a hybrid of Options A and B. Today's permits provide targeted pollution prevention plan requirements that have been designed to address storm water discharges associated with industrial activities that are subject to EPCRA section 313 reporting requirements for water priority chemicals. These additional plan requirements have been designed to provide a reasonable

amount of flexibility to address concerns that specific design criteria, such as containment for specified design storms, were inappropriate.

In addition, as discussed in more detail elsewhere in today's notice, today's permits establish targeted monitoring requirements for EPCRA section 313 facilities where storm water discharges associated with industrial activity come into contact with any equipment, tank, container or other vessel or area used for storage of a section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a section 313 water priority chemical is handled. In this manner, additional data will be used to identify the need for more stringent controls and further pollution prevention efforts will be targeted to facilities where sampling data demonstrates the need for further scrutiny and controls.

The Agency feels that this approach has several advantages and can lead to the achievement of the goals articulated in the August 16, 1991 draft permits. First, this approach establishes a framework for facilities to develop and implement site-specific pollution prevention measures in a manner that ensures appropriate flexibility. Second, the approach ensures that the facilities develop methods and protocols, including discharge sampling, that allow for continued evaluation of the discharge and potential pollutant sources at the facility. Third, this approach is similar to a performance standard in that it establishes a benchmark that triggers additional evaluation of pollutant sources at the facility and of pollution prevention measures.

WET Limitation

Comments received on the proposed WET limitation in the August 16, 1991 draft general permits were mixed. Several commenters recommended the use of chronic WET limitations instead of acute limitations. These commenters indicated that acute WET tests underestimated the toxic impacts of intermittent discharges such as storm water. One commenter indicated that recent research indicates that organisms subject to periodic exposure of toxics typically found in storm water suffer greatly at concentrations much lower than acute toxicity levels based on continuous exposure. One commenter indicated that it was meaningless to require secondary containment without requirements for testing water discharged from the structure or effluent limitations. This commenter implied that even with a requirement to provide containment, facilities could still discharge contaminated storm water. The commenter indicated that if a facility properly implements an appropriate storm water pollution prevention plan, it will be virtually impossible for pollutants from the facility to contaminate storm water from the facility.

Several commenters thought it was premature and inappropriate that technology-based effluent limits be established for storm water discharges. These commenters raised a number of concerns about the WET limitation. Several of these commenters contended that EPA did not have adequate data at this time to demonstrate the proposed WET limitation could be met in a cost effective manner after application of the model technologies. Several commenters suggested that EPA had only considered several technologies for reducing toxicity, but had made an inadequate showing that all dischargers could comply with the limitation without resorting to expensive treatment schemes or alternative forms of disposal. Some of these commenters thought that reducing toxicity would be a complex undertaking at some facilities, and that some dischargers would have to develop extensive treatment strategies rather than solely rely on pollution prevention measures. These commenters contended that the cost of compliance with the WET limitation could be significantly higher than was estimated by EPA.

Other commenters suggested that whole effluent toxicity should be addressed through best management practices and pollution prevention measures rather than through numeric toxicity limitations.

Based on additional consideration, today's permit does not contain an acute WET effluent limitation. The Agency believes that acute toxicity is an appropriate parameter for evaluating priority storm water discharges associated with industrial activity. However, based on a consideration of comments indicating that source controls by themselves may not always be adequate to control toxicity in storm water discharges, and that reducing the toxicity of storm water discharges from some facilities may be a more difficult task than was originally anticipated, the Agency is not including the WET limitation in today's permits.

Toxicity Reduction Evaluations

The August 16, 1991 draft general permits provided that facilities that are subject to the Wet effluent limitation that detected acute WET in their storm water discharge and that where notified by the Director were required to conduct a toxicity reduction evaluation (TRE).

Several commenters objected to the requirement to conduct an expensive toxicity reduction evaluations (TRE) without more research into the methods to identify sources of toxicity to storm water, methods to reduce toxicity in storm water and applicability of current TRE procedures to storm water discharges. Consistent with these concerns, another commenter indicated that industry has little experience with conducting TREs for storm water discharges. One commenter indicated that if a discharge is found to fail the WET test, it should be allowed the opportunity to implement a storm water pollution plan and/or conduct additional WET tests before undergoing a formal toxicity reduction evaluation.

In response to concerns raised about conducting formal TREs, the Agency has modified today's permits to provide that a formal TRE is not required at this time where acute WET is detected. Rather, the Agency recommends that if acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected in storm water discharges after October 1, 1995, the permittee should review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. While today's permit does not specifically require dischargers that detect acute WET to conduct a formal TRE, the Agency may request a formal toxicity identification evaluation (TIE) or a TRE pursuant to the authority of section 308 of the CWA.

The Agency believes that this approach provides additional flexibility for facilities to evaluate their storm water discharges for toxicity and to take appropriate steps to reduce toxicity. The Agency believes that this additional flexibility is appropriate in light of concerns raised in the comments that the source(s) of toxicity may be difficult to initially determine and that facilities need an opportunity to evaluate whether specific pollutant prevention measures will successfully reduce toxicity, or whether the facility will need to pursue a treatment strategy. In addition, the approach taken in today's permits provides facilities with an opportunity to develop and implement pollution prevention strategies prior to the October 1, 1995. This provides discharges with an opportunity to implement site-specific and innovative measures to reduce toxicity. In addition, this approach recognizes the difficulties

in ascertaining whether a specific measure or approach will successfully reduce toxicity at a given facility. The Agency believes that this approach will provide additional opportunities to evaluate pollution prevention measures suitable for reducing toxicity and for evaluating the role of treatment technologies in such toxicity reduction strategies.

The Agency also recognizes that sources or activities other than handling toxic chemicals to be used in the industrial process may cause toxicity in some cases. However, the Agency believes that it is important to ensure that these sources of toxicity have been identified, and that the plan be reviewed to identify any appropriate steps be taken to reduce the toxicity of the storm water discharges. Appropriate steps may include diverting storm water flows which originate from offsite, or providing other appropriate storm water management measures. However, today's permits do not require that such offiste sources of pollutants be eliminated. The Agency believes that the approach taken in today's permits provide sufficient flexibility to address these toxicity sources.

Containment Requirements

The August 16, 1991 draft general permits requested comments on requiring secondary containment for two types of areas where liquid section 313 water priority chemicals are managed. The first type of areas was where liquid section 313 water priority chemicals are stored and storm water comes into contact with equipment, tanks, containers or other vessels used for such storage. The second type of areas was truck and rail care loading and unloading areas for liquid section 313 water priority chemicals. The provisions of the August 16, 1991 draft general permits required secondary containment structures to be sufficiently impervious to contain spilled section 313 water priority chemicals until they can be removed or treated. The August 16, 1991 draft general permits requested comment on specifying that secondary containment structures for such areas provide sufficient excess holding capacity for the contents of the largest container in the drainage area plus an allowance for drainage from a 25 year, 24 hour storm.

A number of commenters supported the concepts of secondary containment for targeted areas of facilities which manage toxic chemicals. One commenter urged EPA to require secondary containment for water priority chemicals at all sites, indicated that earthen dikes are easily made, relatively inexpensive, easily maintained and can usually be created, altered or removed within a day. Another commenter indicated that secondary containment for toxic chemicals is clearly a simple, easily verifiable method for preventing spills, and that too much flexibility would result in industrial facilities avoiding implementing appropriate requirements. Another commenter indicated that if the containment of toxic materials is not economically possible, the process should not be in existence. One commenter noted that an added benefit of increased containment is the reduction in fire hazards.

While most industry commenters addressing the containment issue recognized that secondary containment was a commonly used practice, a number of commenters noted that many industrial facilities have already installed secondary containment, but that many existing secondary containment units did not provide sufficient volume to accommodate runoff from a 25 year, 24-hour storm event [33]. The concern raised by these commenters was that they believed that many existing containment systems would not satisfy the 25-year, 24-hour standard and would have to be replaced or retrofitted. A number of these commenters raised concerns about facilities that, in good faith, had already constructed containment requirements would have to face the difficulties and expense of expanding existing secondary containment units. One commenter recommended that facilities with existing containment be allowed to grandfather in their existing facility.

Several other commenters indicated that a requirement to provide secondary containment could result in significant economic burdens for facilities without containment systems but with alternative control strategies. These commenters suggested alternatives such as requirements to develop and implement spill response strategies to reduce the size of the spill, provide drainage systems to isolate spills or other BMP requirements. Some commenters raised specific concerns regarding containment requirements for truck and rail car loading and unloading areas for liquid section 313 water priority chemicals. Some commenters indicated that drip and/or spill sump systems with high level alarms are in common use and provide ample protection against all but rare catastrophic releases. Another commenter, while supporting secondary containment requirements for liquid storage tanks indicated that the risk of spills at a truck or rail unloading area is not great where chemical transfers are not frequent and trucks are only at the loading station for a short time.

In response to a number of concerns raised on the requirements in the draft permits, today's permits contain a considerable amount of additional flexibility with respect to the use of secondary containment or other equivalent management practices for areas of the facility where liquid Section 313 chemicals are stored or loading and/or unloaded. Today's permit provides that liquid storage areas and truck and rail car loading and unloading areas for liquid section 313 water priority chemicals must be operated to minimize discharges of section 313 chemicals. For liquid storage areas, appropriate measures to minimize discharges of section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures. For truck and rail car loading and unloading areas, appropriate measures to minimize discharges of section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

This approach will allow permittees to select the most cost effective technology for controlling releases of section 313 chemicals at their site consistent with the requirement that the discharge of section 313 water priority chemicals is minimized. As discussed earlier in

[33] Commenters gave numerous examples of alternative design volumes for containment units. One commenter indicated that industry often develops its own design standard, for example, the petroleum industry has developed a number of standards, including a standard that bermed areas must contain liquid contents but not be greater than 6 feet high. A large chemical industry trade association indicated that most company guidelines require containment systems that are capable of holding the contents of the largest tank within the containment area. A number of other industrial commenters indicated that they had similar guidelines. Commenters indicated that containment systems for flammable liquids were expressly designed to conform to the National Fire Protection Association (NFPA) 30 code which states that dike walls should contain the potential liquid contents and be less than 6 feet tall. Some commenters anticipated that expanding existing containment structures would create conflicts with the 6 foot maximum wall height specified by the NFPA 30 code. Several commenters indicated that many existing containment systems do not comply with any specific volumetric requirements.

today's notice, today's permits also require that a registered PE certify that the storm water pollution prevention plan, including controls to minimize the discharge of section 313 water priority chemicals from areas of the facility where liquid section 313 chemicals are stored or loading and/or unloaded, has been prepared in accordance with good engineering practices. The PE certification will assist in ensuring that good engineering practices are used in selecting an approach to minimize the discharge of section 313 water priority chemicals.

In providing this additional flexibility with respect to containment requirements, EPA is particularly concerned that many existing secondary containment units would have to be retrofitted in order to comply with the requirement to provide sufficient storage for the 25-year, 24-hour storm. The additional flexibility provided by today's permits will ensure that this provision is attainable for facilities with existing controls, such as secondary containment, to minimize the discharge of section 313 water priority chemicals, and that such facilities will not have to provide for retrofitting of existing systems which currently meet the standard. At the same time, this approach addresses concerns regarding facilities where secondary containment measures are not economically achievable. Under today's permits, these facilities may implement alternative approaches to controlling pollutants in their storm water discharges in lieu of secondary containment.

EPCRA Section 313 Facilities: Other Concerns

One commenter indicated that the requirement in the August 16, 1991 draft permits that permittees either take immediate corrective action or shut down a unit or process if a leak is discovered which may result in a significant release of a section 313 water priority chemical to the drainage system was an unreasonable requirement because a release to the drainage system may not result in a release to waters of the United States.

In response, the Agency wants to clarify that the requirements in today's permits do not apply to facilities that do not discharge storm water associated with industrial activity to waters of the United States. The Agency has modified the language in today's permit to limit this requirement to leaks or other conditions which may result in significant releases of section 313 water priority chemicals to waters of the United States. The Agency has also replaced the term "corrective action" with the phrase "action to stop the leak or otherwise prevent the significant release of section 313 water priority chemicals to waters of the United States" to avoid confusion. The Agency also wants to clarify that the temporary use of drip pans, diversions to sumps, or other measures that prevent toxic chemicals from being discharged to waters of the United States until permanent repairs can be made may, where appropriate, constitute appropriate action within the meaning of today's permits. The Agency believes that such requirements are reasonable, are common industrial practices, and are necessary to prevent discharges of toxic chemicals to waters of the United States.

One commenter indicated that integrity testing of storage tanks is not economically achievable and did not reflect current industry practice, but rather visual inspection of above ground tanks and pipes is general industry practice. One commenter indicated that visual inspection was less expensive than integrity testing. One commenter indicated that integrity testing should not be required for straight runs of pipe without connections or joints or to welded joints. However, other commenters indicated that integrity testing was a viable alternative to containment. One commenter indicated that integrity testing should be required at reasonable intervals, and indicated that such testing is not an alternative to containment as most spills are the result of human error, not mechanical failure. One commenter indicated that many local and State standards exist for integrity testing for tanks and piping.

In response to comments, the Agency recognizes that integrity testing can be an important part of a sound spill prevention program. However, to minimize confusion and address concerns raised about specific integrity testing procedures, the Agency has added flexibility to today's permits by listing spill contingency plans and integrity testing as one type of management measure that is appropriate for liquid storage areas or areas of the facility that are used for truck and rail car loading and unloading of liquid section 313 water priority chemicals.

A number of commenters supported the requirement that plans for EPCRA section 313 facilities be certified by a registered PE. Some of these commenters indicated that this approach would allow the Agency to incorporate additional flexibility into some provisions of the permit, while still ensuring that the objectives of the permit are met. Several commenters suggested that additional flexibility be given to EPCRA section 313 facilities, and that the Agency continue to require PE certifications as a means to ensure that adequate measures are being implemented. One commenter requested clarification on whether the PE certification applied to the entire plan for the facility or for only those portions of the plan that addressed areas where section 313 water priority chemicals are managed.

However, some commenters raised concerns about PE certifications. One commenter indicated that PEs hired by a facility will not provide the appropriate level of assurance unless penalties for misrepresentation are possible. Other commenters stated their belief that industries and Federal facilities have historically been unable to monitor themselves. One commenter indicated that only a few registered PEs work for the chemical industry or many manufacturing industries, and suggested that the permits provide that employees other than registered PEs be allowed to provide a certification in addition to registered PEs. The commenter indicated that given their knowledge and experience, employees that were not a registered PE could result in equivalent or better certifications than those provided by a registered PE who was not an employee. One commenter suggested that the plant manager should be able to certify compliance based on information provided by his or her staff in lieu of a registered PE certification. One commenter recognized that a PE would be qualified to certify that secondary containment is designed and constructed in accordance with good engineering practices. However, most PEs have no special qualifications to certify certain other major elements of the plan, such as training, and the pollution prevention committee. Another commenter indicated that a PE certification could be expensive for small businesses.

In response, the Agency believes that PE certifications are appropriate for EPCRA section 313 facilities with storm water discharges associated with industrial activity for two reasons. First, the nature of the storm water concerns at these facilities dictates that storm water pollution prevention plans should be as reliable as possible. EPCRA section 313 facilities manage large amounts of toxic chemicals, and the material handling equipment and practices are a potential source of pollutants to storm water. EPA believes that certification by a PE will add a measure of independent reliability to

ensure adequate implementation of the plan requirements.

Second, the Agency's experience with the SPCC program indicates that PE certifications can be a useful component of a spill prevention program for facilities that manage large amounts of liquids and that PEs are particularly well qualified to evaluate controls at such facilities. Studies have indicated that a principal leak prevention measure for chemical handling systems and ancillary equipment is proper design and installation and that a quality audit of storage and handling equipment will prevent many leaks, particularly from loose fittings, poor welding, and maligned gaskets.[34]

The Agency believes that PE certifications will assist in ensuring that chemical handling systems are properly designed, installed and operated and that permittees comply with the terms of the permit and adequately implement measures identified in their pollution prevention plan. The Agency believes that the costs of a PE certification are achievable. For facilities that do not have an appropriate PE on staff to conduct the certification, the Agency encourages permittees to have employees with appropriate knowledge and experience assist a PE that is not regularly employed by the facility in making the certification.

The Agency further believes that a PE certification is appropriate for all plan components at EPCRA section 313 facilities can involve various aspects of the industrial process. For example, the training requirements of today's permits apply to all facility employees and contractor personnel that work in areas where SARA title III, section 313 water priority chemicals are used or stored. These training measures must ensure that such personnel are trained in and informed of preventive measures at the facility. The Agency believes that it is cost effective to have a PE that has begun to review parts of the plan to review the entire plan.

One commenter objected to the requirement to maintain records of the frequency and estimated volume of discharges from secondary containment areas. The commenter raised concerns that this provision triggered testing requirements. In response, the Agency wants to clarify that this provision does not trigger sampling requirements.

One commenter indicated that providing curbing and roofing for many forms of metals storage is not practical and provides no environmental benefit, and that roofs made of galvanized steel or copper present a greater potential source than industrial laydown areas for insoluble metals. In response, the Agency wants to clarify that today's permit (and the August 16, 1991 draft permits) provide dischargers with the option of either providing drainage controls to prevent or minimize the potential for storm water runon to come into contact with Section 313 water priority chemicals or to provide roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to wind and storm water. The Agency recognizes that in some situations where metal storage areas pose little potential as a pollutant source, roofs may not be necessary. In such case, facilities should pursue appropriate runon or drainage controls. The Agency notes that such drainage is typically provided for exposed portions of industrial activities to prevent ponding or flooding.

Special Requirements for Salt Storage

The August 16, 1991 draft general permits contained a provision requiring storage piles of salt to be enclosed or covered to prevent exposure to precipitation.

Several commenters identified several situations where storm water runoff from salt piles did not lead to a discharge of storm water to waters of the United States. Examples cited by the commenters included lined salt impoundments (such as those used for salt dome petroleum storage activities); situations where runoff from salt piles is used as a brine source in a manufacturing process; and certain storage piles associated with solar ponds. These commenters requested clarification as to whether salt piles where storm water runoff is not discharged to water of the United States needed to be covered or enclosed.

In response, the Agency did not intend to address these situations. The Agency has clarified today's permit to provide that salt piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States.

One commenter noted that economics dictates that every effort is made to limit the working face of salt piles to exposure to precipitation, but that a requirement that salt piles be covered at all times was not feasible because portions of the pile must be uncovered during the time salt is being placed on or removed from the pile. In response, the Agency recognizes that it will not always be feasible to ensure that working faces of the pile are covered when materials are being added or removed from the pile. Accordingly, today's permits provide that salt piles shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile.

One commenter indicated that salt piles should not be singled out, and that numerous other bulk commodities (e.g. potash, trona, sodium sulfate) are stored outside and are readily dissolved by precipitation. In response, at the time that the draft general permits were published, the Agency had appropriate information on the practices of the salt industry and information on the nature of pollutants in salt pile runoff that was used in the support of the proposed requirement. The Agency will continue to evaluate industry practices for other types of bulk commodities, and pollutants associated with runoff from storage practices.

One commenter argued that covers for very large stockpiles, (such as piles of 400,000 tons) were not feasible. As discussed below, the Agency has expanded its cost model to evaluate these discharges, and believes that such controls are in fact reasonable for such piles. The Agency also wants to clarify the dischargers who want to seek alternative permit conditions may submit an individual permit application with a description of why alternative requirements would be appropriate.

Several commenters indicated that additional time would be needed to comply with this requirement, particularly where a facility had a significant number of piles. In response, the Agency has extended the compliance date for this requirement until three years after issuance of the permit, consistent with section 402(p)(4) of the CWA.

Effluent Limitation for Coal Pile Runoff

The August 16, 1991 draft general permits requested comment on an effluent limitation for coal pile runoff of 50 mg/1 total suspended solids and pH within a range of 6.0 to 9.0. The draft permit provided that any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 25-year, 24-hour rainfall event shall not be subject to the limitation.

A number of commenters indicated their belief that the 10 year, 24-hour storm was adequately protective for coal pile runoff, as is evidenced by the Agency use of the standard in the Coal Mining Effluent Limitation Guidelines. One commenter complained that EPA failed to consider the costs of implementing a storm design system to

[34] For example, see "Hazardous Waste Tank Risk Analysis", EPA, 1986.

accommodate a 25-year, 24-hour storm event. The commenter indicated that the cost differential to construct a system to accommodate a 25-year, 24-hour storm event versus a 10-year, 24-hour storm event would be significant, and the incremental pollutant reduction associated with the larger design system would be small. The commenter indicated that the higher costs would be associated with the number or capacity of catch basins or inlet structures, the capacity of the conveyance system (e.g. the size of pipes or ditches), and pumping station capacity.

In response to comments, EPA has modified the effluent limitation in today's permits to be consistent with the effluent limitation guideline for coal pile runoff in the steam electric category (40 CFR 434). Therefore, the numeric limitation for coal pile runoff in today's permits uses the 10-year, 24-hour storm instead of the 25-year, 24-hour storm. EPA recognizes that the initial analysis used to develop the proposed limitations in the August 16, 1991 notice relied heavily on coast data from the steam electric guideline background document. The Agency believes that it is appropriate to tie the limitation in today's permit more closely to the limitation that was evaluated in the study until it can better evaluate the incremental costs associated with alternative approaches.

One commenter expressed concern that the proposed limitations may apply to coal pile runoff from steam electric facilities which is already subject to an effluent limitation guideline. In response, the Agency wants to clarify that the effluent limitation in today's permit for coal pile runoff is not intended to apply to coal pile runoff from steam electric facilities. As noted in the August 16, 1991 draft permit, coal pile runoff from steam electric facilities are already subject to an effluent limitation guideline (see 40 CFR 423). In addition, today's permits (and the August 16, 1991 draft permits), specifically exclude from coverage storm water discharges that are subject to an effluent limitation guideline.

One commenter expressed their belief that coal piles at mining sites and preparation plants should not be subject to the effluent limitation because such piles are already subject to SMCRA monitoring and performance standards at 30 CFR 730.21(j), 30 CFR 816.42 and 816.45), and the proposed limitations go beyond these requirements. The commenter indicated that they thought that all activities presently permitted under SMCRA at coal mining, ore mining and dressing, and mineral mining and processing facilities are not subject to the conditions of the general permit.

In response, the Agency wants to clarify that today's permits do not cover storm water discharges which are subject to an effluent limitation guideline. Most coal pile runoff from active mining sites and preparation plants are subject to the coal mining effluent limitation guideline at 40 CFR 434, and therefore can not obtain coverage under today's permit. The Agency notes that the imposition of SMCRA requirements does not preclude CWA requirements,[35] and that generally such requirements are intended to work together. For example, 30 CFR 816.42 requires that discharges of waters from areas disturbed by surface mining activities must be in compliance with all application Federal and State water laws and regulations. 30 CFR 816.45 establishes sediment control measures that do not specifically address toxic discharges from coal pile runoff.

One commenter requested clarification as to whether pre-SMCRA disturbed coal mining sites were subject to this requirement. The commenter argued that Congress intended that pre-SMCRA coal mining sites are to be handled under Title IV of SMCRA which established the Abandoned Mine Lands Program. In response, the effluent limitation for coal pile runoff in today's permits is intended to apply to all coal pile runoff covered by the permit. Today's permit can cover storm water discharges associated with industrial activity from pre-SMCRA disturbed lands where the discharger has submitted an NOI to be covered by the permit. While Congress intended that Title IV of SMCRA addressed pre-SMCRA coal mining sites, nothing in the legislative history of the provision suggests that it was intended as the exclusive means of addressing these sites.[36] Discharges that do not believe that this requirement is appropriate for a given discharge may submit an individual permit application or participate in an applicable group application. The Agency expects that inactive mining sites will generally have fewer coal piles than active coal mining sites, as it is expected that materials with a commercial value will often be removed from the site. In addition, the Agency recognizes that additional options are available to inactive sites, such as removing the coal piles, or reclaiming/stabilizing the site to ensure that storm water is not contaminated by contact with a coal pile.

Several commenters indicated that they believed that storm water permits should not impose numeric effluent limitations. EPA disagrees with this comment in connection with coal pile runoff. The Agency remains concerned about imposing broad national numeric effluent limitations which would apply to all storm water discharges associated with industrial activity. However, the Agency believes that numeric effluent limitations may be appropriate when applied to storm water discharges from specific, priority unit operations or types of industrial facilities. For example, as discussed above, the Agency has developed a number of effluent limitation guidelines for runoff from various industrial categories. The Agency intends to continue to evaluate the use of numeric effluent limitations for priority storm water discharges.

Several commenters thought the pH limitation of between 6.0 and 9.0 was unreasonable because the levels in rainfall and receiving waters often exceed the 6.0 to 9.0 range. Some of these commenters suggested that the Agency should consider allowing a wider range of values when it can be demonstrated that "natural" storm water is outside this range. Another commenter indicated that the pH limit was impossible to reach without treatment in areas of acid rain.

In response, the Agency recognizes that rainfall may have a pH of lower than 6.0 (or higher than 9.0). In such cases, dischargers will typically have to provide treatment for coal pile runoff prior to discharge, even where they are using low sulfur coal. Such treatment is anticipated and consistent with today's effluent limitation. The Agency also notes that the pH and TSS parameters in the coal pile limitation are indicator parameters for other toxic constituents, including a number of heavy metals. The pH of the storm water affects the availability and solubility of these parameters. Storm water with a low pH will leach metals from coal. Thus it is appropriate to control pollutants in coal pile runoff events where a low pH is caused by low pH rain instead of sulfur in the coal. In addition, metals in a low pH solution will tend to be in a form that is more available to organisms. Thus, the pH typically needs to be controlled to provide for appropriate control of these constituents.

One commenter indicated that EPA should only impose coal pile limitations where site-specific impacts to receiving streams are identified. The commenter also noted that the pollutant

[35] See *American Mining Congress* v. *EPA*, 965 F.2d 759 (9th Cir. 1992).

[36] *See American Mining Congress* v. *EPA*, *Supra*.

characteristics of coal pile runoff can depend on a number of factors, such as the size of the pile, the type of foundation under the pile, and the pH of the precipitation, and that the Agency should consider such factors at each site before imposing a limitation on that site.

In response, the Agency notes that the effluent limitations for coal pile runoff in today's permits are technology-based requirements based on BAT considerations, and do not consider site-specific water quality impacts. EPA does not agree with the commenter that it should be precluded from issuing technology-based requirements unless it specifically identifies water quality impacts associated with a discharge. This approach is not authorized by the CWA, which requires that NPDES permits for storm water discharges associated with industrial activity establish, at a minimum, technology-based BAT/BCT requirements. The Agency notes that it has considered a number of factors, including size of piles, type of coal, and other appropriate factors in developing the limitation for coal pile runoff in today's permits.

One commenter suggested that any modifications to numeric discharge limits on coal piles be done through changes in the effluent limitation guidelines, and that the establishment of new effluent limitations for coal pile runoff in a storm water permit was confusing.

In response, the Agency has authority to establish effluent limitations in NPDES permits on a case-by-case basis outside of the effluent limitation guidelines process. Section 402(a)(1) of the CWA authorizes EPA to issue permits imposing effluent limitations based on best professional judgement for activities for which EPA-promulgated effluent limitation guidelines have not been developed. Again, the Agency wants to clarify that today's permits do not modify requirements for coal pile runoff which are already subject to an effluent limitation guideline.

Deadlines for Plan Preparation and Compliance

The August 16, 1991 draft general permits provided that plans should be completed within 180 days of the effective date of the permit (and updated as appropriate) and provide for compliance within 365 days of the effective date of the permit. The August 16, 1991 draft general permits also required that NOIs be submitted within 180 days of the effective date of the permit.

One commenter indicated that with general permits, the effective date of the general permit is not the date that the discharger is subject to the permit. Rather, with a general permit, a discharger will need time to review the permit and understand the alternatives prior to selecting this option and submitting the Notice of Intent. Other commenters expressed confusion over plan deadlines and requested clarification.

In response, the Agency has modified the permit to provide specific dates for plan preparation and compliance. While the Agency does not agree that it cannot establish compliance dates based on the effective date of the permit, the Agency believes that specifying specific dates will minimize confusion regarding these dates, particularly where EPA issues permits for different States on different dates.

A number of commenters indicated that they thought that it was inappropriate to require that plans be developed at the same time that an NOI was required. In response, as discussed above, the Agency has modified the deadline for submitting most NOIs to be covered by today's permits to October 1, 1992 to provide consistency with the deadlines for individual permit applications and for part 2 of group applications. In addition, to reflect this date for submitting NOIs and to address the concerns of the commenters, pollution prevention plans for dischargers with facilities in operation on or before October 1, 1992 shall be prepared by April 1, 1993, and provide for implementation and compliance with the terms of the plan on or before October 1, 1993.

However, the Agency believes that operators of new industrial activity that commence after October 1, 1992 will have opportunities to prepare storm water pollution prevention plans prior to commencement of the industrial activity. Thus, today's permits require that such new dischargers be prepared to comply with their pollution prevention plan upon commencement of their discharge. The Agency believes that this approach will ensure that new facilities adequately incorporate pollution prevention concepts into their plans for new industrial activities.

Some commenters suggested different times for complying with plans. One commenter recommended that facilities be given 270 days after the effective date of the permit to prepare the plan. Some of these recommended that facilities be given a full year to develop the plan and an additional 180 days to implement baseline requirements. Other commenters suggested that permittees be given one year from the effective date of the permit to complete its plan and one and one half years from the effective date of the permit to comply with the conditions of the permit. One commenter thought permittees should be given one year from the effective date of the permit to prepare plans, and an additional year to comply with the plan to allow facilities to incorporate storm water management planning into the normal budgeting and operation of the facility. Another commenter indicated that the storm water control measures of the draft permit may require significant technical and management input for testing and evaluation prior to final implementation. One commenter urged EPA to stretch out compliance deadlines based on their belief that such action would provide industries with additional opportunities to plan and implement more comprehensive solutions to storm water management, thereby increasing the effectiveness of integrated pollution prevention methods.

In response, EPA notes that today's permits provide that plans can be modified after the initial compliance date to address information that comes from testing and the evaluation that occurs during the term of the permit. Given this flexibility, and based on a consideration of the requirements of the permit, the Agency believes that the time frames established in today's permits are reasonable. To ensure adequate flexibility and in response to comments, today's permits allow the Director to establish a later date for preparing and complying with plans based on a showing of good cause. However, it should be noted that section 402(p)(4)(A) of the CWA requires that any permit for a storm water discharge associated with industrial activity shall provide for compliance as expeditiously as practicable, but in no event later than three years after the date of issuance of such permit.

One commenter suggested that permittees be given one year to comply with the requirement to test for (or evaluate) illicit connections. In response, today's permit has been modified to provide that permittees have one year to certify that they have tested for or otherwise evaluated their storm water conveyance system for the presence of non-storm water discharges This has been done to provide consistency between the deadline for certifying that storm water discharges have been tested for the presence of non-storm water and the deadline for implementing the pollution prevention plan.

One commenter suggested that small business be given 3 to 5 years to comply with permit requirements. In response,

the Agency believes that the complexity of the flexible, site-specific storm water pollution prevention plans required by today's permits will to some degree be related to the size of the facility. Thus, EPA believes that the time frames established in today's permits are appropriate for small businesses. However, in response to comments, today's permits provide additional flexibility for the Director to establish a later date for preparing and complying with plans based on a showing of good cause.

One commenter indicated that Federal facilities would have unique problems with the compliance dates in the August 16, 1991 draft permits because of the complexities of the Federal budgetary process. In response, the Agency notes that the draft permits were first publicly noticed on August 16, 1991. Federal facilities have had since that time to make planning decisions necessary to support plan preparation. In addition, today's permits require that plans for existing storm water discharges associated with industrial activity be developed by April 1, 1993, six months after the beginning of the 1993 fiscal year for the Federal government. Again, the Agency wants to clarify that today's permits provide additional flexibility for the Director to establish a later date for preparing and complying with plans based on a showing of good cause.

Some commenters indicated that it generally would take additional time to comply with the more complex requirements of the permit. Many of these commenters focussed on the special requirements for EPCRA section 313 facilities. For example, several commenters indicated the proposed plan requirements for EPCRA section 313 facilities can require substantial planning and design efforts. One commenter indicated that it would generally not be possible for many facilities to provide measures requiring significant construction, such as secondary containment, within one year because of the demand on environmental engineering firms, the time needed to prepare plans, the lead time required for planning and designing activities to construct secondary containment structures, and the delays that industrial facilities through the North will experience due to winter weather. Several commenters, including a large water pollution trade organization indicated that three years from the effective date of the permit be provided for any measure, such as installing secondary containment, that requires construction. Other commenters indicated that they thought four years would be needed by most facilities to complete installation of any required containment structures.

In response, the Agency believes that it is appropriate to provide permittees with more complex requirements which may require significant construction activities, such as those for EPCRA section 313 facilities, salt storage, and coal pile runoff, additional time to comply with today's permit requirements, and has established a three year compliance date for complying with these special requirements. In addition, facilities which trigger EPCRA section 313 thresholds for the first time during the permit term will have three years from the time they first have to report to comply with the additional requirements for EPCRA section 313 facilities. This deadline is consistent with section 402(p)(4)(A) of the CWA which requires that any permit for a storm water discharge associated with industrial activity shall provide for compliance as expeditiously as practicable, but in no event later than 13 years after the date of issuance of such permit. However, the Agency wants to clarify that such facilities must prepare a storm water pollution prevention plan address the baseline requirements (e.g. requirements other than the special requirements) by April 1, 1993, and provide for compliance with this portion of the plan by October 1, 1993.

One commenter requested that EPA clarify requirements for oil and gas operations that prior to October 1, 1992, did not require an NPDES permit for their storm water discharge, but that have a discharge of storm water resulting in the discharge of a reportable quantity of oil or a hazardous substance after October 1, 1992. In response, today's permits establish special deadlines for certain oil and gas operations. Oil and gas operations having a discharge of a reportable quantity of oil or a hazardous substance after October 1, 1992 are required to submit an NOI within 14 days after knowledge of the reportable quantity release and prepare and comply with the terms of a storm water pollution prevention plan within 60 days of the reportable quantity release. EPA believes this shorter time frame is appropriate because the potential for spills associated with such facilities and the additional expertise expected in the oil industry that has developed to comply with SPCC requirements.

Subsequent to the publication of the August 16, 1991 draft general permits, Congress established special permit application deadlines in the Transportation Act of 1991 for storm water discharges associated with industrial activity from facilities that are owned or operated by a municipality that has participated in a timely part 1 group application and where either the group application is rejected or the facility is denied participation in the group application by EPA. As discussed above, the deadline for such facilities to submit NOIs to be covered by today's permits is consistent with the Transportation Act. Today's permits provide that the plan for storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely group application and where either the group application is rejected or the facility is denied participation in the group application by EPA must be prepared on or before the 365th day following the date on which the group is rejected or the denial is made, (and updated as appropriate). In addition, such permittees must provide for compliance with the terms of the plan on or before the 545th day following the date on which the group is rejected or the denial is made. These deadlines will give facilities that are part of a rejected group application sufficient time to comply with the pollution prevention plan requirements of today's permits.

Procedures for Reviewing Plans

The August 16, 1991 draft general permits provided that permittees were not required to submit a storm water pollution prevention plan to EPA unless EPA requested the plan on a case-by-case basis. The permit also provided that EPA may notify the permittee that the plan does not meet one or more of the requirements of the permit. Unless otherwise provided by EPA, permittees would have 30 days after such notification to make necessary changes and submit to the Director a written certification that the requested changes had been made.

Several commenters indicated that they thought, depending on the extent to which the Director required changes, 30 days could be an insufficient period of time to make the required changes. Some of these commenters suggested 90 days as a time period to make required revisions.

In response, the Agency notes that the permit provides flexibility for EPA to establish a longer or shorter time period for permittees to make and implement modifications to their plans. In general, EPA will consider factors such as whether the change is procedural in nature or will require structural

modifications, the extent of the modifications, and the environmental risk of the discharge when establishing alternative time periods for modifying plans.

One commenter indicated that they believed that plans should be dynamic documents which are revised as appropriate to reflect changes in the facility's operations. The Agency agrees with this comment. The Agency has modified today's permits to clarify and highlight this principle. Today's permits require that the permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants to waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants. In addition, the requirements in today's permits for comprehensive site compliance evaluations have been developed based on the concept that permittees need to inspect their sites and evaluate the accuracy and effectiveness of their plans and make plan modifications as necessary.

Some commenters indicated that requiring permittees to submit plans to EPA upon request for review and approval would decrease plan effectiveness by discouraging facilities from revising their plans as necessary in light of new information and to meet changing circumstances. They indicated that this approach would also impose a heavy burden on EPA's limited reviewing resources.

The Agency does not agree that submitting plans to EPA upon request for review and approval would decrease plan effectiveness by discouraging facilities from revising their plans as necessary in light of new information and to meet changing circumstances. As discussed above, today s permit requires permittees to evaluate the accuracy and effectiveness of their plan, and to make modifications as necessary. The Agency believes that most discharges will realize that modifying their plan to make it more effective and will decrease the chances that EPA will require modifications. Nonetheless, as discussed below; plans must be submitted to EPA only on request.

Some commenters suggested submitting the storm water pollution prevention plans to EPA for their approval, thus avoiding compliance problems later. One commenter indicated that they thought some businesses will want their plans approved by EPA prior to implementing them, to avoid wasting money on a plan which is later deemed inadequate.

The Agency wants to clarify that it does not intend to conduct detailed reviews of all storm water pollution prevention plans prior to authorizing storm water discharges under the general permit because of limited resources. However, EPA retains authority to request and review storm water pollution prevention plans and to require changes to the plans and/or submittal of an individual permit application where appropriate. The Agency wants to clarify that if plans are voluntarily submitted to EPA for Agency review, the Agency is not precluded from requesting additional modifications at a later date based on additional information, changing conditions, evaluation of the effectiveness of the plan, or other relevant factors. Neither is the Agency precluded from requiring plan modifications where a plan had been voluntarily submitted earlier, and the Agency did not respond.

One commenter recommended that the permit should provide that no enforcement action could be brought against a permittee for violation of several provisions of the permit that provided dischargers with flexibility in selection of practices.

In response, the Agency will exercise enforcement discretion where appropriate when evaluating permit compliance. The Agency recognizes that several provisions of the permit provide flexibility for selecting controls to be implemented, and will consider good faith attempts at compliance when exercising its enforcement discretion. However, the Agency is concerned that specific language in the permit as requested by the commenter would create unnecessary confusion, and that some permittees would inappropriately argue that such language precluded EPA from enforcing permit conditions in all cases.

One commenter requested that EPA clarify that when requesting modifications to a storm water pollution prevention plan, the Agency identify with reasonable specificity which provisions of the plan require change and which of the minimum requirements the existing plan violates. In response, the Agency has made this clarification.

One commenter raised concerns that EPA has not provided administrative procedures for reviewing plans and requiring modifications, and it is unclear whether the permittee has the right to meet with the Agency, submit comments on the required changes, or file any sort of appeal. The commenter indicated that a discharger and EPA may legitimately differ on whether a plan meets appropriate requirements, and that facilities should have the opportunity to request review of the agency's initial determination that a plan does not meet requirements, and explain exactly why a particular element of a plan is appropriate for a specific facility.

In response, the ultimate resolution of disagreements concerning the adequacy of pollution prevention plans is a compliance issue. However, permittees always have the opportunity to make their disagreements known to the Agency and to resolve compliance concerns on an informal or formal basis. It can also be noted that EPA's regulations, and today's permits provide dischargers with the opportunity to submit an individual permit application. In cases where the Agency decides to issue an individual permit, dischargers will have additional opportunities for input.

Monitoring and Reporting Requirements

I. Overall Approach to Monitoring Requirements

On August 16, 1991, EPA requested comment on modifying the regulatory provision at 40 CFR 122.44(i)(2), addressing the establishment of discharge monitoring reporting requirements in NPDES permits for storm water discharges associated with industrial activity. The regulation existing at the time of the proposal provided that NPDES permits, including NPDES permits for storm water discharges, require discharge monitoring reports at a minimum of once a year. As part of the August 16, 1991 notice, EPA specifically identified six options for modifying requirements to report monitoring results for storm water discharges associated with industrial activity.

In addition, the draft general permits in the same August 16, 1991 notice requested comment on annual discharge sampling of storm water discharges from most classes of storm water discharges associated with industrial activity as this approach was consistent with the option EPA favored in the August 16, 1991 notice for the regulatory change. However, in the August 16, 1991 notice, the Agency also indicated that the monitoring requirements in the final permits could be less stringent if the regulatory change provided additional flexibility with respect to minimum monitoring requirements.

The draft baseline general permit proposed on August 16, 1991, required a minimum of annual monitoring for all discharges of storm water associated

with industrial activity except those from certain oil and gas operations. Most facilities were subject to a baseline monitoring requirement of eight parameters plus any pollutant limited by an effluent guideline to which the facility was subject. Six classes of industries were selected for more extensive semi-annual monitoring with additional industry-specific parameters. Oil and gas exploration or production operations were given the option of obtaining a PE certification that a pollution prevention plan was being implemented in accordance with the permit in lieu of monitoring.

On April 2, 1992, (57 FR 11394), EPA published final revisions to the Agency's baseline NPDES monitoring requirements for storm water discharges. Under the modified regulatory framework, monitoring requirements for NPDES permits for storm water discharges associated with industrial activity are to be established on a case-by-case basis, with minimum requirements relating to site inspections rather than discharge monitoring.

II. Comments on Proposed General Permit Monitoring Requirements

Several commenters thought that the monitoring requirements in the August 16, 1991 draft permits should be retained or expanded. These commenters indicated that monitoring was necessary to adequately identify pollutant sources, determine the effectiveness of pollution prevention measures, and build a data base to support future permit issuing activities. However, the majority of commenters addressing this issue raised concerns regarding proposed requirements for all permittees to sample their discharges. A number of these commenters suggested that it was important to sample storm water discharges from priority classes of activities or facilities, but that across-the-board monitoring requirements for all facilities covered by the permit may not be an appropriate or cost-effective use of resources. While most commenters in the regulated community supported the necessity for controlling pollutants discharged via storm water runoff, the expense and difficulties of storm water monitoring were of major concern. Some of these commenters indicated that overly broad discharge monitoring requirements at this point in time could be counterproductive toward the goals of the program, as significant resources would have to be expended collecting and analyzing discharge samples, thereby limiting available resources at some facilities to develop and implement measures that would result in the removal of pollutants in their storm water discharges. Other concerns raised by the commenters included the difficulties in characterizing storm water discharges with sampling data, the belief that in some situations, site inspections would be more appropriate than monitoring for determining permit compliance, and EPA's limited ability to effectively review data. An underlying theme that emerged from the comments was that a number of factors, such as the potential for discharges to contain significant amounts of pollutants, the nature of permit conditions, and the nature of the operation of the facility should be considered when establishing monitoring conditions in NPDES permits for storm water discharges.

In response, the Agency has modified the monitoring requirements of the final general permit to be consistent with the flexibility afforded by the changes to minimum monitoring requirements at 40 CFR 122.44(i)(2) made on April 2, 1992. Monitoring requirements for discharges from many classes of industrial facilities have been reduced or eliminated. Monitoring requirements have been retained for selected industries or industrial activities which, due to the nature of industrial activities or materials stored or used onsite, have significant potential for contributing pollutants to storm water. These requirements are discussed in more detail below.

As discussed in more detail earlier in today's notice, the Agency has also added requirements to conduct comprehensive annual site compliance evaluations which have been designed to evaluate the effectiveness of permit implementation and identify pollutant sources consistent with the April 2, 1992, regulatory modifications. The Agency believes that these compliance evaluations can provide an efficient and cost-effective approach for evaluating the effectiveness of permit program implementation.

In adopting this approach, the Agency recognizes that discharge monitoring data can play several important functions, including assisting in identifying pollutant sources, evaluating the effectiveness of pollution prevention measures, evaluating the risk of discharges by indicating the type and concentration of pollutant parameters in the discharge, and provide information which can be used in efforts to identify water quality impacts, and supporting future permitting activities, such as Tier II, III and IV activities described in EPA's long-term permitting strategy.[37]

However, the Agency also recognizes that other types of information can be used to supplement or in some cases replace monitoring information. For example, the requirements in today's permits for the narrative description of potential pollutant sources, inspections, testing for non-storm water discharges, and comprehensive site compliance evaluations will assist in identifying pollutant sources associated with industrial activity. In addition, the Agency notes that the effectiveness of some types of pollution prevention measures can be observed without monitoring, such as removal or elimination of pollutant sources, eliminating exposure of materials to precipitation, and eliminating non-storm water discharges to the storm sewer system. Other measures, such as maintaining vegetation to prevent erosion, silt fences, and screens or other devices to collect floatables can be evaluated without sampling discharges.

The approach taken in today's permits represents an approach which uses both comprehensive site compliance evaluations and monitoring requirements for targeted industrial activities and facilities to pursue the goals of the program. In accordance with 40 CFR 122.44, today's permits require permittees to conduct comprehensive site compliance evaluations. In addition, all permittees are required to develop and implement pollution prevention plans. These requirements establish a baseline for ensuring facilities evaluate pollutant sources and evaluate the effectiveness of pollution prevention measures for storm water discharges. Today's permits also establish monitoring requirements for facilities where EPA has identified targeted activities that are potential sources of significant amounts of pollutants. These requirements will provide additional information that will assist and supplement efforts to identify pollutant sources and evaluate the effectiveness of pollution prevention requirements. The Agency believes that this approach represents a balanced approach that addresses the concerns raised in the comments. Those facilities that are not required to conduct monitoring will be able to dedicate their efforts at this time to developing and implementing pollution prevention plans which involve identifying pollutant sources

[37] EPA's long term permit issuance strategy for storm water discharges associated with industrial activity is described in the April 2, 1992 **Federal Register** (57 FR 11394).

and evaluating the effectiveness of pollution prevention measures. Additional monitoring requirements have been limited to facilities which EPA believes, based on a general evaluation of industry practices, may have sources of significant amounts of pollution that warrant further evaluation.

Today's permits provide an exemption from monitoring requirements for outfalls at targeted facilities that do not have any materials, material handling equipment, industrial machinery or industrial operations exposed to storm water located within the drainage area of the outfall. In such cases, a discharger must provide an annual certification that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or, in the case of airports, deicing activities, within the drainage area of the outfall will not be exposed to storm water. Where the certification is provided, the permittee will not be required to monitor storm water discharges from the outfall. (However, the permittee must still comply with other applicable permit requirements which do not address sampling pollutants in discharges). This approach is consistent with the general monitoring scheme of today's permits which focuses monitoring requirements on specific targeted sources of pollution. The Agency believes that this approach will provide an incentive for permittees to eliminate exposure of potential pollutant sources to storm water. Eliminating exposure of these materials to storm water is one of the most effective pollution prevention measures available for these sources and is consistent with the objectives of the permit and the CWA. The Agency also believes that this approach will lower burdens on facilities that have taken steps to eliminate exposure of materials and equipment to storm water discharges.

In developing the monitoring strategy in today's permits, EPA recognizes that it has other sources of information available to assist in achieving the broader national objectives supported by monitoring data, such as developing additional targetted controls for storm water discharges from priority industries. Examples of other sources of monitoring data include, group applications [38], individual applications, information in State Storm Water Permitting Plans[39], and storm water monitoring data required under other EPA or authorized NPDES State permits that are entered into the permit compliance system (PCS) data base. In addition, EPA is authorized under section 308 of the CWA to require dischargers to, on a case-by-case basis, submit sampling monitoring data necessary to carry out the objectives of the CWA. This authority can be used to obtain storm water monitoring data that is not otherwise required under the permit. For example, EPA could request facilities from targetted industries that have certified that they do not have materials or equipment exposed to storm water to report storm water monitoring data in order to characterize other potential pollutant sources or to identify background levels of pollutants from facilities that have been able to eliminate exposure of these activities to storm water.

Other commenters raised issues regarding the appropriateness of the proposed monitoring parameters to particular industries. In general, EPA has modified some of the parameters associated with the monitoring requirements in today's permits in response to comments and to provide a better relationship between the monitoring requirements and potential pollutant sources associated with classes of industrial activities. These concerns and changes are addressed below.

Several commenters also requested clarification on, or objected to, potential overlap between the industrial categories. While the comments were directed at the EPCRA section 313 facilities, the Agency's response applies to all annual and semi-annual monitoring categories in the final permit. Generally, the industry-specific monitoring requirements are additive and not intended to be mutually exclusive. Monitoring requirements must be evaluated on a outfall by outfall basis. If a particular discharge fits under more than one set of monitoring requirements, the facility must comply with both sets of sampling requirements. This will ensure adequate data to evaluate all of the appropriate pollutant sources. The Agency notes that this approach often will not result in requiring dischargers to collect extra samples, but rather to analyze samples that are collected for additional parameters.

On the other hand, sampling parameters often overlap between the categories. For example, an outfall subject to the semi-annual EPCRA and annual "Other Facility" sampling requirements could sample semi-annually for EPCRA parameters and satisfy both sampling requirements by analyzing for parameters in an applicable effluent guideline to either of the two semi-annual samples. However, coal pile runoff should be addressed somewhat differently because it is subject to a numeric effluent limitation under today's permit. Coal pile runoff should be monitored before it is commingled with flows from other sources. Thus, coal pile runoff from a primary metal facility, for example, should only be monitored for the parameters specified for coal pile runoff. The Agency believes that this approach will adequately support the effluent limitation of today's permit.

The monitoring requirements of today's permits can be broken into two general classes, semi-annual monitoring, and annual monitoring. Facilities that are required to conduct semi-annual monitoring are required to report data annually. Facilities that are required to conduct annual monitoring are required only to report data if the data is requested by the permitting authority. EPA believes that higher monitoring frequency for facilities that are required to report data will assist EPA in efforts to establish program priorities and will support future permitting efforts, as well as gives these facilities more data to consider. Not requiring facilities to submit data unless it is specifically requested will lower reporting burdens on facilities where data is not specifically requested, while still providing facilities with a means to evaluate pollution prevention plans.

III. Certification of Testing For Non-storm Water Discharges

The draft permit prohibited the discharge of all non-storm water and required certification under the pollution prevention plan that all storm water outfalls had been tested for the presence of illicit connections. If unable to provide certification within the 180 day pollution prevention plan development period, the permittee was required to notify the Director. One commenter felt the certification date should be changed to correspond to the deadline for pollution prevention plan compliance.

The Agency concurs with this comment and has modified the "Failure to Certify" reporting requirement. Any

[38] EPA has received over 1,200 Part 1 group applications from a wide variety of industrial groups. Part 2 of the group applications, which contains representative monitoring data from the industrial group, are due on October 1, 1992.

[39] State Storm Water Permitting Plans are to contain a description of activities addressing priority issuing permits for storm water discharges from priority industrial facilities (see April 2, 1992 (57 FR 11394)).

facility that is unable to provide the certification regarding testing for non-storm water discharges, must notify the Director by October 1, 1993 or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1992, within 180 days after submitting a NOI to be covered by this permit. The October 1, 1993 date is appropriate for existing facilities because it is consistent with the timing provided for these facilities to prepare (April 1, 1993) and implement (October 1, 1993) a plan. The 180 days provided to facilities which begin to discharge storm water associated with industrial activity after October 1, 1992 is consistent with the requirement that these facilities must have their plan developed before beginning the industrial activity that will generate the storm water discharge.

IV. Monitoring and Reporting Requirements for Classes of Targeted Industrial Activities

Semi-Annual Monitoring Requirements

In today's permits, EPA has retained, with some modifications, the semi-annual (twice per year) monitoring requirements proposed in the August 16, 1991 draft permits for certain storm water discharges associated with industrial activity from: EPCRA section 313 facilities with water priority chemicals; primary metal facilities; land disposal units/incinerators/boiler and industrial furnaces (BIFs); wood treatment facilities (wood preservers); and coal pile runoff. As discussed below, semi-annual monitoring requirements have been added for battery reclaimers. These facilities have a significant potential to contribute toxic pollutants to storm water due to the nature of activities occurring onsite and the types of materials handled.

In response to comments, EPA has clarified the requirements as they pertain to each industrial category. For the most part, monitoring requirements are limited to discharges associated with specific industrial activities, and do not necessarily apply to all storm water discharges from a site.

EPCRA Section 313 Facilities with Water Priority Chemicals. Comments were received both objecting to and supporting additional monitoring requirements for EPCRA section 313 facilities. In both cases, commenters indicated that any EPCRA monitoring conditions should be applied only to those areas where section 313 water priority chemicals were stored or handled. Other commenters suggested that sampling parameters be limited to those section 313 water priority chemicals actually stored within the drainage area. Several individual companies and trade organizations argued that typical pollution prevention measures at their facilities are already stringent enough to prevent uncontrolled releases into the environment and that monitoring should either be eliminated or reduced. Comments regarding acute whole effluent toxicity testing are addressed separately below.

In response, as discussed above, EPA believes that facilities that manufacture, import or process, or other use of large amounts of toxic chemicals can potentially be a significant source of toxic pollutants to storm water. Failures of process, handling and storage equipment used for EPCRA water priority chemicals associated with operator error, structural failures, and corrosion can result in the release of toxic chemicals. Such releases can continue undetected until the release becomes obvious.[40] In such cases, monitoring data can provide valuable insight with respect to these pollutant sources. For example, monitoring data can show that leaks from seals, values or piping are a source of pollution to storm water. The Agency also believes that EPCRA thresholds are appropriate for identifying priorities for the purposes of establishing storm water monitoring requirements, as these thresholds identify a well known set of facilities which manage large amounts of toxic chemicals. One of the major purposes of monitoring storm water discharges from EPCRA section 313 facilities is to provide data that can assist in identifying pollutant sources associated with the storage, use or management of EPCRA section 313 water priority chemicals. Dischargers will also be able to review monitoring data as a means of evaluating the effectiveness of pollution prevention measures. Assessment of data will also allow the Agency to develop the controls and monitoring requirements in the Tiers II, III, and IV storm water permits.

In response to comments, the Agency has limited special EPCRA monitoring requirements to the areas where section 313 water priority chemicals are stored or handled. The final permit clarifies that these monitoring requirements apply only to those facilities subject to EPCRA section 313 reporting requirements for section 313 water priority chemicals, and then only for those storm water discharges associated with industrial activities that allow storm water to come into contact with any equipment, tank, container or other vessel or area used for storage of a section 313 water priority chemical, or storm water discharges from a truck or rail car loading or unloading area where a section 313 water priority chemical is handled.

Primary Metal Facilities

Primary metal facilities (SIC 33) are engaged in the manufacturing of ferrous metals and metal products and the primary and secondary smelting and refining of nonferrous metals. In addition, facilities engaged in the molding, casting, or forming of ferrous or nonferrous metals are included in this group. Due to the nature of processes and activities commonly occurring at these facilities, a number of sources can potentially contribute significant amounts of pollutants to storm water. Sources of pollutants include outdoor storage and material handling activities, particulate and dust generating processes, and slag quench processes. Open air storage and handling of raw materials, products, and wastes is a common practice at many of these facilities. In addition, dust and particulate-generating processes, particularly at smelting and refining facilities, are considered potential sources of pollutants in storm water discharges. Many of these types of facilities also use a high volume of water for operations such as spray quenching, heat treating, and die cooling, which when coupled with the old age of many primary metals industry facilities, can create the potential for non-storm water to be discharged to the storm water collection systems.

One commenter suggested that monitoring requirements should be limited to those in effluent guidelines applicable to specific facilities. In response, the Agency does not agree with the commenter because the effluent guidelines for process discharges may not address all of the pollutants that potentially can be found in storm water discharges. In some cases, the effluent guidelines use indicator parameters such as TSS to characterize the removal of other pollutants, such as metals. While such an indicator can be appropriate for evaluating the effectiveness of treatment technologies, TSS will not differentiate between inert solids and other pollutants, such as heavy metals. EPA has modified today's permits by not including total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and total phosphorus as parameters required for primary metal facilities. High levels of these parameters are not typically associated with the activities of primary metal facilities, and not requiring these parameters will reduce the costs of

[40] See "Hazardous Waste Tank Risk Analysis," EPA, 1986.

sampling for these facilities. In addition, the Agency has added the requirement that these facilities monitor any pollutant limited in an effluent guideline to which the facility is subject. The Agency believes that the addition of these parameters is appropriate, because they represent parameters which have been identified as being associated with the various subcategories of primary metal activities. In addition, the Agency notes that it was an oversight in the August 16, 1991 draft permit to not require monitoring of any pollutant limited in an effluent guideline to which the facility is subject, and that most other sampling requirements for other categories of industries addressed (including the category of additional facilities described below), required monitoring of these parameters.

One company requested silicon manufacturing and semiconductor grade silicon manufacturing be exempted due to lower heavy metal content of ores. In response, data indicates that raw silicon metal for manufacture of silicones begins with the reduction of quartz rock which typically contains relatively minor amounts of heavy metals relative to other ores. In addition, the manufacture of semiconductor grade silicon begins with distilled chlorosilanes which are free of heavy metals and that heavy metals cannot be in the starting material or they would contaminate the product. Based on a consideration of these factors, the Agency has limited the monitoring requirements for these facilities.

Two trade organizations questioned EPA's legal authority to require additional monitoring of the primary metal industry and indicated that many of their members already recover particulate that can contaminate storm water and that facilities that did not perform primary smelting operations did not generate dust. One of these commenters suggested that EPA wait until it collects and reviews information from other sources, such as group applications, before requiring monitoring.

The Agency has broad authority under sections 308(a) and 402(a)(2) of the Clean Water Act to establish any monitoring conditions deemed necessary to develop or insure compliance with effluent standards or insure protection of water quality. The monitoring conditions in today's permits have a number of purposes, including providing information to identify pollutant sources, and evaluating the effectiveness of pollution prevention measures. In addition, as summarized above, the Agency notes that industrial activities which typically occur at SIC 33 facilities can contribute pollutants other than by dust generation.

Land Disposal Units/Incinerators/BIFs

Land disposal units and incinerators and boilers and industrial furnaces (BIFs) that burn hazardous waste may receive a diverse range of industrial wastes. Waste receiving, handling, storage and processing, in addition to actual waste disposal can be a significant source of pollutants at waste disposal facilities. The surface water impacts associated with land disposal units are well characterized. EPA has summarized case studies documenting surface water impacts and ground water contamination of land disposal units (see August 30, 1988). Evaluation of 163 case studies revealed surface water impacts at 73 facilities. Elevated levels of organics, including pesticides, and metals have been found in ground water and/or surface water at many sites.

The August 16, 1991 draft permits proposed special sampling requirements for land disposal units. Today's permits contains modified monitoring requirements for land disposal units and incinerators and boilers and industrial furnaces (BIFs) that burn hazardous waste and are at facilities with storm water associated with industrial activity. BIFs are those boilers and industrial furnaces burning hazardous waste for fuel that are subject to regulations promulgated under the Resource Conservation and Recovery Act (RCRA) and published February 21, 1991 (56 FR 7134), are similar to hazardous waste incinerators in that they burn hazardous materials such as spent solvents, contaminated fuels, etc., but the primary purpose of the facility is not waste disposal and the hazardous material is typically burned to provide heat, steam or generate electricity for use in manufacturing processes.

Incinerators and BIFs that burn hazardous wastes have been added to this category because these facilities will typically manage the same types of wastes as landfills, and therefore present similar risks with respect to waste transportation, handling, and storage. In addition, a wide range of toxic pollutants potentially present in fuel stocks, material accepted for disposal, air emission particulate, and ash at these facilities have the potential to contaminate storm water runoff.

A number of commenters objected to the number of parameters associated with the monitoring requirements proposed for land disposal units. In response, monitoring parameters for this class were selected due to the wide range of potential pollutants at land disposal facilities. The parameters listed in the August 16, 1991 draft permits are similar to the parameters addressed by proposed ground water monitoring requirements for municipal solid waste landfills established under subtitle D of RCRA (see August 30, 1988 (53 FR 33372)). In developing the list of parameters for the sampling requirements for land disposal units and incinerators in today's permits, the Agency has deleted several parameters which are monitored in a ground water context primarily to detect plume migration, and are not necessarily of concern in and of themselves. These parameters include carbonate, calcium, chloride, iron, potassium, sodium, and sulfate. Not requiring these parameters to be analyzed will reduce monitoring costs. Comments regarding acute whole effluent toxicity testing are addressed separately below.

Several commenters felt landfill runoff was already adequately addressed by State regulatory programs. In response, the Agency notes that the criteria the Agency has published for solid waste disposal facilities under subtitle D of RCRA does not include sampling or treatment requirements for storm water discharged from landfills (see October 9, 1991 (56 FR 51054)). In the October 9, 1991, notice establishing criteria for solid waste disposal facilities, the Agency noted that the NPDES permit under the CWA would be the appropriate mechanism for ensuring that point source discharges of runoff from landfills are protective of human health and the environment.

Several commenters requested clarification on whether inactive or closed land disposal sites were also subject to these monitoring requirements. In response, the Agency is clarifying that today's permits establish monitoring requirements for storm water discharge from an active or inactive landfill, open dump or land application site without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site).

In general, inactive land disposal sites with a final cover that is consistent with specifications for a final cover system for municipal solid waste landfills developed under subtitle D of RCRA will satisfy the requirement of a stabilized final cover for the purposes of monitoring requirements under today's permits. The subtitle D specifications for a final cover system are provided at 40 CFR 258.60 and include an erosion layer underlain by an infiltration layer as follows:

• The infiltration layer must be comprised of a minimum of 18 inches of earthen material that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than $1 \times 10^{**-5}$ cm/sec, whichever is less, and

• The erosion layer must consist of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

States may approve alternative final cover designs that include an infiltration layer that achieves an equivalent reduction in infiltration, and an erosion layer that provides equivalent protection from wind and water erosion.

The Agency believes that inactive facilities meeting these requirements will generally not be a significant source of pollutants to storm water discharges.

Wood Treatment Facilities (Wood Preservers)

Pollutants in storm water runoff from treated material storage yards at wood-preserving facilities were studied by EPA in 1981 in support of effluent guidelines development, and in support of a proposed hazardous waste listing in 1988 (December 30, 1988 (53 FR 53287)). Several organic pollutants were found at significant concentrations, including pentachlorophenol, fluoranthene, benzo(a)anthracene, chrysene, phenanthrene, and pyrene.

One commenter suggested combining the two categories of wood treating facilities identified in the August 16, 1991 draft permits into one category, with monitoring requirements based on the type of wood preservative used. In response, the Agency has modified these monitoring requirements so that there is only one wood preserving monitoring category in today's permits. Under the combined category, all wood treatment facilities will be required to monitor for oil and grease, pH, COD, and TSS. Requirements for monitoring phosphorus, nitrate plus nitrite, Kjeldahl nitrogen, and BOD5 have been eliminated. Nutrients are not expected to be present in significant amounts at these facilities. Metals or other toxic materials in samples can limit the accuracy of BOD5 analysis. Facilities that use chlorophenolic formulations must measure pentachlorophenol and acute whole effluent toxicity; facilities which use creosote formulations must measure acute whole effluent toxicity; and facilities that use chromium-arsenic formulations must measure total arsenic, total chromium, and total copper. In addition, the final permit clarifies that areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface application facilities are subject to these monitoring requirements.

Another commenter suggested reducing the monitoring frequency due to material management regulations established under other environmental programs such as RCRA. In response, the Agency notes that no provision of RCRA or the CWA limits EPA's authority to regulate storm water discharges from wood preserving facilities under the CWA. EPA published regulations addressing several wastes from wood preserving facilities, including storage yard drippage, on December 6, 1990 (55 FR 50450). The RCRA requirements do not require monitoring of storm water discharges to assist in characterizing pollutants in such discharges. Rather, the RCRA requirements establish a set of controls, including certain management practices, to control wastes addressed by the rule. While several of these requirements, where properly implemented, should decrease pollutants in storm water discharges, the Agency continues to believe that a minimum of twice per year sampling is appropriate for these facilities to adequately characterize pollutant sources and to evaluate the effectiveness of the pollution control measures required under RCRA and today's permits.

Comments regarding acute whole effluent toxicity testing are addressed separately below.

Coal Pile Runoff

Pollutants in storm water runoff from coal piles are discussed in detail earlier in today's notice. Monitoring requirements are necessary to support the numeric effluent limitation in today's permits. Commenters did not emphasize concerns regarding monitoring requirements for coal pile runoff. However, the final permit does modify the coal pile runoff limitations to correspond to those at 40 CFR part 423. As a result, grab sampling of the parameters will be required to be consistent with the instantaneous maximum limitations.

Battery Reclaimers

Today's permit establishes special semi-annual monitoring requirements for storm water discharges from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries. Based on an evaluation of the battery reclamation industry, the Agency has identified handling, storage and processing of lead acid batteries, as well as byproduct and waste handling at reclamation facilities as having a significant potential for pollutants in storm water discharges.

Only those areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) are subject to this monitoring requirement.

Acute Whole Effluent Toxicity Monitoring Requirements

The August 16, 1991, draft permit proposed acute whole effluent toxicity (WET) monitoring for EPCRA section 313 facilities; primary metal (SIC 33) facilities; land disposal facilities; and wood treatment facilities using creosote or chlorophenolic compounds. WET testing was included as both an efficient method of assessing the toxicity potential of complex mixtures of pollutants in storm water and as a measure of the effectiveness of a facilities pollution prevention plan.

A number of concerns regarding acute WET testing were raised in the comments. The usefulness of testing storm water for toxicity without allowing for instream dilution was questioned. These commenters indicated concerns that storm water discharges that exhibited toxicity may not create toxic conditions in receiving waters due to the dilution provided by the receiving stream.

In response, the Agency wants to clarify a primary purpose of the WET monitoring requirements in today's permits is to assist in the identification of pollutant sources, particularly where complex mixtures of pollutants in storm water may result, and assist in the evaluation of the effectiveness of pollution prevention practices, not to consider the ability of receiving streams to dilute toxicity. The Agency believes that testing 100 percent storm water effluent (no dilution) is appropriate for this purpose because testing 100 percent storm water effluent is preferable to testing diluted effluent where the object of conducting the test is to detect the presence of toxicity in the effluent. The Agency also notes that tests conducted on 100 percent effluent can serve as an initial screen for evaluating whether a discharge potentially contributes to water quality impairment.

Several commenters questioned the particular acute toxicity test proposed (48-hr invertebrate and 96-hour vertebrate) with regard to its use on short, intermittent, and variable storm water discharges. In response, today's

permits have been modified to provide for a 24-hour test period for the acute WET parameter. EPA believes that in certain situations, such as where several storm events occur over a period of several days, storm water discharges can result in exposures to toxic chemicals of longer than 24 hours, and that in some situations, monitoring the acute WET parameter using longer time periods (such as 48-hr for invertebrate species and 96-hour for vertebrate species) will be appropriate. However, the primary reasons for establishing monitoring requirements for the acute WET parameter in today's permit is to assist in identifying pollutant sources and to evaluate the effectiveness of pollution measures. Since the WET monitoring requirements in today's permits are generally not intended to directly evaluate toxic effects on organisms in receiving waters, the Agency believes that it is appropriate to allow for 24 hour testing of the WET parameter to reduce monitoring costs.[41] This approach is consistent with the EPA policy of allowing for shorter toxicity testing time intervals when conducting toxicity screening tests.[42]

Several commenters suggested the use of indigenous species. In response, the WET monitoring requirements in many of today's permits allow flexibility for the selection of appropriate invertebrate and fish species, consistent with EPA recommendations in "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", EPA, 1991, (EPA-600/4-90/027). However, the permits for Louisiana, New Mexico, Oklahoma, Texas, Colorado, Wyoming, Montana, North Dakota, South Dakota, and Utah specify specific species to be tested. EPA believes that specifying the species in standardized test methods will allow direct comparison to similar discharges at different facilities, and is consistent with WET procedures generally used in other NPDES permits issued for discharges in these States. In addition, the use of sensitive standardized test species helps avoid problems that arise when indigenous organisms may be diseased or impaired. Many laboratories across the country maintain healthy cultures of standardized toxicity test organisms. A similar problem may arise in using indigenous organisms when the organisms may have built up a tolerance to certain toxicants that they are exposed to. Again, the Agency wants to emphasize that the primary purposes of requiring WET monitoring is to assist in identifying pollutant sources and to evaluate the effectiveness of pollution prevention measures, and is generally not intended to directly evaluate toxic effects on organisms in receiving waters.

Additional comments were received questioning the usefulness of toxicity testing prior to implementation of a facility's pollution prevention plan. In response, the Agency believes that acute WET monitoring data can be used to assist in the development of storm water pollution prevention plans by assisting in identifying potential pollutant sources which can be targeted for control, and therefore monitoring for this parameter before implementing plans is appropriate. In addition, sampling data obtained before storm water pollution prevention plans have been implemented can assist in developing a baseline to evaluate the effectiveness of pollution prevention measures.

Several commenters raised concerns regarding the costs of analyzing samples for the WET parameter. In response, an informal survey of commercial laboratories indicated 24-hour acute toxicity tests conducted on 100 percent effluent would be in the neighborhood of $250 per species, or $500 total. Based on a consideration of these costs and other factors, the Agency maintains that monitoring for the WET parameter is appropriate. The Agency has made several modifications to WET monitoring procedures to reduce the costs of monitoring for the WET parameter, including reducing the test period to 24 hours and only requiring testing on 100 percent effluent. Since the monitoring requirement is not designed to directly measure water quality impacts on the receiving water, use of freshwater test species and reconstituted dilution water will be allowed for all discharges.

Some commenters indicated that monitoring the acute WET parameter would not necessarily indicate the source of pollutants causing the toxicity. In response, the Agency agrees that monitoring for the WET parameter, by itself, will not necessarily indicate sources of pollutants or the chemical constituents affecting the WET parameter. Rather, the WET parameter serves as a screen that gives a general indication of the toxicity of the discharge. One of the biggest advantages to the WET parameter is its ability to characterize complex mixes of chemicals with a single, easily understood, parameter. When using the WET parameter, it is not necessary to specifically identify and consider all of the potential pollutants that could be present in a discharge. Once toxicity is detected, the discharger can use a variety of methods to identify sources of pollutants causing the toxicity, including evaluating information in the description of potential pollutant sources required in the storm water pollution prevention plan, evaluating other information regarding the nature of industrial activities at the facility, and conducting additional monitoring and analyzing for specific pollutants.

However, in response to concerns raised on this issue, the sampling requirements of today's permits for wood preserving facilities, land disposal units, hazardous waste incinerators or BIFs, primary metals facilities, and facilities subject to Section 313 of the EPCRA for water priority chemicals (e.g. those classes of facilities where the acute WET parameter was identified in the draft general permits) provide that these dischargers, in addition to monitoring for parameters specified for the industrial class, can either analyze samples for the WET parameter or for the pollutants identified in Tables II and III of appendix D of 40 CFR 122 that the discharger knows or has reason to believe are present at the facility site. Permittees that monitor for selected pollutants identified in Tables II and III of appendix D of 40 CFR 122 should base their determination of whether a particular chemical is known or believed to be present at the facility site on a consideration of the activities at the facility.

The determination of whether a chemical is known or reasonably expected to be present at a facility site will involve the reasonable best effort of the permittee to identify that significant quantities of materials or chemicals are present at the facility. The Agency's intention is to focus monitoring on constituents (pollutants) that are present in quantities large enough so that it is likely that they may potentially be present in storm water. The Agency generally believes that, unless there is other evidence to suggest the likelihood of discharge in storm water, where quantities are less than 100 kilograms or one barrel within the monitoring period the likelihood of detection in storm water is relatively low. This determination can be based on an evaluation of information such as material inventories, the industrial

[41] Today's permits for discharges in CO, WY, MT, ND, and UT require 48 hour testing for invertebrate species, and 96 hour testing for fish species. These procedures are consistent with the procedures generally used in NPDES permits for WET testing other discharges within these States. Use of the same procedures will assist EPA in evaluating this data.

[42] "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", EPA, 1991, (EPA-600/4-90/027).

activities, raw materials, products, waste materials, and other site specific considerations. EPA does not intend that dischargers know with an exact measurement or absolute certainty whether a chemical is present in amounts that exceed this threshold. For example, where the chemical is a minor constituent of various materials and products used at the facility, where the chemical is present in various products, such as cleaning supplies, or other incidental materials not used in an industrial process, or where it is held as a small laboratory stock, there would be no requirement for monitoring.

This change provides permittees with two approaches for attempting to identify sources of pollution to storm water discharges. The first approach, use of the WET parameter, focuses on the use of a single parameter with the ability to identify the potentially toxic character of mixtures of chemicals in water. This approach might be used, for example, at industrial facilities where the storm water may contain a wide range of chemicals, or where the chemicals used at the facility are not well characterized. The WET parameter can be used to provide an initial indication of whether the level of toxic constituents in a discharge reaches toxic levels.

The second approach focuses on analyzing storm water samples for specific chemicals that the discharger knows or has reason to believe are present at the facility site. This approach might be used, for example, where the discharger can characterize the chemicals at the facility site. This monitoring approach provides chemical specific information that may provide a more direct indication than the WET parameter of specific pollutant sources.

EPA suggests that permittees consider the following factors when evaluating which approach to monitoring to pursue: the types of chemicals present at the site; the feasibility of collecting sample volumes necessary to conduct WET monitoring; and analytical laboratory costs.

Toxicity Reductions

A number of commenters requested clarification as to whether facilities that detected acute WET in their storm water discharge would be required to conduct a toxicity reduction evaluation (TRE). Several commenters objected to the requirement to conduct a toxicity reduction evaluations (TRE) without more research into the applicability of current TRE procedures to storm water discharges. One commenter indicated that if a discharge is found to fail the WET test, it should be allowed the opportunity to conduct additional WET tests before undergoing a formal toxicity reduction evaluation.

In response, today's permits provide that if acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and control) is detected after October 1, 1995 in storm water discharges required to conduct toxicity testing under this permit, the permittee must review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. The Agency believes it is appropriate that the permit require the permittee to review the pollution prevention plan and study ways to reduce demonstrated toxicity. The Agency believes that the approach taken in today's permits provide considerably more flexibility than requirements to conduct formal TREs.

The Agency believes that this approach addresses the need to reduce demonstrated toxicity while providing flexibility for facilities to evaluate their storm water discharges for toxicity and to take appropriate steps to reduce toxicity prior to October 1, 1995. This provides dischargers with an opportunity to implement site-specific and innovative measures to reduce toxicity. In addition, this approach recognizes the difficulties in ascertaining whether a specific measure or approach will successfully reduce toxicity at a given facility. The Agency believes that this approach will provide additional opportunities to evaluate pollution prevention measures suitable for reducing toxicity and for evaluating the role of treatment technologies in such toxicity reduction strategies.

While today's permit does not specifically require dischargers that detect acute WET to conduct a formal TRE, the Agency may request a TIE or a TRE pursuant to the authority of Section 308 of the CWA where toxicity is reported. Similarly, where facilities detect significant levels of other pollutant parameters, the Agency may, where appropriate, request additional information, such as an additional pollutant source evaluation or a pollution prevention evaluation.

Annual Monitoring Requirements

The August 16, 1991 draft general permits required, at a minimum, annual monitoring of storm water discharges associated with industrial activity except for certain storm water discharges from oil and gas operations. As discussed above, the Agency is limiting monitoring requirements to selected industrial activities with significant pollutant sources. Annual monitoring requirements have been retained for certain discharges of storm water associated with industrial activity at: Larger airports, coal fired steam electric facilities; animal handling/meat packing; facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products); facilities classified as SIC 28 (Chemicals and Allied Products) facilities; larger automobile junkyards; lime manufacturing facilities; oil fired steam electric power generating facilities; cement manufacturing facilities and kilns; ready-mixed concrete facilities; and ship building and repairing facilities.

Permittees subject to annual monitoring requirements are not required to submit the results of their monitoring unless EPA specifically requests the information. However, monitoring results must be retained for a minimum of six years. Monitoring results must be made available to the Director upon request, or upon permit renewal. The specific monitoring parameters were chosen to provide information on the overall quality of the discharge, concentrate on industry-specific pollutants of concern, aid in determining the effectiveness of pollution prevention plan controls, and assist in development of Tier II, III, and IV permitting efforts.

Airports

Deicing activities at airports can be a significant source of pollutants to storm water discharges. The amount of deicing fluids used depend on temperature and the amount and type of precipitation (freezing rain may require more deicing fluids than many snowfalls) as well. Ethylene glycol, urea and ammonium nitrate are the primary ingredients of other deicing compounds used at airports. These chemicals can have a significant oxygen demand in water. When deicing operations are performed, large volumes of ethylene glycol are sprayed on aircraft and runways. Data from Stepleton International Airport show that 62,986 gallons of concentrated ethylene glycol were used during the month of February 1988 (Denver Public Works 1988). Data from Stepleton International Airport indicate that storm water discharges contained levels of up to 5,050 mg/L ethylene glycol during a monitoring period from December 1986 to January 1987. Deicing fluids have been implicated in several fish kills across the nation.

One State Agency specifically identified airport deicing operations as the area of most concern at airports. In

response, the Agency agrees that deicing operations can be a significant potential source of pollutants in storm water discharges. Given these concerns, the Agency is retaining monitoring requirements for deicing activities at large airports. Facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor for parameters indicative of the overall quality of the discharge and to identify deicing materials used at the site that are entering the storm water discharge.

Several commenters requested reduced or eliminated sampling for smaller airports. In response, today's monitoring requirements for airports are limited to have been limited to airports with over 50,000 flight operations per year and apply only to those areas where deicing activities occur. A flight operation consists of a single takeoff or landing by an aircraft. The Agency believes that the number of operations is one of the key factors for determining the amount of deicing activity and other industrial activities occurring at an airport, and that in general, airports with a higher number of operations are expected to discharge more pollutants in their storm water. In addition, some smaller airports may not conduct deicing activities, and a requirement targeting monitoring of deicing activities at such smaller airports may cause confusion.

According to information obtained from the Aircraft Owners and Pilots Association (AOPA) and based on 1990 Federal Aviation Administration data, there are approximately 5078 public use airports in the United States. Of these, approximately 376 airports (7.4%) have 50,000 or more flight operations per year.

Coal-fired Steam Electric Facilities

Coal-fired steam electric facilities use large amounts of coal. Coal handling activities at these facilities can be a significant source of pollutants in storm water discharges. Runoff from coal handling areas can have pollutant characteristics that are similar to coal pile runoff, and can have high levels of total suspended solids, sulfate, iron, aluminum, mercury, copper, arsenic, selenium and manganese, as well as an acidic pH.[43] The Agency believes that it is appropriate to retain monitoring requirements in these coal handling areas to adequately quantify the effect of these pollutant sources on storm water discharges. Monitoring parameters will be the same as those required semi-annually under this permit for coal piles, with the same justification on their selection. Because this monitoring requirement does not support a numeric effluent limitation, and due to the more diffuse nature of coal in the coal handling areas, the monitoring frequency of once per year was deemed adequate. Compared to the basic monitoring required under the August 16, 1991, draft permits, this monitoring requirement focuses more on the pollutants of particular concern and should be less costly for the facility.

Animal Handling/Meat Packing

The nature of potential pollutant sources to runoff from animal handling, manure management areas, and production waste management areas at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats with animal waste and/or production wastes is similar to runoff from confined animal feeding operations (feedlots). Animal waste products can be a significant source of pollutants to storm water runoff which can contribute high levels of oxygen demanding pollutants, nutrients and fecal bacteria.[44] Monitoring data can be used to detect if these materials are entering the storm water. The monitoring requirements for animal handling facilities in today's permit are more tailored than the August 16, 1991 draft permits. Tailoring these requirements is expected to reduce the costs of these requirements relative to the August 16, 1991 draft permits.

Additional Facilities

Today's permits retain monitoring requirements for storm water discharges from seven additional classes of industrial activities. These storm water discharges will have to be monitored annually for a basic set of parameters (oil and grease, COD, TSS, pH, and any pollutant limited in an effluent limitation guideline for which the facility is subject). The Agency has identified these industrial classes based on a consideration of specific activities at these facilities that have a significant potential for contributing pollutants to storm water. If the listed activity does not occur at a particular site, or the runoff from that area is treated as a process wastewater, is discharged to a municipal sanitary sewer (with the municipality's permission), or is retained onsite, no sampling will be required. The sampling required for these facilities is generally less restrictive than would have been required under the draft permit.

Chemical storage piles can have a significant potential for contributing pollutants to storm water discharges. Today's permits include monitoring requirements for storm water that comes into contact with solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products). In addition, today's permits require monitoring of storm water that comes into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities. Lime can significantly raise the pH of such discharges.

Automotive fluids and greases from automobile drivelines are a significant potential source of pollutants to storm water discharges from automobile junkyards. Drivelines include the engine, transmission, differential/transaxle, fuel, brake, and coolant (radiator) systems. Automotive fluids/greases from these areas would typically include engine oil, fuel, transmission fluid or oil, rear end oil, suspension joint and bearing greases, antifreeze, brake fluid, power steering fluid, and the oil and grease leaking from and covering various components (for example, oil and grease on exterior of an engine). The procedures used for fluids capture during the dismantling process will affect the potential to contribute pollutants to storm water.[45]

The Agency has attempted to reduce the burden on the auto salvage industry by retaining monitoring requirements only from priority facilities with dismantling or storage practices that are generally thought to have a higher potential for contributing significant amounts of pollutants to storm water discharges than other yards. Two factors, the number of units stored, and exposure of automotive fluid drainage and storage areas, are used to determine the applicability of monitoring requirement. Facilities were (A) over 250 auto/truck bodies with drivelines, 250 drivelines, or any combination thereof (in whole or in parts) are exposed to

[43] See "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source category", 1982. (EPA-440/1-82/-29).

[44] See "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", May 1991, EPA and "Development Document for Effluent Limitations Guidelines and New Source Performance Standards—Feedlots Point Source Category", EPA, 1974, EPA-440/1/74-004-a.

[45] Summary of site inspections by CA State Department of Health Services, March 19, 1992.

storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water; will be required to monitor storm water discharges from these areas.

Spills and leaks from fuel handling sites, including loading/unloading areas and storage tanks, at oil fired steam electric power generating facilities are potential significant sources of pollutants to storm water runoff.[46] Monitoring data from these sites can be used to identify pollutant sources and allow the Agency to assess the effectiveness of the facility's material management and spill prevention/response practices.

Loading and unloading activities, raw material storage, processing operations, at cement manufacturing facilities, cement kilns, and ready-mix concrete facilities, can be a significant potential source of pollutant to storm water.[47] Dust generating processes and air deposition of pollutants from smokestacks at cement kilns could also be significant sources of pollutants to storm water. Discharges from cement manufacturing facilities and cement kilns and discharges from ready-mixed concrete facilities could contain the same constituents limited in the storm water effluent limitations guidelines for cement kilns material storage piles.

A number of industrial activities at ship building and repairing facilities can be significant sources of pollutants to storm water discharges, including improper controls on activities such as ship bottom cleaning, bilge water disposal, loading/unloading of fuels, metal fabrication and cleaning operations, and surface preparation and painting.[48]

[46] Given the large amounts of oil managed at these facilities, many of the pollutant sources associated with oil handling and storage are expected to be similar to those at petroleum refineries. A more complete description of the pollution potential of these types of operations is provided in the "Development Document for Effluent Limitations Guidelines and Standards for Pretreatment Standards for the Petroleum Refineries Point Source Category", EPA, 1979, 440/1/-79/014b.

[47] See "Development Document for Effluent Limitation Guidelines and New Source Performance Standards for the Cement Manufacturing Point Source Category", EPA, 1974, EPA/440/1-79-005-a. The effluent limitation guidelines for the cement manufacturing category address runoff derived from the storage of materials used in or derived from the manufacture of cement (see 40 CFR 411.30). Discharges that are covered by the guideline cannot be authorized under today's permits.

[48] See "Development Document for Proposed Effluent Limitations Guidelines and Standards for the Shipbuilding and Repair Point Source Category", EPA, December 1979, EPA 440/1/-79/076-b and "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", May 1991, EPA.

III. Sample Collection

One State agency requested a requirement for more accurate flow measurement to provide more accurate flow proportioning for composite sampling and pollutant loading calculations. In response, EPA agrees there are more accurate flow measuring methods than the flow estimation methods required by the permit. Where a State requires, or a particular facility wishes, more accurate flow measurement is certainly desirable. However, the Agency also recognizes that there is a variety of methods for providing more accurate flow proportioning for composite sampling,[49] with different methods having very different costs. The Agency is concerned about possible confusion in the regulated community leading to the use of overly expensive techniques and methods for measuring flow. In addition, the Agency notes that the monitoring data collected pursuant to today's permits will serve a number of purposes, such as identification of pollutant sources and possible contaminants, which do not require flow estimates. Therefore, today's permits do not require more precise flow measurement techniques, such as primary flow measurement devices, for all discharges required to sample at this time.

Several commenters questioned the necessity for both first flush grab sampling and composite event sampling. Other commenters supported the proposed sampling requirements. In response, EPA believes that it is necessary to require sampling that will provide information on the typically more polluted "first flush" as well as a measure of the average concentration of pollutants discharged during an event. First flush sampling (a grab sample during the first 30 minutes of the discharge) is also necessary to evaluate the effectiveness of detention and retention devices which may only provide controls for the first portion of the discharge.

Commenters also questioned whether the first flush must be collected during the first 30 minutes of the storm event or the first thirty minutes of discharge. The Agency would like to clarify that first flush sampling applies to the first thirty minutes of discharge, rather than rainfall. In some instances, particularly where detention or retention systems are used, there will be a delay between the start of a storm event and the first measurable discharge.

With regard to the provision allowing a single grab sample from detention devices with a 24 hour holding time, one commenter suggested establishing a design storm to calculate holding times. In response, the Agency believes that defining the residence time of the detention device (e.g. 24 hours) is adequate to achieve the objective of the requirement. Devices with a 24 hour residence time for a given storm should provide adequate mixing to allow a single grab sample to provide a reasonably accurate characterization of the average concentration of the discharge and will mitigate first flush effects. The Agency believes that by not establishing a design storm to calculate holding times, more flexibility will be provided for applying this provision on a storm-by-storm basis.

One commenter suggested that composite sampling be eliminated and only grab sampling of the first flush be required in the baseline general permit, with the results used to target industries for more extensive monitoring at a later date. In response, the Agency believes that composite sampling will provide more information for estimating pollutant loads, evaluating certain concentration-based water quality impacts, and generally characterizing storm water discharges. The permit authorizes either time-weighted or flow-weighted composite samples which may be manually or automatically collected.

The use of pH paper rather than a pH meter was recommended by many commenters based on the cost differential. In response, EPA approved test methods at 40 CFR 136.3 require an accuracy for pH measurements of plus or minus 0.1 pH unit. The test method only describes the electrometric method using a glass electrode. pH paper generally ranges in accuracy from plus or minus 0.5 pH unit to 1.0 pH unit. Other potential problems with pH paper are that it is judged subjectively by comparison to a color chart, is affected by humidity, age and method of storage, and may be affected by turbidity or suspended solids. The Agency notes that some pH measuring devices which use the electrometric method, such as pH, can provide the required accuracy at a reasonable price ($50.00 to $200.00).

Commenters from arid regions and those with unattended remote sites pointed out the difficulties in conducting sampling of representative storm events in areas characterized by infrequent storm events and/or when no personnel were stationed onsite. In response, under the sampling requirements

[49] See "NPDES Storm Water Sampling Guidance Document," EPA 833-B-92-001, July 1992, EPA.

developed for the final permit, many industries, including inactive remote mining sites, will not be required to collect monitoring data. In addition, monitoring from any event greater than 0.1 inch is acceptable.

IV. Sampling Waiver

All comments on the proposed waiver for sampling based on adverse climatic conditions supported this provision. Several commenters did request clarification on the applicability. In response, EPA would like to clarify that the sampling waiver is only intended to apply to unsurmountable weather conditions such as drought or dangerous conditions such as lightning, flash flooding, or hurricanes. These events tend to be isolated incidents, and should not be used as an excuse for not conducting sampling under more favorable conditions associated with other storm events. The sampling waiver is not intended to apply to difficult logistical conditions.

V. Use of Representative Outfalls for Sampling

The permit allows the use of substantially identical outfalls to reduce the monitoring burden on a facility. All comments received on this issue supported this provision. EPA has maintained this provision. However, the permittee must develop justification on why one outfall is representative of others and keep this information onsite, available to the Director upon request.

VI. Submittal and Availability of Reports and Monitoring Results

The issue of whether monitoring results should be retained onsite or submitted to EPA (and how often) received comments supporting both positions. Several commenters suggested that all monitoring data be kept onsite, available to the Director upon request. Other commenters suggested all monitoring results be submitted, with frequencies ranging from twice per year to once per permit term. In the final permit, EPA has adopted a monitoring approach that targets selected industrial activity. Facilities required to monitor semi-annually are required to report results annually. Facilities required to monitor annually are not required to report information unless the information is requested by the Director.

This approach maintains closer oversight of targeted facilities, while reducing the overall burden on the regulated community and EPA.

Several commenters supported the requirement to submit copies of discharge monitoring reports to the operator of municipal separate storm sewer systems when at least one outfall discharges to that system. Several State agencies also requested copies of all discharge monitoring results. The final permit requires those dischargers required to submit monitoring information annually to provide copies to receiving large or medium municipal separate storm sewer systems and States that have requested this information.

The location for submittal of all reports is contained in the permit. Facilities located on certain Indian Lands in Arizona, Utah, New Mexico, Idaho, Nebraska, Nevada and Oregon and Colorado should note that permitting authority has been consolidated in one EPA Region or another where a reservation crosses the boundaries of the Regions. For example, all NPDES permitting for Navajo lands is handled by EPA Region 9.

VII. Retention of Records

The draft permit required retention of all records for a minimum of three years. Several commenters suggested that records be kept for the entire permit term. In response, the final permit requires retention of monitoring records for six years since not all facilities who monitor will be required to submit the results annually. In addition, pollution prevention plans must be kept for the life of the permit.

Costs

The August 16, 1991 draft notice summarized EPA's estimates of the costs for compliance with the draft permits. The Agency has revised these estimates to reflect changes made when issuing the final permits, and additional evaluation made in response to comment.

One commenter indicated that they thought that to meet the conditions of the permit most small companies will have to hire a full-time engineer which many small businesses cannot afford and that other companies will use staff with general technical backgrounds. In response, the Agency has reordered and simplified the requirements in today's permit and believes that small facilities will generally not have to hire a full-time engineer to implement storm water pollution prevention plans. In addition, the Agency has developed guidance entitled "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992 to assist facilities with limited storm water technical expertise in preparing and implementing their storm water pollution prevention plan.

Appendix B—NPDES General Permits for Storm Water Discharges Associated with Industrial Activity

Permit No. MER00000IF

Authorization to Discharger Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, for Indian Tribes located in the State of Maine, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities with storm water discharges, for Indian Tribes located in the State of Maine.

Permit No. NHR00000IF

Authorization to Discharger Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, for Indian Tribes located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges

associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities with storm water discharges, for Indian Tribes located in the State of New Hampshire.

Authorization to Discharger Under the National Pollutant Discharge Elimination System

Permit No. MAR00000IF

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, for Indian Tribes located in the State of Massachusetts, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities and storm water discharges, for Indian Tribes located in the State of Massachusetts.

Authorization to Discharger Under the National Pollutant Discharge Elimination System

Permit No. MER000000

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Maine, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of Maine.

Authorization to Discharger Under the National Pollutant Discharge Elimination System

Permit No. NHR000000

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity, who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of New Hampshire.

General Permit No. FLR000000

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located in the State of Florida.

General Permit No. NCR00000F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in North Carolina belonging to the Eastern Band of Cherokee Indians in the State of North Carolina are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

General Permit No. FLR00000F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in Florida belonging to the Seminole Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend tc be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

General Permit No. MSR00000F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in Mississippi belonging to the Mississippi Band of Choctaw Indians are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

General Permit No. FLR00001F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in Florida belonging to the Miccosukee Indian Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

Permit No. LAR000000

Cover Page

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Louisiana, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located in the State of Louisiana.

Permit No. N M R000000

Cover Page

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as

provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of New Mexico, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the State of Louisiana.

Permit No. O K R000000

Cover Page

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Oklahoma, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the State of Louisiana.

Permit No. T X R000000

Cover Page

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Texas, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the State of Louisiana.

Permit No. COR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity in applicable federal facilities located in the State of Colorado, and in the following Indian Reservations:

Southern Ute Reservation; and,

Ute Mountain Reservation—Includes the entire Reservation, which is located in Colorado and New Mexico.

Are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of Colorado and the portion of the Ute Mountain Reservation located in the State of New Mexico.

Permit No. MTR00000F

Authorization To Discharger Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, in all Indian Reservations in Montana including the following Reservations:

Blackfeet Reservation;
Crow Reservation;
Flathead Reservation;
Fort Belknap Reservation;
Fort Peck Reservation;
Northern Cheyenne Reservation; and,
Rocky Boys Reservation.

Are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of Montana.

Permit No. NDR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity in all the Indian Reservations located in the State of North Dakota including the following (with the exception of the portion of the Lake Traverse Reservation, also known as the Sisseton Reservation, located in North Dakota)

Fort Totten Reservation—Also known as Devils Lake Reservation;
Fort Berthold Reservation;
Standing Rock Reservation—Includes the entire Reservation, which is located in both North Dakota and South Dakota; and,
Turtle Mountain Reservation.

Are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of North Dakota and the portion of the Standing Rock Reservation located in the State of South Dakota.

Permit No. SDR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the entire State of South Dakota including the Indian reservations noted below (with the exception of the portion of the Standing Rock Reservation located in South Dakota), and the portion of the Lake Traverse Reservation located in North Dakota

Cheyenne River Reservation;
Crow Creek Reservation;
Flandreau Reservation;
Lake Traverse Reservation—Also known as the Sisseton Reservation. Includes the entire Reservation, which is located in North Dakota and South Dakota;
Lower Brule Reservation;
Pine Ridge Reservation—Includes only the portion of the Reservation located in South Dakota;
Rosebud Reservation; and,
Yankton Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of South Dakota and the portion of the Lake Traverse Reservation located in the State of North Dakota.

Permit No. UTR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the following Indian Reservations in Utah (except for the portions of the Navajo Reservation and Goshute Reservation located in Utah)

Northern Shoshoni Reservation;
Paiute Reservations—several very small reservations located in the southwest quarter of Utah;
Skull Valley Reservation; and,
Uintah & Ouray Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of Utah.

Permit No. WYR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the Wind River Indian Reservation in the State of Wyoming, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in

accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of Wyoming.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. CAR0000IF

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (U.S.C. . . 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Indian Lands in the State of California

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in parts I through IX and for any additional conditions in Part XI which apply to facilities located on Indian lands in California.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. AZR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located in the

State of Arizona (Excluding Indian Lands)

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of Arizona (excluding Indian lands).

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. JAR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (U.S.C. . . 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Johnston Atoll

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in parts I through IX and for any additional conditions in Part XI which apply to facilities located on Johnston Atoll.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. MWR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Midway Island or Wake Island

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located on Midway Island or Wake Island.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. AZR0000IF

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Indian Lands in the State of Arizona, Including Navajo Territory in the States of New Mexico and Utah

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located on the Indian lands specified above.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. NVR0000IF

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Indian Lands in the State of Nevada, Including Goshute Territory the State of Utah

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located on the Indian lands specified above.

General Permit No.: AK–R–00–0000

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators of facilities engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof and except facilities located on Indian lands within the State of Alaska, are authorized to discharge to waters of the State of Alaska and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities in the State of Alaska.

General Permit No.: ID–R–00–000F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators of facilities located on Indian lands in the State of Idaho that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities in the State of Idaho.

General Permit No.: AK–R–00–000F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the "Act".

Owners and operators of facilities located on Indian lands in the State of Alaska that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located on Indian lands in the State of Alaska.

General Permit No.: WA-R-00-001F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of facilities located on Indian lands in the State of Washington that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located on Indian lands in the State of Washington.

General Permit No.: WA-R-00-000F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of federal facilities in the State of Washington, that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof and except facilities located on Indian lands within the State of Washington, are authorized to discharge to waters of the State of Washington and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to federal facilities in the State of Washington.

General Permit No.: ID-R-00-0000

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of facilities engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof and except facilities located on Indian lands within the State of Idaho, are authorized to discharge to waters of the State of Idaho and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities in the State of Idaho.

NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

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PREFACE

The CWA provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part X) of this permit. In order to determine the applicability of the requirement to a particular facility, the facility operator must examine its activities in relationship to the eleven categories of industrial facilities described in the definition of "storm water discharge associated with industrial activity".

Category (xi) of the definition, which address facilities with activities classified under Standard Industrial Classifications (SIC) codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)), differs from other categories listed in that it only addresses storm water discharges where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery *are exposed to storm water.*[1]

The United States Environmental Protection Agency (EPA) has established the Storm Water Hotline at (703) 821–4823 to assist the Regional Offices in distributing notice of intent forms and storm water pollution prevention plan guidance, and to provide information pertaining to the NPDES storm water regulations.

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (*Natural Resources Defense Council v. EPA*, Nos. 90–70671 and 91–70200).

Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas of:

Region I—for the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region IV—for the State of Florida; and for Indian lands located in Florida, Mississippi, and North Carolina.

Region VI—for the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—for the State of South Dakota; for Indian lands located in Colorado, Montana, North Dakota, South Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation in Colorado, and New Mexico.

Region IX—for the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—for the State of Alaska, and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

B. Eligibility

1. This permit may cover all new and existing point source discharges of storm water associated with industrial activity to waters of the United States, except for storm water discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges associated with industrial activity that are mixed with storm water discharges associated with industrial activity from construction activities provided that the storm water discharge from the construction activity is in compliance with the terms, including applicable notice of intent (NOI) or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. *Limitations on Coverage.* The following storm water discharges associated with industrial activity are not authorized by this permit:

a. storm water discharges associated with industrial activity that are mixed with sources of non-storm water other than non-storm water discharges that are:

(i) in compliance with a different NPDES permit; or

(ii) identified by and in compliance with Part III.A.2 (authorized non-storm water discharges) of this permit.

b. storm water discharges associated with industrial activity which are subject to an existing effluent limitation guideline addressing storm water (or a combination of storm water and process water) [2];

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit; are located at a facility that where an NPDES permit has been terminated or denied; or which are issued in a permit in accordance with paragraph VII.M (requirements for individual or alternative general permits) of this permit. Such discharges may be authorized under this permit after an existing permit expires provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges associated with industrial activity from construction sites, except storm water discharges from portions of a construction site that can be classified as an industrial activity under 40 CFR 122.26(b)(14) (i) through (ix) or (xi) (including storm water discharges from mobile asphalt plant, and mobile concrete plants);

e. storm water discharges associated with industrial activity that the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard;

f. storm water discharges associated with industrial activity that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; and

g. storm water discharges associated with industrial activity from inactive mining, inactive landfills, or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified.

[2] For the purpose of this permit, the following effluent limitation guidelines address storm water (or a combination of storm water and process water): cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443 Subpart A). This permit may authorize storm water discharges associated with industrial activity which are not subject to an effluent limitation guideline even where a different storm water discharge at the facility is subject to an effluent limitation guideline.

4. Storm water discharges associated with industrial activity which are authorized by this permit may be combined with other sources of storm water which are not classified as associated with industrial activity pursuant to 40 CFR 122.26(b)(14), so long as the discharger is in compliance with this permit.

c. Authorization

1. Dischargers of storm water associated with industrial activity must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof), to be authorized to discharge under this general permit [3].

2. Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit 2 days after the date that the NOI is postmarked.

3. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in paragraphs II.A.4 (rejected or denied municipal group applicants), II.A.5 (new operator) and II.A.6 (late NOIs), individuals who intend to obtain coverage for an existing storm water discharge associated with industrial activity under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this part on or before October 1, 1992;

2. Except as provided in paragraphs II.A.3 (oil and gas operations), II.A.4 (rejected or denied municipal group applicants), II.A.5 (new operator), and II.A.6 (late NOI) operators of facilities which begin industrial activity after October 1, 1992 shall submit a NOI in accordance with the requirements of this part at least 2 days prior to the commencement of the industrial activity at the facility;

3. Operators of oil and gas exploration, production, processing, or treatment operations or transmission facilities, that are not required to submit a permit application as of October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but that after October 1, 1992 have a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, must submit a NOI in accordance with the requirements of Part II.C of this permit within 14 calendar days of the first knowledge of such release.

4. Storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely Part 1 group application and where either the group application is rejected or the facility is denied participation in the group application by EPA, and that are seeking coverage under this general permit shall submit a NOI in accordance with the requirements of this part on or before the 180th day following the date on which the group is rejected or the denial is made, or October 1, 1992, whichever is later.

5. Where the operator of a facility with a storm water discharge associated with industrial activity which is covered by this permit changes, the new operator of the facility must submit an NOI in accordance with the requirements of this part at least 2 days prior to the change.

6. An operator of a storm water discharge associated with industrial activity is not precluded from submitting an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1, 2, 3, or 4 (above) of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. *Contents of Notice of Intent.* The Notice of Intent shall be signed in accordance with Part VII.G (signatory requirements) of this permit and shall include the following information:

1. The street address of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the facility must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or for hazardous waste treatment, storage or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage, a narrative identification of those activities;

3. The operator's name, address, telephone number, and status as Federal, State, private, public or other entity;

4. The permit number(s) of additional NPDES permit(s) for any discharge(s) (including non-storm water discharges) from the site that are currently authorized by an NPDES permit;

5. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s) for the discharge through the municipal separate storm sewer;

6. An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI);

7. Where a facility has participated in Part 1 of an approved storm water group application, the number EPA assigned to the group application shall be supplied; and

8. For any facility that begins to discharge storm water associated with industrial activity after October 1, 1992, a certification that a storm water pollution prevention plan has been prepared for the facility in accordance with Part IV of this permit. (A copy of the plan should not be included with the NOI submission).

C. *Where to Submit.* Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, P.O. Box 1215, Newington, VA 22122.

D. *Additional Notification.* Facilities which discharge storm water associated with industrial activity through large or medium municipal separate storm sewer systems (systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system (see definition in Part X of this permit and Appendix E of this notice)) shall, in addition to filing copies of the Notice of Intent in accordance with paragraph II.D, also submit signed copies of the Notice of Intent to the operator of the municipal separate storm sewer through which they discharge in accordance with the deadlines in Part II.A (deadlines for notification) of this permit.

[3] A copy of the approved NOI form is provided in Appendix C of this notice.

E. *Renotification.* Upon issuance of a new general permit, the permittee is required to notify the Director of their intent to be covered by the new general permit.

Part III. Special Conditions

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph III.A.2 (below), all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.b (below), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.3.g.(2) (measures and controls for non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Except as provided in paragraph III.B.2 (multiple anticipated discharges) of this permit, where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period.

a. The discharger is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The storm water pollution prevention plan required under Part IV (storm water pollution prevention plans) of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed by the permittee to identify measures to prevent the reoccurence of such releases and to respond to such releases, and the plan must be modified where appropriate; and

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.D.1.d (reporting: where to submit) of this permit.

2. *Multiple Anticipated Discharges*—Facilities which have more than one anticipated discharge per year containing the same hazardous substance in an amount equal to or in excess of a reportable quantity established under either 40 CFR 117 or 40 CFR 302, which occurs during a 24 hour period, where the discharge is caused by events occurring within the scope of the relevant operating system shall:

a. submit notifications in accordance with Part III.B.1.b (above) of this permit for the first such release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and

b. shall provide in the storm water pollution prevention plan required under Part IV (storm water pollution prevention plan) a written description of the dates on which all such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the release. In addition, the plan must be reviewed to identify measures to prevent or minimize such releases and the plan must be modified where appropriate.

3. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices and in accordance with the factors outlined in 40 CFR 125.3(d) (2) or (3) as appropriate. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

1. Except as provided in paragraphs IV.A.3 (oil and gas operations) 4 (facilities denied or rejected from participation in a group application) 5 (special requirements) and 6 (later dates) the plan for a storm water discharge associated with industrial activity that is existing on or before October 1, 1992:

a. shall be prepared on or before April 1, 1993 (and updated as appropriate);

b. shall provide for implementation and compliance with the terms of the plan on or before October 1, 1993;

2. a. The plan for any facility where industrial activity commences after October 1, 1992, but on or before December 31, 1992 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the commencement of industrial activity (and updated as appropriate);

b. The plan for any facility where industrial activity commences on or after January 1, 1993 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit, on or before the date of submission of a NOI to be covered under this permit (and updated as appropriate);

3. The plan for storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992 has a discharge of a

reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, shall be prepared and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the first knowledge of such release (and updated as appropriate);

4. The plan for storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely group application where either the group application is rejected or the facility is denied participation in the group application by EPA,

a. shall be prepared on or before the 365th day following the date on which the group is rejected or the denial is made, (and updated as appropriate);

b. except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the 545th day following the date on which the group is rejected or the denial is made; and

5. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to Parts IV.D.7 (EPCRA Section 313 and IV.D.8 (salt storage) shall provide for compliance with the terms of the requirements identified in Parts IV.D.7 and IV.D.8 as expeditiously as practicable, but except as provided below, not later than either October 1, 1995. Facilities which are not required to report under EPCRA Section 313 prior to July 1, 1992, shall provide for compliance with the terms of the requirements identified in Parts IV.D.7 and IV.D.8 as expeditiously as practicable, but not later than three years after the date on which the facility is first required to report under EPCRA Section 313. However, plans for facilities subject to the additional requirements of Part IV.D.7 and IV.D.8 shall provide for compliance with the other terms and conditions of this permit in accordance with the appropriate dates provided in Part IV.1, 2, 3, or 5 of this permit.

6. Upon a showing of good cause, the Director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a NOI in accordance with Part II.A.2 (deadlines for notification—new dischargers) of this permit (and updated as appropriate).

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit.

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this Part. Within 30 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B (above).

D. Contents of Plan

The plan shall include, at a minimum, the following items:

1. *Pollution Prevention Team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during any dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. *Drainage.*

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part IV.D.2.c (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. *Inventory of Exposed Materials.* An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff

between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. *Spills and Leaks.* A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. *Sampling Data.* A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. *Risk Identification and Summary of Potential Pollutant Sources.* A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g. biochemical oxygen demand, etc.) of concern shall be identified.

3. *Measures and Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. *Good Housekeeping.*—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. *Preventive Maintenance.* A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. *Spill Prevention and Response Procedures.* Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. *Inspections.* In addition to or as part of the comprehensive site evaluation required under Part IV.4 of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained.

e. *Employee Training.* Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. *Recordkeeping and Internal Reporting Procedures.* A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. *Non-Storm Water Discharges.*

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant source of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part VI.A (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 (authorized non-storm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

h. *Sediment and Erosion Control.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. *Management of Runoff.* The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges, associated with industrial activity (see Parts IV.D.2. (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators),

snow management activities, infiltration devices, and wet detention/retention devices.

4. *Comprehensive Site Compliance Evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, except as provided in paragraph IV.D.4.d (below), in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part IV.D.2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph IV.D.3 (measures and controls) of this permit shall be revised as appropriate within two weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than twelve weeks after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph IV.D.4.b (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least one year after coverage under this permit terminates. The report shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G (signatory requirements) of this permit.

d. Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part shall be conducted at appropriate intervals specified in the plan, but, in no case less than once in three years.

5. *Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.*

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. *Consistency with other plans.* Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. *Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA Section 313 requirements.* In addition to the requirements of Parts IV.D.1 through 4 of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as 'Section 313 water priority chemicals' in accordance with the definition in Part X of this permit, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water, and wind.

b. In addition to the minimum standards listed under Part IV.D.7.a (above) of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable State rules, regulations and guidelines:

(1) *Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals.*

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) *Material storage areas for Section 313 water priority chemicals other than liquids.* Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) *Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals.* Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the

placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

(4) *Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled.* Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) *Discharges from areas covered by paragraphs (1), (2), (3) or (4).*

(a) Drainage from areas covered by paragraphs (1), (2), (3) or (4) of this part should be restrained by values or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

(6) *Facility site runoff other than from areas covered by (1), (2), (3) or (4).* Other areas of the facility (those not addressed in paragraphs (1), (2), (3) or (4)), from which runoff which may contain Section 313 water priority chemicals or spills of Section 313 water priority chemicals could cause a discharge shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) *Preventive maintenance and housekeeping.* All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to waters of the United States, action to stop the leak or otherwise prevent the significant release of section 313 water priority chemicals to waters of the United States shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with Federal, State, and local requirements and as described in the plan.

(8) *Facility security.* Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) *Training.* Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) *Engineering certification.* The storm water pollution prevention plan for a facility subject to EPRCA Section 313 requirements for chemicals which are classified as 'section 313 water priority chemicals' shall be reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. A Registered Professional Engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional Requirements for Salt Storage

Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to a waters of the United States shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than October 1, 1995. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States.

Part V. Numeric Effluent Limitations

A. Coal Pile Runoff

Any discharge composed of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/1 total suspended solids. Coal pile runoff

shall not be diluted with storm water or other flows in order to meet this limitation. The pH of such discharges shall be within the range of 6.0–9.0. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/1 limitation for total suspended solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than October 1, 1995, will constitute a violation of this permit.

Part VI. Monitoring and Reporting Requirements

A. Failure to Certify

Any facility that is unable to provide the certification required under paragraph IV.D.3.g.(1) (testing for non-storm water discharges), must notify the Director by October 1, 1993 or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1992, 180 days after submitting a NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated or dischargers must submit appropriate NPDES permit application forms.

B. Monitoring Requirements

1. *Limitations on Monitoring Requirements.*

a. Except as required by paragraph b., only those facilities with activities specifically identified in Parts VI.B.2 (semi-annual monitoring requirements) and VI.B.3 (annual monitoring requirements) of this permit are required to conduct sampling of their storm water discharges associated with industrial activity.

b. The Director can provide written notice to any facility otherwise exempt from the sampling requirements of Parts VI.B.2 (semi-annual monitoring requirements) or VI.B.3 (annual monitoring requirements), that it shall conduct the annual discharge sampling required by Part VI.B.3.d (additional facilities), or specify an alternative monitoring frequency or specify additional parameters to be analyzed.

2. *Semi-Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.2.a through f must monitor those storm water discharges identified below at least semi-annually (2 times per year) except as provided in VI.B.5 (sampling waiver), VI.B.6 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in Parts VI.B.2.a through f (below) must report in accordance with Part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

a. *Section 313 of EPCRA Facilities.* In addition to any monitoring required by Parts VI.B.2.b through f. or Parts VI.B.3.a through d, facilities with storm water discharges associated with industrial activity that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' are required to monitor storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (B0D5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L): pH; acute whole effluent toxicity; and any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986.

b. *Primary Metal Industries.* Facilities with storm water discharges associated with industrial activity classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); total suspended solids (mg/L); pH; acute whole effluent toxicity; total recoverable lead (mg/L); total recoverable cadmium (mg/L); total recoverable copper (mg/L); total recoverable arsenic (mg/L); total recoverable chromium (mg/L); and any pollutant limited in an effluent guideline to which the facility is subject. Facilities that are classified as SIC 33 only because they manufacture pure silicon and/or semiconductor grade silicon are not required to monitor for total recoverable cadmium, total recoverable copper, total recoverable arsenic, total recoverable chromium or acute whole effluent toxicity, but must monitor for other parameters listed above.

c. *Land Disposal Units/Incinerators/BIFs.* Facilities with storm water discharges associated with industrial activity from any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site); and incinerators (including Boilers and Industrial Furnaces (BIFs)) that burn hazardous waste and operate under interim status or a permit under Subtitle C of RCRA, are required to monitor such storm water that is discharged from the facility for: Magnesium (total recoverable) (mg/L), Magnesium (dissolved) (mg/L), Total Kjeldahl Nitrogen (TKN) (mg/L), Chemical Oxygen Demand (COD) (mg/L), Total Dissolved Solids (TDS) (mg/L), Total Organic Carbon (TOC) (mg/L), oil and grease (mg/L), pH, Total recoverable arsenic (mg/L), Total recoverable Barium (mg/L), Total recoverable Cadmium (mg/L), Total Chromium (mg/L), Total recoverable Cyanide (mg/L), Total recoverable Lead (mg/L), Total Mercury (mg/L), Total recoverable Selenium (mg/L), Total recoverable Silver (mg/L), and acute whole effluent toxicity.

d. *Wood Treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, COD (mg/L), and TSS (mg/L). In addition, facilities that use chlorophenolic formulations shall measure pentachlorophenol (mg/L) and acute whole effluent toxicity; facilities which use creosote formulations shall measure acute whole effluent toxicity; and facilities that use chromium-arsenic formulations shall measure total recoverable arsenic (mg/

L), total recoverable chromium (mg/L), and total recoverable copper (mg/L).

e. *Coal Pile Runoff.* Facilities with storm water discharges associated with industrial activity from coal pile runoff are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, TSS (mg/L), total recoverable copper (mg/1), total recoverable nickel (mg/1) and total recoverable zinc (mg/1).

f. *Battery Reclaimers.* Facilities with storm water discharges associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; total recoverable copper (mg/1); and total recoverable lead (mg/1).

3. *Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.3.a through d. (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.B.5 (sampling waiver), and VI.B.6 (representative discharge). Permittees with facilities identified in parts VI.B.3.a through d. (below) are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E (retention of records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

a. *Airports.* At airports with over 50,000 flight operations per year, facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (B0D5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

b. *Coal-fired Steam Electric Facilities.* Facilities with storm water discharges associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423—which are not eligible for coverage under this permit) are required to monitor such storm water that is discharged from the facility for: Oil and grease (mg/L), pH, TSS (mg/L), total recoverable copper (mg/L), total recoverable nickel (mg/L) and total recoverable zinc (mg/L).

c. *Animal Handling / Meat Packing.* Facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils, are required to monitor such storm water that is discharged from the facility for: Five Day Biochemical Oxygen Demand (B0D5) (mg/L); oil and grease (mg/L); Total Suspended Solids (TSS) (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); ph; and fecal coliform (counts per 100 mL).

d. *Additional Facilities.* Facilities with storm water discharges associated with industrial activity that:

(i) come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products);

(ii) are from those areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water;

(iii) come into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities;

(iv) are from oil handling sites at oil fired steam electric power generating facilities;

(v) are from cement manufacturing facilities and cement kilns (other than discharges in whole or in part from material storage piles subject to storm water effluent guidelines at 40 CFR 411—which are not eligible for coverage under this permit);

(vi) are from ready-mixed concrete facilities; or

(vii) are from ship building and repairing facilities;

are required to monitor such storm water discharged from the facility for: Oil and Grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and any pollutant limited in an effluent guideline to which the facility is subject.

4. *Sample Type.* For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hours of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, fecal coliform, and oil and grease.

5. *Sampling Waiver.* When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why

samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two year period.

6. *Representative Discharge.* When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Permittees required to submit monitoring information under Parts VI.D.1.a, b or c of this permit shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

7. *Alternative Certification.* A discharger is not subject to the monitoring requirements of Parts VI.B.2 or 3 of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.D of this permit.

8. *Alternative to WET Parameter.* A discharger that is subject to the monitoring requirements of Parts VI.B.2.a through d may, in lieu of monitoring for acute whole effluent toxicity, monitor for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 (see Addendum A of this permit) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in Parts VI.B.2.a through d.

C. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test Procedures.*

a. The permittee shall conduct acute 24 hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1).[2] Freshwater species must be used for discharges to freshwater water bodies. Due to the non-saline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

b. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,* EPA/600/4–90–027 (Rev. September 1991). EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 *FR* 50216).

c. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100 effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–027 (Rev. September 1991), Section 12, Report Preparation, and the report submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report "O" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected on or after October 1, 1995, in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

D. Reporting: Where to Submit.

1. a. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(a) (EPCRA Section 313), and (d) (Wood Treatment facilities), shall monitor samples collected during the sampling periods running from January to June and during the sampling period from July to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than twelve months of information.

b. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(b) (Primary Metal facilities), (e) (Coal Pile Runoff), and (f) (Battery Reclaimers) shall monitor samples collected during the sampling period running from March to August and during the sampling period running from September to February. Such permittees shall submit monitoring results obtained during the reporting period running from April to March on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following April. A separate Discharge Monitoring Report Form is required for each event sampling period. The first report may include less than twelve months of information.

c. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(c) (Land disposal facilities), shall monitor samples collected during the sampling period running from October to March and during the sampling period running from April to September. Such permittees shall submit monitoring

results obtained during the reporting period running from October to September on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of October. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than twelve months of information.

d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office:

1. CT, MA, ME, NH, RI, VT

United States EPA, Region I, Water Management Division, (WCP-2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203.

2. NJ, NY, PR, VI

United States EPA, Region II, Water Management Division, (2WM-WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

3. DE, DC, MD, PA, VA, WV

United States EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

4. AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division, (FPB-3), Storm Water Staff, 345 Courtland Street, NE, Atlanta, GA 30365.

5. IL, IN, MI, MN, OH, WI

United States EPA, Region V, Water Quality Branch, (5 WQP), Storm Water Staff, 77 West Jackson Boulevard, Chicago, IL 60604.

6. AR, LA, NM (except see Region IX for Navajo lands, and see Region VIII for Ute Mountain Reservation lands), OK, TX

United States EPA, Region VI, Water Management Division, (6W-EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202.

7. IA, KS, MO, NE

United States EPA, Region VII, Water Management Division, Compliance Branch, Storm Water Staff, 726 Minnesota Avenue, Kansas City, KS 66101.

8. CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM-C), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466.

Note.—For *Montana Indian Lands*, please use the following address:
United States EPA, Region VIII, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620-0026.

9. AZ, CA, HI, NV, Guam, American Samoa, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID

United States EPA, Region IX, Water Management Division, (W-5-1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

10. AK, ID (except see Region IX for Duck Valley Reservation lands), OR, WA

United States EPA, Region X, Water Management Division, (WD-134), Storm Water Staff, 1200 Sixth Street, Seattle, WA 98101(i).

e. Permittees with facilities identified in Parts VI.B.3 (annual monitoring) are not required to submit monitoring results, unless required in writing by the Director.

2. Additional Notification.

In addition to filing copies of discharge monitoring reports in accordance with Part VI.D.1 (reporting: where to submit), facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph VI.D.1 (reporting: where to submit). Facilities not required to report monitoring data under Part VI.B.3 (annual monitoring requirements), and facilities that are not otherwise required to monitor their discharges, need not comply with this provision.

E. Retention of Records.

1. The permittee shall retain the pollution prevention plan developed in accordance with Part IV (storm water pollution prevention plans) of this permit until at least one year after coverage under this permit terminates. The permittee shall retain all records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, until at least one year after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit (see paragraph VI.E.2 (below) of this permit) or extended by request of the Director at any time.

2. For discharges subject to sampling requirements pursuant to Part VI.B (monitoring requirements), in addition to the requirements of paragraph VI.E.1 (above), permittees are required to retain for a six year period from the data of sample collection or for the term of this permit, which ever is greater, records of all monitoring information collected during the term of this permit. Permittees must submit such monitoring results to the Director upon the requests of the Director, and submit a summary of such result as part of renotification requirements in accordance with Part II.F (renotification).

Part VII. Standard Permit Conditions

A. Duty to Comply.

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions.

a. *Criminal.*

(1). *Negligent violations.*—The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2). *Knowing violations.*—The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3). *Knowing endangerment.*—The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by

imprisonment for not more than 15 years, or both.

(4). *False statement.*—The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309(c)(4) of the Clean Water Act).

b. *Civil penalties.*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. *Administrative penalties.*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1). *Class I penalty.*—Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2). *Class II penalty.*—Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires on October 1, 1997. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof) between August 1, 1997 and September 29, 1997 to remain covered under the continued permit after October 1, 1997. Facilities that had not obtained coverage under the permit by October 1, 1997 cannot become authorized to discharge under the continued permit.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the Director, within a time specified by the Director, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director upon request copies of records required to be kept by this permit.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director (and/or the operator of a large or medium municipal separate storm sewer system), or that this permit requires be maintained by the permittee, shall be signed.

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality: State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g. Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to authorization.* If an authorization under paragraph VII.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice of intent satisfying the requirements of paragraph II.C must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. *Certification.* Any person signing documents under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other

document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Penalties for Falsification of Monitoring Systems

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in section 309 of the CWA.

J. Oil and Hazardous Substances Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part VI.D.1.d (reporting: where to submit) of this permit. The Director may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application as required by the Director, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2F) with reasons supporting the request to the Director. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part VI.D.1.c. of this permit. The request may be granted by the issuance of any individual permit or an alternative general permit if the reasons cited by the owner or operator are adequate to support the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is authorized for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

N. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

O. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

P. Monitoring and Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 6 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3. *Records contents.*—Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The time(s) analyses were initiated;

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

Q. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

R. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Bypass of Treatment Facility

1. Notice:

a. Anticipated bypass. If a permittee subject to the numeric effluent limitation of Part V.A of this permit knows in advance of the need for a bypass, he or she shall submit prior notice, if possible, at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the pass.

b. Unanticipated bypass. The permittee subject to the numeric effluent limitation of Part V.A of this permit shall submit notice of an unanticipated bypass. Any information regarding the unanticipated bypass shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the bypass and its cause; the period of the bypass; including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurance of the bypass.

2. Prohibition of bypass:

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass. Unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee should, in the exercise of reasonable engineering judgment, have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices of the bypass.

b. The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part VII.S.2.a.

T. Upset Conditions

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based numeric effluent limitations in Part V.A of this permit if the requirements of paragraph 2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset:

b. The permitted facility was at the time being properly operated; and

c. The permittee provided oral notice of the upset to EPA within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the upset and its cause; the period of the upset; including exact dates and times, and if the upset has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the upset.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain individual permit or an alternative general permit in accordance with Part VII.M (requiring an individual permit or alternative general permit) of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

Part IX. Termination of Coverage

A. Notice of Termination

Where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G (signatory requirements) of this permit. The Notice of Termination shall include the following information:

1. Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator addressed by the Notice of Termination;

3. The NPDES permit number for the storm water discharge associated with industrial activity identified by the Notice of Termination;

4. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or

that I am no longer the operator of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

B. Addresses

All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof),[4] to the Director of the NPDES program in care of the following address: Storm Water Notice of Termination, PO Box 1185, Newington, VA 22122.

Part X. Definitions

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Coal pile runoff means the rainfall runoff from or through any coal storage pile.

CWA means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972).

Director means the Regional Administrator or an authorized representative.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Large and medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part II of this permit.)

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Section 313 water priority chemical means a chemical or chemical categories which: 1) Are listed at 40 CFR 372.65 pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); 2) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and 3) that meet at least one of the following criteria: (i) Are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic water quality criteria. See Addendum B of this permit.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water associated with industrial activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the:

[4] A copy of the approved NOT form is provided in Appendix D of this notice.

storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[5]

[5] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

Time-weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with the numeric effluent limitations of part V of this permit because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Waste pile means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

Part XI. State Specific Conditions

The provisions of this part provide modifications or additions to the applicable conditions of parts I through

IX of this permit. Part X of this permit does not establish special provisions for the States of Maine, New Hampshire, South Dakota, Johnson Atoll, Midway, Wake Island, New Mexico (Indian lands), Montana (Indian lands), North Dakota (Indian lands), Utah (Indian lands), Wyoming (Indian lands).

Region 1

A. *Maine.* Maine 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* This permit covers all areas administered by EPA Region 1 in the State of Maine.

* * * * *

2. The following section is added to Part VI of the permit:

Part VI. Monitoring and Reporting Requirements

* * * * *

c. *Toxicity Testing.*

* * * * *

3. The discharge described will not lower the quality of the receiving waters below the minimum requirements of their classification and will satisfy the appropriate requirements of Maine Law provided that the test organisms include ceriodaphnia dubia and brook trout, salvelinus fontinalis, to meet the whole effluent toxicity requirements for certain storm water discharges associated with industrial activity.

Region 6

B. *Louisiana.* Louisiana 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 6 in the State of Louisiana.

* * * * *

2. Part IV of the permit is revised to read:

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each facility covered by this permit. The pollution prevention plan shall provide for compliance with numeric effluent limitations as part V.B. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

* * * * *

3. The following section is added to part V of the Permit:

Part V. Numeric Effluent Limitations

A. *Coal Pile Runoff.*

* * * * *

B. *Limitations For All Discharges of Storm Water Associated With Industrial Activity.*

1) General Limitations: Effective 10/1/95.

Parameter	Daily maximum
Total Organic Carbon (TOC)	50 mg/1
Oil & Grease	15 mg/1

2) Oil & Gas Exploration and Production Facilities: Effective 10/1/92.

Parameter	Daily maximum
Chemical Oxygen Demand (COD).	100 mg/1
Total Organic Carbon (TOC)	50 mg/1
Oil & Grease	15 mg/1
Chlorides	

a) Maximum chloride concentration of the discharge shall not exceed two times the ambient concentration of the receiving water in brackish marsh areas.

b) Maximum chloride concentration of the discharge shall not exceed 500 mg/l in freshwater or intermediate marsh areas and upland areas.

Facilities without monitoring requirements must insure the pollution prevention plan developed in accordance with part IV will insure compliance with these effluent limitations.

* * * * *

4. Part VI.B.2 of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

* * * * *

2. *Semi-Annual Monitoring Requirements.*

* * * * *

a. *Section 313 of SARA Title III Facilities.* In addition to any monitoring required by parts VI.B.2.b through f or parts VI.B.3.a through d, facilities with storm water discharges associated with industrial activity that are subject to requirements to report releases into the environment under section 313 of EPCRA for chemicals which are classified as 'section 313 water priority chemicals' are required to monitor storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of a section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a section 313 water priority chemical is handled for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; acute whole effluent toxicity; and any section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986.

b. *Primary Metal Industries.* Facilities with storm water discharges associated with industrial activity classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); pH; Acute Whole Effluent Toxicity; Total Lead (mg/L); Total Cadmium (mg/L); Total Copper (mg/L); Total Arsenic (mg/L); Total Chromium (mg/L); and any pollutant limited in an effluent guideline to which the facility is subject.

c. *Land Disposal Units/Incinerators/BIFs.* Facilities with storm water discharges associated with industrial activity from any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site); and incinerators (including Boilers and Industrial Furnaces (BIFs)) that burn hazardous waste and operate under interim status or a permit under Subtitle C of RCRA, are required to monitor such storm water that is discharged from the facility for: Ammonia (mg/L),

Magnesium (total) (mg/L), Magnesium (dissolved) (mg/L), Nitrate plus Nitrite Nitrogen (mg/L), Chemical Oxygen Demand (COD) (mg/L), Total Dissolved Solids (TDS) (mg/L), Total Organic Carbon (TOC) (mg/L), Oil and Grease (mg/L), pH, Total Arsenic (mg/L), Total Barium (mg/L), Total Cadmium (mg/L), Total Chromium (mg/L), Total Cyanide (mg/L), Total Lead (mg/L), Total Mercury (mg/L), Total Selenium (mg/L), Total Silver (mg/L), and Acute Whole Effluent Toxicity.

d. *Wood Treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L), Total Organic Carbon (TOC) (mg/l); pH, Five Day Biochemical Oxygen Demand (BOD5) (mg/L), Chemical Oxygen Demand (COD) (mg/L), and Total Suspended Solids (TSS) (mg/L). In addition, facilities that use chlorophenolic formulations shall measure Pentachlorophenol (mg/L) and Acute Whole Effluent Toxicity; facilities which use creosote formulations shall measure Acute Whole Effluent Toxicity; and facilities that use chromium-arsenic formulations shall measure Total Arsenic (mg/L), Total Chromium (mg/L), and Total Copper (mg/L).

e. *Coal Pile Runoff.* Facilities with storm water discharges associated with industrial activity from coal pile runoff are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); pH; Total Suspended Solids (TSS) (mg/L); Total Copper (mg/l); Total Nickel (mg/l) and Total Zinc (mg/l).

f. *Battery Reclaimers.* Facilities with storm water discharges associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; Total Copper (mg/l); and Total Lead (mg/l).

5. Part VI.B.3 of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

* * * * *

3. *Annual Monitoring Requirements.*

* * * * *

a. *Airports.* At airports with over 50,000 flight operations per year, facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

b. *Coal-fired Steam Electric Facilities.* Facilities with storm water discharges associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423—which are not eligible for coverage under this permit) are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L), Total Organic Carbon (TOC) (mg/l); pH, Total Suspended Solids (TSS) (mg/L), Total Copper (mg/l), Total Nickel (mg/l) and Total Zinc (mg/l).

c. *Animal Handling/Meat Packing.* Facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils, are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/l); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; and Fecal Coliform (counts per 100 ml).

d. *Additional Facilities.* Facilities with storm water discharges associated with industrial activity that:

(i) come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products);

(ii) are from those areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water;

(iii) come into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities;

(iv) are from oil handling sites at oil fired steam electricpower generating facilities;

(v) are from cement manufacturing facilities and cement kilns (other than discharges in whole or in part from material storage piles subject to storm water effluent guidelines at 40 CFR 411—which are not eligible for coverage under this permit);

(vi) are from ready-mixed concrete facilities; or

(vii) are from ship building and repairing facilities;

Are required to monitor such storm water discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and any pollutant limited in an effluent guideline to which the facility is subject.

* * * * *

6. Part VI.C of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

c. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test Procedures*

* * * * *

c. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100 percent strength (no dilution) and a control consisting of synthetic dilution water.

Results of all tests conducted with any species shall be prepared according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation, and the report retained on-site. Results of the testing shall be summarized on Table VI-A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report results of the testing in accordance with questions 1-4 of Table VI-A.

Table VI-A (Sheet 1 of 2)

Permittee: _____
NPDES permit: _____
Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ synthetic water.

Time	Replicate	Percent effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

No _____ Yes _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

Table VI-A (Sheet 2 of 2)

Permittee: _____
NPDES permit: _____
Outfall(s): _____

Fathead minnow *(Pimephales promelas)* Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ synthetic water.

Time	Replicate	Percent effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE6C. Otherwise, enter a *0*.

* * * * *

7. The following definitions are added to Part X of the permit:

Part X. Definitions

Brackish Marshes—those areas that are inundated or saturated by surface water or groundwater of moderate salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes wiregrass *(Spartina patens)*, three-cornered grass *(Scirpus olneyi)*, coco *(Scirpus robustus)*, and widgeongrass *(Ruppia maritima)*. Interstitial water salinity normally ranges between 7 and 15 parts per thousand. (LAC 33:IX.708)

Freshwater Swamps and Marshes—those areas that are inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes maiden cane *(Panicum hemitomon)*, *Hydrocotyl sp.*, water hyacinth *(Eichhornia crassipes)*, pickerelweed *(Pontederia cordata)*, alligatorweed *(Alternanthera philoxeroides)*, and bulltongue *(Sagittaria sp.)*. Interstitial water salinity is normally less than 2 parts per thousand. (LAC 33:IX.708)

Intermediate Marshes—those areas that are inundated or saturated by surface water or groundwater of salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes wiregrass *(Spartina patens)*, deer pea *(Vigna repens)*, bulltongue *(Sagittaria sp.)*, wild millet *(Echinochloa walteri)*, bullwhip *(Scirpus californicus)*, and sawgrass *(Cladium jamaicense)*. Interstitial water salinity normally ranges between 3 and 6 parts per thousand. (LAC 33:IX.708)

Saline Marshes—those wetland areas that are inundated or saturated by surface water or groundwater of salinity characteristic of near Gulf of Mexico ambient water at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes oystergrass *(Spartina alterniflora)*, glasswort *(Salicornia sp.)*, black rush *(Juncus roemericanus)*, *Batis maritima*, black mangrove *(Avicennia nitida)*, and saltgrass *(Distichlis spicata)*. Interstitial water salinity normally exceeds 16 parts per thousand. (LAC 33:IX.708)

Upland—any land area that is not normally inundated with water and that would not, under normal circumstances, be characterized as swamp or fresh, intermediate, brackish, or saline marsh. The term shall have both a regional and site-specific connotation; for example, naturally occurring and man-made topographic highs that are partially or totally surrounded by swamp, marsh, or open water will be considered upland on a local basis, but will not necessitate characterization of the surrounding area as upland. The land and water bottoms of all parishes north of the nine parishes contiguous with the Gulf of Mexico shall be determined on a case-by-case basis with reference to the presences of a regional expanse of emergent aquatic vegetation or open water. (LAC 33:IX.708)

C. *New Mexico*. New Mexico 401 certification special permit conditions revise the permit as follows:

1. Part I.A. of the permit is revised to read:

Part I. Coverage Under this Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 6 in the State of New Mexico.

* * * * *

2. Part VI.B of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

* * * * *

2. *Semi-Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in parts VI.B.2.a through f. must monitor those storm water discharges identified below at least semi-annually (2 times per year) except as provided in VI.B.6 (sampling waiver), VI.B.7 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in parts VI.B.2.a through f (below) must report in accordance with part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

* * * * *

3. *Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in parts VI.B.3.a through d. (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.B.6 (sampling waiver), and VI.B.7 (representative discharge). Permittees with facilities identified in parts VI.B.3.a through d. (below) are not required to submit monitoring results. However, such permittees must retain monitoring results in accordance with part VI.E (retention of records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

* * * * *

4. *Discharges to Domestic Water Supplies.*

a. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities discharging into waters of the State of New Mexico designated by the latest design of *Water Quality Standards for Interstate and Intrastate Streams in New Mexico* for use as a domestic water supply (See Appendix * * *) must monitor those storm water discharges into the domestic water supply waterbody at least annually (once per year) except as provided in VI.B.6 (sampling waiver), and VI.B.7 (representative discharge). These monitoring requirements for the parameters listed below are in addition to any monitoring required under parts VI.B.2 (semi-annual monitoring) or part VI.B.3 (annual monitoring requirements). Monitoring results must be reported in accordance with part VI.D. (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

Parameter	Reportable quantity action level
Dissolved arsenic	0.05 mg/1.
Dissolved barium	1.0 mg/1.
Dissolved cadmium	0.010 mg/1.
Dissolved chromium	0.05 mg/1.
Dissolved lead	0.05 mg/1.
Total mercury	0.002 mg/1.
Dissolved nitrate (as N)	10.0 mg/1.
Dissolved selenium	0.05 mg/1.
Dissolved silver	0.05 mg/1.
Dissolved cyanide	0.2 mg/1.
Dissolved uranium	5.0 mg/1.
Radium-226+radium-228	30.0 pCi/1.

b. If the concentration of any sample exceeds a Reportable Quantity Action Level listed above, the permittee shall, within 24 hours of receipt of the sampling data, submit the results of the sample analysis to the State at the address specified in part VI.D.2.b (additional notification: where to submit). Dischargers occurring on Indian Nations shall submit the required report directly to EPA Region 6 at the address specified in part VI.D., with a copy provided to the Governing Body of the Indian Nation.

5. *Sample Type.* For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 150 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. There shall be a minimum of 60 days between sampled events for facilities required to monitor semi-annually (twice per year). The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Only grab samples must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, and oil and grease.

* * * * *

6. *Sampling Waiver*

* * * * *

7. *Representative Discharge*

* * * * *

8. *Alternative Certification*

* * * * *

9. *Alternative to WET Parameter*

* * * * *

3. Part VI.C of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

C. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series

of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. Test Procedures

* * * * *

C. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100 percent strength (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be prepared according to EPA/600/4–90–027 (Rev. September 1991), Section 12, Report Preparation, and the report retained on-site. Results of the testing shall be summarized on Table VI–A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report results of the testing in accordance with questions 1–4 of Table VI–A.

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ Synthetic water.

Time	Replicate	Percent effluent (%)	
		0	100
24 Hr	A		
	B		
	C		
	D		
	Mean		

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Fathead Minnow (*Pimephales promelas*) Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ Synthetic water.

Time	Replicate	Percent effluent (%)
	0	100
24 hr	A	
	B	
	C	
	D	
	Mean	

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE6C. Otherwise, enter a *0*.

4. Part VI.D.1.e of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. Reporting: Where to Submit.

1.

* * * * *

e. Permittees with facilities identified only in Part VI.B.3 (annual monitoring) or VI.B.4 (discharges to domestic water supplies), are not required to submit monitoring results, unless required in writing by the Director or by the provisions of Part VI.B.4.b. (discharges to domestic water supplies: 24 hour reporting).

* * * * *

5. Part VI.D.2.b of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. Reporting: Where to Submit.

* * * * *

2. *Additional Notification.*

* * * * *

b. Facilities located in the following States shall provide copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, to the Director of the appropriate State Agency at the address listed below:

New Mexico

Program Manager, New Mexico Environment Department, Surface Water Quality Bureau, Surface Water Section, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico, 87502

APPENDIX * * *.—NEW MEXICO RIVER SEGMENTS DESIGNATED FOR USE AS A DOMESTIC WATER SUPPLY

No.	Description
2–106	The Jemez River and all its tributaries above State Highway 4 near the town of Jemez Springs and the Guadalupe River and all its tributaries.
2–107	Perennial reaches of Bluewater Creek, Rio Moquino, Seboyeta Creek, Rio Paguate, the Rio Puerco within the Santa Fe National Forest, and all other perennial reaches of tributaries to the Rio Puerco including the Rio San Jose in Cibola County from the USGS gaging station at Correo upstream to Horace Springs.
2–112	The perennial reaches of Rio Vallecitos and its tributaries, and Rio del Oso, and El Rito Creek above the town of El Rito.
2–116	All perennial reaches of tributaries to the Rio Chama above Abiquiu Reservoir except the Rio Gallina and Rio Puerco se Chama north of State Highway 96 and the main stem of the Rio Chama from the headwaters of El Vado Reservoir upstream to the New Mexico-Colorado line.
2–118	Perennial tributaries to the Rio Grande in Bandelier National Monument and their headwaters in Sandoval County, all perennial reaches of tributaries to the Rio Grande in Santa Fe County unless included in other segments.
2–120	The Red River upstream of the mouth of Placer Creek, all tributaries to the Red River, and all other perennial reaches of tributaries to the Rio Grande in Taos and Rio Arriba counties unless included in other segments.
2–209	Eagle Creek above the Alto Reservoir, Bonito Creek upstream of Angus, and the Rio Ruidoso and its tributaries above Seeping Springs Lakes.
2–212	The Gallinas River and all its tributaries above the diversion for the Las Vegas municipal reservoir and perennial reaches of Tecolote Creek and its perennial tributaries.

APPENDIX * * *.—NEW MEXICO RIVER SEGMENTS DESIGNATED FOR USE AS A DOMESTIC WATER SUPPLY—Continued

No.	Description
2-214	Cow Creek and all its tributaries and the main stem of the Pecos Rover from one river mile below the bridge on State Highway 223 upstream to its headwaters, including all tributaries thereto.
2-306	The Mora River and its tributaries above Mora, all tributaries to the Mora River upstream from State Highway 518, Coyote Creek, the Cimarron River above State Highway 21 in Cimarron, all tributaries to the Cimarron River, Rayado Creek above Miami Lake Diversion, Ocate Creek and its tributaries upstream of Ocate, and all other tributaries to the Canadian River northwest and north of U.S. Highway 64 in Colfax County unless included in other segments.
2-503	The main stem of Gila River from Gila Hot Springs upstream to the headwaters and all perennial tributaries to the Gila River at or above the town of Cliff.
2-603	All perennial reaches of tributaries to the San Francisco River at or above the town of Glenwood.
2-802	Perennial reaches of Three Rivers.
2-804	The Mimbres River upstream of the USGS gaging station at Mimbres and all perennial tributaries thereto.
2-805	Perennial reaches of the Sacramento River (Sacramento-Salt Flat Closed Basin) and all perennial tributaries thereto.

D. *Oklahoma.* Oklahoma 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage under this Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 6 in the State of Oklahoma.

2. The following section is added to Part I.B.3 of the permit:

B. *Eligibility.*

* * * * *

3. *Limitations on Coverage.* The following storm water discharges associated with industrial activity are not authorized by this permit:

* * * * *

h. "new" point source discharges of storm water associated with industrial activity (those commencing after the June 25, 1992, effective date of the Oklahoma Water Quality Standards—Oklahoma Annotated Code Title 785, Chapter 45) to the following waters:

(i) waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards;

(ii) Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards; and

(iii) waterbodies located within the boundaries of Oklahoma Water Quality Standards Appendix B areas which are specifically designated as "Outstanding Resource Waters" in Appendix A of the Oklahoma Water Quality Standards.

* * * * *

3. Part VI.C.1.c of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

c. *Toxicity Testing.*

* * * * *

1. *Test Procedures*

* * * * *

c. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100 percent strength (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be prepared according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation, and the report retained on-site. Results of the testing shall be summarized on Table VI-A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report results of the testing in accordance with questions 1-4 of Table VI-A.

Table VI-A (Sheet 1 of 2)

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water.

Time	Replicate	Percent Effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

Yes_____ No_____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

Table VI-A (Sheet 2 of 2)

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Fathead Minnow (*Pimephales promelas*) Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water

Time	Replicate	Percent Effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____#

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE6C. Otherwise, enter a *o*.

4. The following section is added to Part VIII of the permit:

Part VIII. Reopener Clause

* * * * *

C. This permit may be reopened and modified if the State of Oklahoma

adopts new or revises existing water quality requirements regarding the discharge of storm water.

E. *Texas.* Texas 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

* * * * *

A. *Permit Area.* This permit covers all areas administered by EPA Region 6 in the State of Texas.

* * * * *

2. The following sections are added to Part V of the permit:

Part V. Numeric Effluent Limitations

* * * * *

B. All Discharges to Inland Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/l), for discharges to inland waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

C. All Discharges to Tidal Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/l), for discharges to tidal waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.1	0.2	0.3
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.1	0.2	0.3
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

3. Part VI.B.2.d of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. Monitoring Requirements

* * * * *

2. Semi-Annual Monitoring Requirements

* * * * *

d. *Wood Treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, BOD5 (mg/L), COD (mg/L), and TSS (mg/L). In addition, facilities that use chlorophenolic formulations shall measure pentachlorophenol (mg/L) and acute whole effluent toxicity; facilities which use creosote formulations shall measure acute whole effluent toxicity; and facilities that use chromium-arsenic formulations shall measure acute whole effluent toxicity, total arsenic (mg/L), total chromium (mg/L), and total copper (mg/L).

4. Parts VI.C and VI.C.1 of the permit are revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

C. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

The permittee shall test the effluent for lethality in accordance with the provisions of this section. Such testing will determine if an effluent sample meets the Texas Surface Water Quality Standard listed at 31 TAC § 307.6(e)(2)(B) of greater than 50% survival of the appropriate test organisms in 100% effluent for a 24-hour period.

1. Test Procedures

a. The permittee shall conduct acute 24 hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the non-saline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

The following tests shall be used:

1. Acute static 24-hour definitive toxicity test using *Daphnia pulex.* A minimum of four (4) replicates with a minimum of five (5) organisms per replicate shall be used for this test.

2. Acute static 24-hour definitive toxicity test using fathead minnow (*Pimephales promelas*). A minimum of four (4) replicates with a minimum of ten (10) organisms per replicate shall be used for this test.

b. Five dilutions in addition to an appropriate control (0% effluent), shall be used in the toxicity tests. These effluent concentrations shall be 6%, 13%, 25%, 50% and 100%. The control and/or dilution water shall consist of a standard, synthetic, moderately hard, reconstituted water. If more than 10% of the test organisms in any control die, that test, including the control and all effluent dilution(s), shall be repeated, with all results from *both* tests reported as per paragraph d. of this section.

c. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,* EPA/600/4–90–027 (Rev. September 1991). EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 *FR* 50216).

d. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100% strength (no dilution), the dilutions specified in paragraph b. above, and a control consisting of either receiving water or synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–027 (Rev. September 1991), Section 12, Report Preparation, and the report retained onsite. The test results shall be summarized in the format used on Table VI–A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report test results in accordance with the instructions on Table VI–A.

* * * * *

Table VI–A (Sheet 1 of 2)

Permittee: _____

NPDES Permit: _____

Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water.

Time	Replicate	Percent Effluent (%)					
		0	100	50	25	13	6
24 Hr.	A						
	B						
	C						
	D						
	Mean						

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes_____ No_____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes_____ No_____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

Table VI–A (Sheet 2 of 2)

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Fathead Minnow (*Pimephales promelas*) Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water.

Time	Replicate	Percent Effluent (%)					
		0	100	50	25	13	6
24 Hr.	A						
	B						
	C						
	D						
	Mean						

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes_____ No_____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically signficant difference in survival at the 100% dilution as compared to the control (0%)?

Yes_____ No_____

If you report a YES, enter a *1* on the DRM Form, Parameter No. TEE6C. Otherwise, enter a *0*.

5. The following definitions are added to Part X of the permit:

Part X. Definitions

"Inland Waters"—all surface waters in the State other than "tidal waters" as defined below.

"Tidal Waters"—those waters of the Gulf of Mexico within the jurisdiction of the State of Texas, bays and estuaries thereto, and those portions of the river systems which are subject to the ebb and flow of the tides, and to the intrusion of marine waters.

Region 8

F. *Colorado (Federal facilities and Indian lands).* There are no special conditions pursuant to Colorado 401 certification in this permit for storm water discharges associated with industrial activity located on Indian lands in Colorado. Colorado 401 certification special permit conditions for storm water discharges associated with industrial activity from Federal facilities is revised as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under this Permit

A. *Permit Area.* The permit covers all Federal Facilities administered by EPA Region 8 in the State of Colorado.

2. Part III.A.2.b of the permit is revised to read:

Part III. Special Conditions

A. Prohibition on non-storm water discharges

* * * * *

2.

* * * * *

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.3.g. (2) (measures and controls for non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate that has not been contaminated by industrial activity and no chemicals have been added to it; naturally occurring springs which have not been altered by the industrial activity; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

3. Part III.B.c of the permit is revised to read:

Part III. Special Conditions

* * * * *

B. Releases in excess of Reportable Quantities

* * * * *

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.D.1.d (reporting: where to submit) of this permit and to the Colorado Water Quality Control Division at the following address: Colorado Department of Health, Water Quality Control Division,

4300 Cherry Creek Drive South, Denver, Colorado, 80222–1530. Attention: Permits and Enforcement.

* * * * *

4. Part IV.B.2 of the permit is revised to read:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

B. Signature and Plan Review

* * * * *

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system. Federal Facilities located on non-Indian lands in Colorado shall make plans available upon request to the Colorado Water Quality Control Division.

5. Part VIII of the permit is revised to read:

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain individual permit or an alternative general permit in accordance with Part VII.M (requiring an individual permit or alternative general permit) of this permit or the permit may be modified to include different limitations and/or requirements. If EPA develops new regulations which specifically impact storm water permit requirements or there is a change in statute which imposes additional requirements, this permit may be reopened and modified (following administrative procedures) to include the appropriate requirements.

* * * * *

Region 9

G. *Arizona.* Arizona 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 9 in the State of Arizona, excluding all Indian lands.

* * * * *

2. The following section is added to Part II of the permit:

Part II. Notice of Intent Requirements

* * * * *

F. Special NOI Requirements for the State of Arizona. NOIs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, P.O. Box 600, Phoenix, Arizona, 85001–0600.

NOIs submitted to the State of Arizona shall include the well registration number if storm water associated with industrial activity is discharged to a dry well or an injection well.

* * * * *

3. The following section is added to Part III of the permit:

Part III. Special Conditions

* * * * *

C. *Compliance with Water Quality Standards of the State of Arizona.* Discharges authorized by this permit shall not cause or contribute to a violation of any applicable water quality standard of the State of Arizona (A.G. Rule No. R92–006).

* * * * *

4. Part IV.D.7.b.(1).(b) of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

D. Contents of Plan

* * * * *

7. *Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA Section 313 requirements.*

* * * * *

b.

* * * * *

(1) *Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.*

* * * * *

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals shall include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for the 25-year, 24-hour precipitation event, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

* * * * *

5. The following section is added to Part IX of the permit:

Part IX. Termination of Coverage

* * * * *

C. *Special NOT Requirement for the State of Arizona.* NOTs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, P.O. Box 600, Phoenix, Arizona 85001–0600.

* * * * *

6. The following definition is added to Part X of the permit:

Part X. Definitions

* * * * *

"Significant sources of non-storm water" includes, but is not limited to: discharges which could cause or contribute to violations or water quality standards of the State of Arizona, and discharges which could include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

* * * * *

Region 10

H. *Alaska.* Alaska 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 10 in the State of Alaska, except Federal Indian reservations.

* * * * *

2. Part II.C of the permit is revised to read:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the Federal Register notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA, 22122.

2. A copy of initial Notice of Intent (NOI), any NOI for the continuation of

the general permit, and any Notice of Termination shall be submitted to the appropriate State regional office, attention Storm Water Coordinator, as follows:

Alaska Department of Environmental Conservation, Northern Regional Office, 1001 Noble Street, Suite 350, Fairbanks, Alaska 99701, (907) 452–1714. Fax: 451–2187.

Alaska Department of Environmental Conservation, Southeastern Regional Office, 410 W. Willoughby, Suite 105, Juneau, Alaska 99801, (907) 465–5350. Fax: 465–5362.

Alaska Department of Environmental Conservation, Southcentral Regional Office, 3601 "C" Street, Suite 1334, Anchorage, Alaska 99503, (907) 563–6529. Fax: 562–4026.

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, 411 W. 4th Ave., Suite 2C, Anchorage, Alaska, 99502, (907) 278–8594, Fax: 272–0690.

3. With the NOI to the State, a brief description of the activities to be covered shall be submitted. This shall be on a single sheet and shall describe the area to be disturbed to the nearest acre, the primary pollutants expected from the activities and the type of treatment to be provided.

* * * * *

3. Part III.B.1.c is revised to read as follows:

Part III. Special Conditions

* * * * *

B. Releases in excess of Reportable Quantities

1.

* * * * *

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.D.1.d (reporting: where to submit) of this permit and to the appropriate State regional office at the address provided in Part II.C.

* * * * *

4. Part IV.D of the permit is revised as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

D. Contents of Plan

Note: A copy of the Inventory of Exposed Materials (IV.D.2.b) and Spills and Leaks (IV.D.2.c) from the Pollution Prevention Plan shall be submitted by the plan preparation date stated in Part IV.A to the appropriate State Regional office.

* * * * *

5. The following section is added to Part VI.D.2 of the permit:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. Reporting: Where to Submit

* * * * *

2. Additional Notification

* * * * *

b. Facilities located in Alaska shall provide copies of the discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, to the Director of the appropriate State Agency at the addresses listed below:

Alaska Department of Environmental Conservation, Northern Regional Office, 1001 Noble Street, suite 350, Fairbanks, Alaska 99701, (907) 452–1714. Fax: 451–2187.

Alaska Department of Environmental Conservation, Southeastern Regional Office, 410 W. Willoughby, suite 105, Juneau, Alaska 99801, (907) 465–5350. Fax: 465–5362.

Alaska Department of Environmental Conservation, Southcentral Regional Office, 3601 "C" Street, suite 1334, Anchorage, Alaska 99503, (907) 563–6529. Fax: 562–4026.

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, 411 W. 4th Ave., suite 2C, Anchorage, Alaska 99502, (907) 278–8594. Fax: 272–0690.

* * * * *

I. Idaho.

Idaho 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised as follows:

Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas administered by EPA Region 10 in the State of Idaho.

* * * * *

2. The following section is added to Part III of the permit:

Part III. Special Conditions

* * * * *

C. All storm water shall be treated and disposed of in such a manner that the round water standards of Idaho are not violated. Such standards are specified in Section 1.02299 of the "Idaho Water Quality Standards and Wastewater Treatment Requirements."

* * * * *

J. *Washington (Federal facilities and Indian lands).* Washington 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all Federal Facilities administered by EPA Region 10 in the State of Washington.

2. The following section is added to Part III of the permit:

Part III. Special Conditions

* * * * *

C. Washington State Standards

1. This permit does not authorize the violation of ground water standards (Chapter 173–200 WAC), surface water standards (Chapter 173–201 WAC), or sediment management standards (Chapter 173–204 WAC) of the State of Washington. The point of compliance with surface water standards shall be determined after consideration of the assignment of a dilution zone as allowed under Chapter 173–201 WAC. The point of compliance with ground water standards shall be determined by applying the provisions of Chapter 173–200 WAC. The point of compliance with sediment management standards shall be determined in accordance with Chapter 173–204 WAC.

2. Diversion of storm water discharges to ground water from existing discharges to surface water shall not be authorized by this permit if this causes a violation or the potential for violation of ground water standards (Chapter 173–200 WAC). Such discharges below the surface of the ground are also regulated by the Underground Injection Control Program (Chapter 173–218 WAC).

3. Washington Department of Ecology (WDOE) is currently developing a "Storm Water Pollution Prevention Plan" which will require facilities to assess the potential of their storm water discharges to violate the Washington State surface water, ground water, or sediment management standards. Those discharges with a high potential to violate standards will be required to develop and implement a monitoring program.

Upon issuance of the "Storm Water Pollution Prevention Plan" by WDOE, EPA may reopen this permit to require facilities to assess their storm water

discharges and to require additional monitoring.

Addendum A

Pollutants identified in Tables II and III of Appendix D of 40 CFR 122.

Addendum A

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)

Volatiles

acrolein
acrylonitrile
benzene
bromoform
carbon tetrachloride
chlorobenzene
chlorodibromomethane
chloroethane
2-chloroethylvinyl ether
chloroform
dichlorobromomethane
1,1-dichloroethane
1,2-dichloroethane
1,1-dichloroethylene
1,2-dichloropropane
1,3-dichloropropylene
ethylbenzene
methyl bromide
methyl chloride
methylene chloride
1,1,2,2-tetrachloroethane
tetrachloroethylene
toluene
1,2-trans-dichloroethylene
1,1,1-trichloroethane
1,1,2-trichloroethane
trichloroethylene
vinyl chloride

Acid Compounds

2-chlorophenol
2,4-dichlorophenol
2,4-dimethylphenol
4,6-dinitro-o-cresol
2,4-dinitrophenol
2-nitrophenol
4-nitrophenol
p-chloro-m-cresol
pentachlorophenol
phenol

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)—Continued

2,4,6-trichlorophenol

Base/Neutral

acenaphthene
acenaphthylene
anthracene
benzidine
benzo(a)anthracene
benzo(a)pyrene
3,4-benzofluoranthene
benzo(ghi)perylene
benzo(k)fluoranthene
bis(2-chloroethoxy)methane
bis(2-chloroethyl)ether
bis(2-chloroisopropyl)ether
bis(2-ethylhexyl)phthalate
4-bromophenyl phenyl ether
butylbenzyl phthalate
2-chloronaphthalene
4-chlorophenyl phenyl ether
chrysene
dibenzo(a,h)anthracene
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
diethyl phthalate
dimethyl phthalate
di-n-butyl phthalate
2,4-dinitrotoluene
2,6-dinitrotoluene
di-n-octyl phthalate
1,2-diphenylhydrazine (as azobenzene)
fluroranthene
fluorene
hexachlorobenzene
hexachlorobutadiene
hexachlorocyclopentadiene
hexachloroethane
indeno(1,2,3-cd)pyrene
isophorone
napthalene
nitrobenzene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
N-nitrosodiphenylamine
phenanthrene
pyrene
1,2,4-trichlorobenzene

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)—Continued

Pesticides

aldrin
alpha-BHC
beta-BHC
gamma-BHC
delta-BHC
chlordane
4,4'-DDT
4,4'-DDE
4,4'-DDD
dieldrin
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
PCB–1242
PCB–1254
PCB–1221
PCB–1232
PCB–1248
PCB–1260
PCB–1016
toxaphene

Addendum A

Table III—Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.

CAS number	Common name
75–07–0	Acetaldehyde
75865	Acetane cynohydrin
107–02–8	Acrolein
107–13–1	Acrylonitrile
309–00–2	Aldrin [1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10, 10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1.alpha., 4.alpha.,4a.beta., 5.alpha.,8.alpha.,8a.beta.)-]
107–05–1	Allyl Chloride
7429–90–5	Aluminum (fume or dust)
7664–41–7	Ammonia
62–53–3	Aniline
120–12–7	Anthracene
7440–36–0	Antimony
7647189	Antimony pentachloride
28300745	Antimony potassium tartrate

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
7789619	Antimony tribromide
10025919	Antimony trichloride
7783564	Antimony trifluoride
1309644	Antimony trioxide
7440–38–2	Arsenic
1303328	Arsenic disulfide
1303282	Arsenic pentoxide
7784341	Arsenic trichloride
1327533	Arsenic trioxide
1303339	Arsenic trisulfide
1332–21–4	Asbestos (friable)
542621	Barium cyanide
71–43–2	Benzene
92–87–5	Benzidine
100470	Benzonitrile
98–88–4	Benzoyl chloride
100–44–7	Benzyl chloride
7440–41–7	Beryllium
7787475	Beryllium chloride
7787497	Beryllium fluoride
7787555	Beryllium nitrate
111–44–4	Bis(2-chloroethyl) ether
75–25–2	Bromoform
74–83–9	Bromomethane (Methyl bromide)
85–68–7	Butyl benzyl phthalate
7440–43–9	Cadmium
543908	Cadmium acetate
7789426	Cadmium bromide
10108642	Cadmium chloride
7778441	Calcium arsenate
52740166	Calcium arsenite
13765190	Calcium chromate
592018	Calcium cyanide
133–06–2	Captan [1H-Isoindole-1,3(2H)-dione,3a,4,7,7a-tetrahydro-2-[(trichloromethyl)thio]-]
63–25–2	Carbaryl [1-Naphthalenol, methylcarbamate]
75–15–0	Carbon disulfide
56–23–5	Carbon tetrachloride
57–74–9	Chlordane [4,7-Methanoindan,1,2,4,5,6,7,8,8- octachloro-2,3,3a,4,7,7a-hexahydro-]
7782–50–5	Chlorine
59–50–7	Chloro-4–methyl-3-phenol *p*-Chloro-*m*-cresol
108–90–7	Chlorobenzene
75–00–3	Chloroethane (Ethyl chloride)
67–66–3	Chloroform
74–87–3	Chloromethane (Methyl chloride)
95–57–8	2-Chlorophenol
106–48–9	4-Chlorophenol
1066304	Chromic acetate
11115745	Chromic acid
10101538	Chromic sulfate
7440–47–3	Chromium
1308–14–1	Chromium (Tri)
10049055	Chromous chloride
7789437	Cobaltous bromide
544183	Cobaltous formate
14017415	Cobaltous sulfamate
7440–50–8	Copper
108–39–4	*m*-Cresol
9548–7	*o*-Cresol
106–44–5	*p*-Cresol
1319–77–3	Cresol (mixed isomers)
142712	Cupric acetate
12002038	Cupric acetoarsenite
7447394	Cupric chloride
3251238	Cupric nitrate
5893663	Cupric oxalate
7758987	Cupric sulfate
10380297	Cupric sulfate, ammoniated
815827	Cupric tartrate
57–12–5	Cyanide
506774	Cyanogen chloride
110–82–7	Cyclohexane

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
94-75-7	2,4-D [Acetic acid, (2,4-dichlorophenoxy)-]
106-93-4	1,2-Dibromoethane (Ethylene dibromide)
84-74-2	Dibutyl phthalate
25321-22-6	Dichlorobenzene (mixed isomers)
95-50-1	1,2-Dichlorobenzene
541-73-1	1,3-Dichlorobenzene
106-46-7	1,4-Dichlorobenzene
91-94-1	3,3'-Dichlorobenzidine
75-27-4	Dichlorobromomethane
107-06-2	1,2-Dichloroethane (Ethylene dichloride)
540-59-0	1,2-Dichloroethylene
120-83-2	2,4-Dichlorophenol
78-87-5	1,2-Dichloropropane
542-75-6	1,3-Dichloropropylene
62-73-7	Dichlorvos [Phosphoric acid, 2,2-dichloroethenyl dimethyl ester]
115-32-2	Dicofol [Benzenemethanol, 4-chloro-.alpha.-(4-chlorophenyl)-.alpha.-(trichloromethyl)-]
177-81-7	Di-(2-ethylhexyl phthalate (DEHP)
84-66-2	Diethyl phthalate
105-67-9	2,4-Dimethylphenol
131-11-3	Dimethyl phthalate
534-52-1	4,6-Dinitro-*o*-cresol
51-28-5	2,4-Dinitrophenol
121-14-2	2,4-Dinitrotoluene
606-20-2	2,6-Dinitrotoluene
117-84-0	*n*-Dioctyl phthalate
122-66-7	1,2-Diphenylhydrazine (Hydrazobenzene)
106-89-8	Epichlorohydrin
100-41-4	Ethylbenzene
106934	Ethylene dibromide
50-00-0	Formaldehyde
76-44-8	Heptachlor [1,4,5,6,7,8,8-Heptachloro-3a,4,7,7a-tetrahydro-4,7-methano-1H-indene]
118-74-1	Hexachlorobenzene
87-68-3	Hexachloro-1,3-butadiene
77-47-4	Hexachlorocyclopentadiene
67-72-1	Hexachloroethane
7647-01-0	Hydrochloric acid
74-90-8	Hydrogen cyanide
7664-39-3	Hydrogen fluoride
7439-92-1	Lead
301042	Lead acetate
7784409	Lead arsenate
7645252	Do.
10102484	Do.
7758954	Lead chloride
13814965	Lead fluoborate
7783462	Lead fluoride
10101630	Lead iodide
10099748	Lead nitrate
7428480	Lead stearate
1072351	Do.
52652592	Do.
7446142	Lead sulfate
1314870	Lead sulfide
592870	Lead thiocyanate
58-89-9	Lindane [Cyclohexane, 1,2,3,4,5,6-hexachloro-(1.alpha.,3.beta.,4.alpha.,5.alpha.,6.beta.)-]
14307358	Lithium chromate
108-31-6	Maleic anhydride
592041	Mercuric cyanide
10045940	Mercuric nitrate
7783359	Mercuric sulfate
592858	Mercuric thiocyanate
7782867	Mercurous nitrate
7439-97-6	Mercury
72-43-5	Methoxychlor [Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-]
80-62-6	Methyl methacrylate
91-20-3	Naphthalene
7440-02-0	Nickel
15699180	Nickel ammonium sulfate
37211055	Nickel chloride
7718549	Do.
12054487	Nickel hydroxide

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
14216752	Nickel nitrate
7786814	Nickel sulfate
7697-37-2	Nitric acid
98-95-3	Nitrobenzene
88-75-5	2-Nitrophenol
100-02-7	4-Nitrophenol
62-75-9	*N*-Nitrosodimethylamine
86-30-6	*N*-Nitrosodiphenylamine
621-64-7	*N*-Nitrosodi-*n*-propylamine
56-38-2	Parathion [Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester]
87-86-5	Pentachlorophenol (PCP)
108-95-2	Phenol
75-44-5	Phosgene
7664-38-2	Phosphoric acid
7723-14-0	Phosphorus (yellow or white)
1336-36-3	Polychlorinated biphenyls (PCBs)
7784410	Potassium arsenate
10124502	Potassium arsenite
7778509	Potassium bichromate
7789006	Potassium chromate
151508	Potassium cyanide
75-56-9	Propylene oxide
91-22-5	Quinoline
7782-49-2	Selenium
7446084	Selenium oxide
7440-22-4	Silver
7761888	Silver nitrate
7631892	Sodium arsenate
7784465	Sodium arsenite
10588019	Sodium bichromate
7775113	Sodium chromate
143339	Sodium cyanide
10102188	Sodium selenite
7782823	Do.
7789062	Strontium chromate
100-42-5	Styrene
7664-93-9	Sulfuric acid
79-34-5	1,1,2,2-Tetrachloroethane
127-18-4	Tetrachloroethylene (Perchloroethylene)
935-95-5	2,3,5,6-Tetrachlorophenol
78002	Tetraethyl lead
7440-28-0	Thallium
10031591	Thallium sulfate
108-88-3	Toluene
8001-35-2	Toxaphene
52-68-6	Trichlorfon [Phosphonic acid, (2,2,2-trichloro-1-hydroxyethyl)-dimethylester]
120-28-1	1,2,4-Trichlorobenzene
71-55-6	1,1,1-Trichloroethane (Methyl chloroform)
79-00-5	1,1,2-Trichloroethane
79-01-6	Trichloroethylene
95-95-4	2,4,5-Trichlorophenol
88-06-2	2,4,6-Trichlorophenol
7440-62-2	Vanadium (fume or dust)
108-05-4	Vinyl acetate
75-01-4	Vinyl chloride
75-35-4	Vinylidene chloride
108-38-3	*m*-Xylene
95-47-6	*o*-Xylene
106-42-3	*p*-Xylene
1330-20-7	Xylene (mixed isomers)
7440-66-6	Zinc (fume or dust)
557346	Zinc acetate
14639975	Zinc ammonium chloride
14639986	Do.
52628258	Do.
1332076	Zinc borate
7699458	Zinc bromide
3486359	Zinc carbonate
7646857	Zinc chloride
557211	Zinc cyanide
7783495	Zinc fluoride

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
557415	Zinc formate
7779864	Zinc hydrosulfite
7779888	Zinc nitrate
127822	Zinc phenolsulfonate
1314847	Zinc phosphide
16871719	Zinc silicofluoride
7733020	Zinc sulfate

Addendum C

Large and Medium Municipal Separate Storm Sewer Systems

BILLING CODE 6560-50-M

Addendum C

State	Large and Medium Municipalities Located in the Non-Delegated States *(Including Colorado, Delaware and Washington because they do not have Federal Facility permitting authority)*		
AK	Anchorage		
AZ	Mesa		
	Phoenix		
	Pima County		
	Tempe		
	Tucson		
FL	Apopka	Davie	Homestead
	Atlantis	Deerfield Beach	Hypoluxo
	Bal Harbor Village	Delray Beach	Indian Creek Village
	Bay Harbour Island	Duvall	Islandia
	Bay Lake	Eatonville	Jacksonville
	Belle Glade	Edgewood	Juno Beach
	Belle Isle	El Portal	Jupiter
	Belleair	Escambia County	Lake Buena Vista
	Belleair Beach	Florida City	Lake Clark Shores
	Belleair Bluffs	Ft. Lauderdale	Lake Park
	Belleair Shore	Glen Ridge	Lake Worth
	Biscayne Park	Golden Beach	Lantana
	Boca Raton	Golf Village	Lauderdale-by-the-Sea
	Boynton Beach	Golfview	Lauderdale Lakes
	Briny Breezes	Greenacres City	Lauderhill
	Broward County	Gulf Stream	Lazy Lake Village
	Century	Hacienda Village	Lighthouse Point
	Clearwater	Hallandale	Maitland
	Cloud Lake	Haverville	Mangonia Park
	Coconut Creek	Hialeah	Margate
	Cooper City	Hialeah Gardens	Medley
	Coral Gables	Highland Beach	Miami
	Coral Springs	Hillsboro Beach	Miami Beach
	Dade County	Hillsborough County	Miami Shores
	Dania	Hollywood	Miami Springs

Addendum C

State	Large and Medium Municipalities Located in the Non-Delegated States *(Including Colorado, Delaware and Washington because they do not have Federal Facility permitting authority)*		
FL (Cont.)	Miramar	Palm Springs	South Miami
	North Bay	Parkland	South Palm Beach
	North Miami	Pembroke Park	Sunrise
	North Miami Beach	Pembroke Pines	Surfside
	North Lauderdale	Pennsuco	Sweetwater
	Oakland	Pensacola	Tamarac
	Oakland Park	Pinellas	Tampa
	Ocean Ridge	Plantation	Temple Terrace
	Ocoee	Plant City	Tequesta Village
	Opa-Locka	Polk	Virginia Gardens
	Orange County	Pompano Beach	Walton Manor
	Orlando	Riviera Beach	West Miami
	Pahokee	Royal Palm Beach	West Palm Beach
	Palm Beach	Sarasota	Windermere
	Palm Beach Gardens	Sea Ranch Lakes	Winter Gardens
	Palm Beach Shores	South Bay	Winter Park
ID	Boise City		
LA	Baton Rouge		
	Jefferson County		
	New Orleans		
	Shreveport		
MA	Boston		
	Lowell		
	Springfield		
	Worcester		
ME			
NH			
NM	Albuquerque		
OK	Oklahoma City		
	Tulsa		

Addendum C

State	Large and Medium Municipalities Located in the Non-Delegated States *(Including Colorado, Delaware and Washington because they do not have Federal Facility permitting authority)*		
SD			
TX	Abilene	El Paso	Lubbock
	Amarillo	Fort Worth	Mesquite
	Arlington	Garland	Pasadena
	Austin	Harris County	Plano
	Beaumont	Houston	San Antonio
	Corpus Christi	Irving	Waco
	Dallas	Laredo	
CO	Aurora		
	Colorado Springs		
	Denver		
	Lakewood		
	Pueblo		
DE	New Castle County		
WA	King County		
	Pierce County		
	Seattle		
	Snohomish County		
	Spokane		
	Tacoma		

APPENDIX C—Notice of Intent and Instructions

See Reverse for Instructions

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under the NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section II of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Facility Operator Information

Name: Phone:

Address: Status of Owner/Operator:

City: State: ZIP Code:

II. Facility/Site Location Information

Name: Is the Facility Located on Indian Lands? (Y or N)

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

III. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If You are Filing as a Co-permittee, Enter Storm Water General Permit Number: Are There Existing Quantitative Data? (Y or N) Is the Facility Required to Submit Monitoring Data? (1, 2, or 3)

SIC or Designated Activity Code: Primary: 2nd: 3rd: 4th:

If This Facility is a Member of a Group Application, Enter Group Application Number:

If You Have Other Existing NPDES Permits, Enter Permit Numbers:

IV. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres): Is the Storm Water Pollution Prevention Plan in Compliance with State and/or Local Sediment and Erosion Plans? (Y or N)

V. Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Date:

Signature: _____

EPA Form 3510-6 (8-92)

Instructions - EPA Form 3510-6
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity To Be Covered Under The NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under the NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, contact the Storm Water Hotline at (703) 821-4823.

Where To File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent
PO Box 1215
Newington, VA 22122

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Storm Water Hotline at (703) 821-4823.

Section I Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility.

F = Federal	M = Public (other than federal or state)
S = State	P = Private

Section II Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. If the facility or site lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Indicate whether the facility is located on Indian lands.

Section III Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water.

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate whether or not the owner or operator of the facility has existing quantitative data that represent the characteristics and concentration of pollutants in storm water discharges.

Indicate whether the facility is required to submit monitoring data by entering one of the following:

1 = Not required to submit monitoring data;
2 = Required to submit monitoring data;
3 = Not required to submit monitoring data; submitting certification for monitoring exclusion

Those facilities that must submit monitoring data (e.g., choice 2) are: Section 313 EPCRA facilities; primary metal industries; land disposal units/incinerators/BIFs; wood treatment facilities; facilities with coal pile runoff; and, battery reclaimers.

List, in descending order of significance, up to four 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section II of this application.

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, the following 2-character codes are to be used:

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If the facility listed in Section II has participated in Part 1 of an approved storm water group application and a group number has been assigned, enter the group application number in the space provided.

If there are other NPDES permits presently issued for the facility or site listed in Section II, list the permit numbers. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Section IV Additional Information Required for Construction Activities Only

Construction activities must complete Section IV in addition to Sections I through III. Only construction activities need to complete Section IV.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section V Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

APPENDIX D—Notice of Termination and Instructions

Please See Instructions Before Completing This Form

Form Approved. OMB No. 2040-0086
Approval expires: 5-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number: _____

Check Here if You are No Longer the Operator of the Facility: ☐

Check Here if the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ ZIP Code: _____

III. Facility/Site Location Information

Name: _____

Address: _____

City: _____ State: _____ ZIP Code: _____

Latitude: _____ Longitude: _____ Quarter: _____ Section: _____ Township: _____ Range: _____

IV. Certification: I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: _____ Date: _____

Signature: _____

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under the EPA issued National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Dicharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26 (b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination
P.O. Box 1185
Newington, VA 22122

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, call the Storm Water Hotline at (703) 821-4823.

PLEASE SEE REVERSE OF THIS FORM FOR FURTHER INSTRUCTIONS

EPA Form 3510-7 (8-92)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, contact the Storm Water Hotline at (703) 821-4823.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

[FR Doc. 92-21384 Filed 9-8-92; 8:45 am]
BILLING CODE 6560-50-C

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing , production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

federal register

Wednesday
September 9, 1992

Part IV

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System, Request for Comment on Alternative Approaches for Phase II Storm Water Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL-4202-9]

National Pollutant Discharge Elimination System, Request for Comment on Alternative Approaches for Phase II Storm Water Program

AGENCY: Environmental Protection Agency.

ACTION: Request for comment.

SUMMARY: In a memorandum dated January 28, 1992, the President asked regulatory agencies to review existing and proposed rules to improve cost effectiveness, minimize economic impact, and reduce regulatory burden. In response, today's notice requests information and public input on Phase II of the national storm water program mandated under section 402(p)(6) of the Clean Water Act (CWA). More specifically, EPA is today requesting public comment on a number of issues including scope of coverage under Phase II, identification of high risk Phase II discharges, alternative control strategies, and appropriate deadlines. With respect to each of these issues, the Agency is requesting input on how to meet environmental objectives and requirements set forth under section 402(p)(6) while at the same time identifying cost-effective control strategies that minimize the economic impact on the regulated community as well as the administrative burden on Federal, State and local government.

DATES: Comments on this notice must be received on or before November 9, 1992.

ADDRESSES: Respondents should send an original and two copies of their comments to Michael Plehn, Office of Wastewater Enforcement and Compliance (EN-336), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 260-6929. The public record for this notice is located at EPA Headquarters, NE Mall room 220, 401 M Street, SW., Washington, DC, 20460. Appointments to view the record can be made by contacting Michael Plehn at the above address. A reasonable fee may be charged for copying. The public record for previous rulemaking activity related to Phase I of the storm water program is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street, SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: For further information on this notice, contact the NPDES Storm Water Hotline at (703) 821-4823, or Michael Plehn, Office of Wastewater Enforcement and Compliance (EN-336), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-6929.

SUPPLEMENTARY INFORMATION:

I. Background

A. Environmental Impacts
B. Water Quality Act of 1987
C. Current (Phase I) Storm Water Permitting Program

II. Today's Notice

A. Purpose and Intent
B. Alternative Approaches

1. Targeting

(a) Seek Amendments to the CWA to eliminate Phase II and use designation authority to bring additional sources under Phase I
(b) Identify targeted MS4s as needing an NPDES permit under section 402(p)(6) of the CWA
(c) Continued reliance on Phase I MS4s to control Phase II source which discharge through their system
(d) Identify additional Phase II activities other than MS4s based on comparative loadings
(e) Geographic targeting
(f) Establish requirements for State storm water management programs
(g) Rensselaerville focus groups

2. Control Strategies

(a) Continued reliance on NPDES program
(b) Continued reliance on nonpoint source program
(c) Mandatory performance standards, guidelines, management practices and/or treatment requirements
(d) Rensselaerville focus groups

3. Deadlines

III. Request for Comments

A. General Issues for Comment
B. Current Classification of Regulated Discharges

IV. Review and Analysis Requirements

I. Background

The 1972 amendments to the Federal Water Pollution Control Act (FWPCA, later referred to as the Clean Water Act or CWA) prohibit the discharge of any pollutant to the navigable waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit. Efforts to improve water quality under the NPDES program have focused traditionally on reducing pollutants in discharges of industrial process wastewater and discharges from municipal sewage treatment plants. This program emphasis developed because many industrial and municipal sources were not controlled at that time and were easily identified as contributing to water quality impairment. Over time, as pollution control measures were implemented for these discharges and as data collection efforts have provided additional information, it has become evident that more diffuse sources of water pollution, such as agricultural and urban runoff, are important contributors to water quality problems and use impairment. Some diffuse sources of water pollution, such as agricultural runoff and irrigation return flows, are exempted statutorily from the NPDES program. Controls for other point source discharge of storm water runoff, however, are addressed in this notice.

A. Environmental Impacts

Several national assessments have been conducted to evaluate the impacts of diffuse sources of storm water runoff on receiving water quality. The "National Water Quality Inventory, 1990 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under section 305(b) of the CWA. In section 305(b) Reports, States indicate the fraction of the States' waters that have been assessed, the fraction of those assessed waters that are not supporting designated uses, and the sources of use impairment for those waters (e.g., diffuse sources, point sources, and natural sources). The Report indicates that roughly 30 to 40 percent of assessed rivers, lakes and estuaries are not supporting the uses for which they are designated. Based on information from 51 States and Territories that reported on sources of pollution, the Report indicates that storm water runoff from a number of diffuse sources, including agricultural areas, urban areas, construction sites, land disposal activities, and resource extraction activities, is the leading cause of water quality impairment cited by States. For those States reporting in each category, diffuse sources were cited as causing use impairments in the following magnitudes: For rivers and streams, 11 percent of impaired river miles are caused by separate storm sewers, 6 percent are caused by construction activities, and 14 percent are caused by resource extraction. For lakes, 28 percent of impaired lake acres are caused by separate storm sewers and 25 percent are caused by land disposal. For the Great Lakes' shoreline, 6 percent of impaired shoreline miles are caused by separate storm sewers, and 41 percent are caused by land disposal. For estuaries, 30 percent of impaired acres are caused by separate storm sewers. For coastal areas, 36 percent of impairments are caused by separate

storm sewers, and 37 percent are caused by land disposal.

In 1985, the States conducted a different study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report entitled "America's Clean Water—The States' Nonpoint Source Assessment, 1985." In that study, 38 States reported urban storm water runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

Studies conducted by the National Oceanic and Atmospheric Administration (NOAA) indicate that urban storm water runoff is indeed a major pollutant source that adversely affects shellfish growing waters.[1] The NOAA studies concluded that urban runoff affects 39 percent of harvest-limited area on the East Coast, 59 percent in the Gulf of Mexico, and 52 percent on the West Coast.

B. Water Quality Act of 1987

In response to growing concerns with the environmental impact of storm water runoff, Congress addressed this issue as part of the Water Quality Act of 1987 (WQA) by adding section 402(p) to the CWA to require the establishment of a comprehensive two-phased approach for the control of storm water discharges. Section 402(p)(1) prohibits EPA or NPDES States from requiring permits for storm water discharges until October 1, 1992, except for 5 classes of storm water discharges specifically listed under section 402(p)(2) (see appendix A). These 5 classes of discharges make up Phase I of the existing national storm water program and include storm water discharges:

(A) Permitted before February 4, 1987;

(B) Associated with industrial activity;

(C) From a municipal separate storm sewer system serving a population of 250,000 or more;

(D) From a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000;

(E) Which EPA or a NPDES State determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p)(3) confirms that, like all other point source discharges under the CWA, discharges of storm water associated with industrial activity must meet all applicable provisions of CWA sections 402 and 301, including technology-based requirements and any necessary water quality-based requirements. Permits for discharges from municipal separate storm sewer systems may be issued on a system- or jurisdiction-wide basis and must meet a new statutory standard requiring controls to reduce pollutant discharges to the maximum extent practicable (MEP).

Phase II of the storm water program covers all storm water discharges not addressed under the five Phase I classes described above. Under the current provisions of section 402(p), the existing statutory prohibition against permitting Phase II storm water discharges expires on October 1, 1992 (see appendix B).

Under CWA section 402(p)(5), EPA, in consultation with the States, is required to conduct two studies on Phase II storm water discharges for which permits cannot be required before October 1, 1992. The first study will identify those sources or classes of discharges that may be addressed in Phase II and determine the nature and extent of pollutants in such discharges. The second study is to establish procedures and methods to control Phase II storm water discharges to the extent necessary to mitigate impacts on water quality. These studies have not been completed.

Under section 402(p)(6), EPA, in consultation with State and local officials and based on the two studies, is required to issue regulations by October 1, 1992, which designate particular sources or classes of Phase II storm water discharges to be regulated to protect water quality and which establish a comprehensive program to regulate such designated sources. This program must establish priorities, requirements for State storm water management programs, and expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

The approach mandated by section 402(p)(2) is fully consistent with the intent and requirements of Section 319 of the WQA of 1987. Section 319 was enacted to require States to prevent and control nonpoint source pollution.

Under section 319 States are required to submit Nonpoint Source Assessment Reports identifying State waters which, without additional control of nonpoint sources of pollution, cannot be expected to attain or maintain designated uses. States were also required to prepare and submit for EPA approval a statewide management program for controlling nonpoint source water pollution to navigable waters within the State and improving the quality of such waters to levels sufficient for attaining or maintaining applicable water quality standards or goals. Furthermore, the State program submittal was to identify specific best management practices and measures which the state proposes to implement, in the first four years after program submission, to reduce pollutant loadings from identified nonpoint sources to levels required to achieve the stated water quality objectives.

Although the State nonpoint source programs are not enforceable under Federal law, States were encouraged to adopt both regulatory and non-regulatory approaches under State and local law. Section 319(b)(2)(B) specifies that a combination of "non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects" may be used, as necessary, to achieve implementation of the best management practices or measures identified in the section 319 submittal.

To date, all States have approved section 319 assessments and approved management programs. EPA has awarded approximately $38 million in FY90 funds, $51 million in FY91 funds, and is in the process of awarding $52.5 million in FY92 funds to assist States in implementing the section 319 programs. EPA expects that State nonpoint source management programs will be revised and refined periodically in response to re-evaluated priorities and new strategies and technologies.

Numerous States and local governments have implemented regulations and enforceable policies to control nonpoint source pollution. States such as Delaware and Florida as well as local governments such as the Lower Colorado River Authority are aggressively pursuing storm water management goals through numerical treatment standards for new development. Many States and local governments have enforceable erosion and sediment control regulations. On a broader scale, nonpoint source pollution is being addressed at the watershed level by programs such as those being implemented by the State of Wisconsin and the Puget Sound Water Quality Authority and the states which are parties to the International Agreement on the Great Lakes. A number of individual States and local communities have adopted legislation or regulations like Maryland's Critical Areas Bill which limits development and/or

[1] "The Quality of Shellfish Growing Waters on the East Coast of the United States," 1989; "The Quality of Shellfish Growing Waters in the Gulf of Mexico," 1988; and "The Quality of Shellfish Growing Waters on the West Coast of the United States," 1989

requires special management practices in areas surrounding water resources of special concern. California has also recently created Storm water management districts to better address the control of nonpoint source pollution.

A further development in the area of Federally-mandated nonpoint source management occurred in 1990 with the enactment of section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). Section 6217 provides that States with approved coastal zone management programs must develop and submit to EPA and NOAA for approval a coastal nonpoint pollution control program. Failure to submit an approvable program will result in the loss of Federal grants under both the Coastal Zone Management Act and section 319 of the CWA. State nonpoint pollution control programs must also include enforceable policies and mechanisms which ensure implementation of the management measures throughout the coastal management area. Management measures as defined in section 6217(g)(5) are: "Economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives."

The section 6217(g) guidance was issued for public comment in May, 1991. Final guidance is expected by October, 1992. The technology-based approach used in the guidance provides State Officials flexibility to meet the management measures using best management practices identified in the guidance or other methods and strategies which achieve equivalent or higher levels of pollutant control. If the technology-based approach fails to achieve and maintain applicable water quality standards and protect designated uses, additional management measures are required under CZARA section 6217(b)(3). Congress mandated a technology-based approach founded on technical and economic achievability under the rationale that neither States nor EPA have the money, time, or other resources to create and implement a program which depends on establishing cause and effect linkages between particular land use activities and specific water quality problems. Nonpoint sources addressed in the proposed guidance include: urban runoff from both developing and developed areas, roads, highways and bridges, agriculture, forestry, marinas, hydromodification, dams and levees.

C. Current (Phase I) Storm Water Permitting Program

EPA promulgated permit application regulations for Phase I storm water discharges on November 16, 1990 (55 FR 47990). The November 16, 1990 regulations established the scope of the Phase I storm water program by defining two major classes of storm water discharges identified under section 402(p)(2)(B), (C), and (D) of the CWA: Storm water discharges associated with industrial activity;[2] and discharges from municipal separate storm sewer systems (MS4s) serving a population of 100,000 or more.[3] In addition, the November 16, 1990 regulations established permit application requirements, including deadlines for these two classes of discharges (for a summary of Phase I see appendix A).

The November 16, 1990 regulations defined municipal separate storm sewer system serving a population of 100,000 or more to include municipal separate storm sewers within the boundaries of 173 incorporated cities, and within unincorporated portions of 47 counties that were identified as having populations of 100,000 or more in unincorporated, urbanized portions of the county.[4] In addition, the regulations allowed for additional municipal separate storm sewers to be designated by the Director of the NPDES program as being part of a large or medium MS4. The November 16, 1990 regulations establish comprehensive two part permit applications for discharges from large or medium MS4s. The permit application requirements for large and medium MS4s, among other things, require municipal applicants to propose municipal storm water management programs to control pollutants to the maximum extent practicable and to effectively prohibit non-storm water discharges to the MS4.[5]

The November 16, 1990 regulations also defined the term "storm water discharges associated with industrial activity" to include 11 categories of industrial facilities (see 40 CFR 122.26(b)(14)). The November 16, 1990 regulations establish two sets of application requirements for storm water discharges associated with industrial activity: Individual applications and group applications. In addition, the notice recognizes a third set of application procedures for storm water discharges associated with industrial activity referred to as "notice of intent" (NOI) requirements associated with general permits.

The Phase I storm water program takes two very different approaches to defining the roles of EPA and authorized NPDES States in controlling pollutants in storm water discharges. With respect to permits for large and medium MS4s, the efforts of the NPDES permitting authority (EPA or an authorized NPDES State) are directed to ensuring that municipalities develop and implement storm water management programs to control pollutants to the maximum extent practicable. Municipal programs address the control of pollutants in storm water from all areas within the boundaries of the MS4 that discharge to the system, including privately-owned lands, as well as modifying municipal activities (e.g. road deicing and maintenance, flood control efforts, maintenance of municipal lands, etc.) to address storm water quality concerns. The Agency has defined the role of municipalities under this program in a flexible manner that allows local governments to assist in defining priority pollutant sources within the municipality, and to develop and implement appropriate controls for such discharges. With respect to permits for storm water discharges associated with industrial activity, the NPDES permitting authority has a more direct role in regulating facilities.[6]

While today's request for comments focuses on developing Phase II of the storm water program, readers may find that a brief summary of progress to date

[2] On June 4, 1992 the United States Court of Appeals for the Ninth Circuit found that EPA's rational for exempting construction sites of less than five acres and certain uncontaminated storm water discharges from light industrial facilities from Phase I of the storm water program to be invalid and has remanded these exemptions for further proceedings (see *Natural Resources Defense Council* versus *EPA* No. 91–70176).

[3] Consistent with Section 402(p)(2) of the CWA, the November 16, 1990 regulations address two subclasses of municipal separate storm sewer systems serving a population of 100,000 or more. Large municipal separate storm sewer systems are defined as systems serving a population of 250,000 or more (see 40 CFR 122.26(b)(4)). Medium municipal separate storm sewer systems are defined as systems serving a population of 100,000 or more, but less than 250,000 (see 40 CFR 122.26(b)(7)).

[4] See appendices F, G, H, and I to 40 CFR part 122.

[5] See 40 CFR 122.26(d)(2)(iv).

[6] NPDES permits for discharges from large and medium MS4s will establish municipal responsibilities for assisting EPA and authorized NPDES States in implementing controls to reduce pollutants in storm water discharges associated with industrial activity which discharge through large and medium MS4s. A more detailed description of the role of municipalities in addressing industrial storm water sources under this Federal/State/Municipal partnership, is provided at 56 FR 40972 (August 15, 1991).

in implementing the first phase of the program would be helpful. Part of current implementation activities include outreach efforts and two rulemakings discussed in more detail below which are specifically designed to provide more flexibility and minimize regulatory and administrative burdens where possible.

As discussed above, the November 1990 storm water rule provided for three different options for storm water discharges associated with industrial activity to seek coverage under the program: individual, group, and general permit applications. Since November 1990, there has been a great deal of activity as EPA and the States have worked with the regulated community to provide guidance and implement the program. The Agency has established a four tier risk-based storm water permitting strategy which emphasizes the use of general permits (April 2, 1992, (57 FR 11394)). As part of the strategy, EPA called for the development of State storm water management programs to track permit issuance, provide for prioritization of risk, and create baselines against which to assess environmental results. As part of the same rule, the Agency extended the deadline for Part 2 of group applications until October 1, 1992, and also deferred regulation of storm water discharges from industrial activities owned or operated by municipalities with a population under 100,000 until Phase 2 of the program, pursuant to section 1068(c) of the Intermodal Surface Transportation Efficiency Act of 1991. In providing for greater flexibility, reduced burdens, extended deadlines, and deferred regulation, this recent storm water rulemaking addresses many of the goals underlying the President's January 28, 1992 request to review existing regulations.

Since November 1990, the Agency has received over 1,200 Part I group applications representing more than 60,000 facilities. EPA is currently processing these applications. Final decisions have been reached on over 1,000 to date. Approximately 75% have been approved, 20% withdrawn or determined not to be covered, and 5% denied. Part I group applications were due on September 30, 1991. Part II sampling information from approved groups is due on October 1, 1992.

At the same time that EPA has been receiving and processing group applications, States have been actively moving to provide for storm water general permit issuance. When the storm water application rules were issued in November 1990, only 17 out of 39 States authorized to administer the NPDES program were also approved to issue NPDES general permits. Since then, an additional 16 States have requested and received Federal approval to issue general permits. Over two thirds of the States that now have general permit authority are presently developing specific general permits to cover storm water discharges.

For the 12 States without NPDES authority, EPA is in the process of issuing storm water general permits that rely heavily upon industrial facilities developing and implementing their own storm water pollution prevention plans.

As part of the four tier risk-based permitting strategy referred to above and discussed in more detail in the Agency's April 2, 1992 notice, EPA believes that the majority of storm water discharges associated with industrial activities should be covered by general permits. The Agency urges all authorized NPDES States without general permit approval to obtain NPDES general permit authority.[7] EPA places a high priority on this effort and is providing direct technical guidance and assistance to support States both in obtaining general permit approval and in developing specific general storm water permits.

With regard to guidance, training, and outreach, EPA has undertaken a number of efforts to provide technical assistance and also to get public input on ways to streamline the existing program. In the area of guidance, EPA has published and distributed thousands of municipal and industrial permit application manuals in addition to numerous summaries, fact sheets and work shop materials over the past eighteen months. The Agency has issued additional guidance on storm water sampling, pollution prevention plan development, and storm water best management practices (BMPs), and is developing guidance for part 2 municipal applications. A list of EPA technical guidance, summaries, and storm water fact sheets can be obtained by calling the Agency's storm water hotline at (703) 821–4823.

In the area of training and outreach, EPA staff has participated in over 60 workshops and presentations throughout the country, training permitting authorities and educating the regulated community. For example, EPA Regions held fourteen public hearings to receive public comment on the Agency's proposed general permits in August and September of 1991. EPA held an additional 26 storm water workshops across the country this summer and would welcome hearing from groups or organizations interested in receiving workshop materials for further in-house or local training.

While EPA recognizes the importance of ongoing training and outreach efforts to provide information on the storm water program, the Agency also regards these activities as an effective mechanism for getting feedback on the program and identifying areas for further improvement. The new guidance documents referred to above and presently being developed reflect input from States and the regulated community on high priority areas requiring clarification and further technical assistance.

In addition to these activities, EPA has recently completed a study, in conjunction with the Rensselaerville Institute, to obtain direct public input and develop recommendations for streamlining the program and making it more effective. This study has two objectives. The first is to develop recommendations to streamline program implementation under existing regulations and legislation (Phase I). The second is to develop cost-effective options for addressing risks from storm water sources not currently required to be permitted that could potentially be addressed under Phase II of the storm water program.

Under the first objective, the Rensselaerville Institute sponsored 6 focus groups across the country with members representing state and local government, the regulated community, and environmental interests for uninterrupted full day discussions on ways to improve the storm water program. Five key issues were raised by all groups: (1) Groups felt that EPA has not been very clear about the intended goals of the regulations and should communicate storm water risks, objectives, and requirements more clearly to the general public as well as the regulated community, (2) participants noted that the cost of program implementation is significantly higher than original EPA estimates and there is great concern regarding the real costs of the program and of achieving compliance, (3) there was consensus that EPA and States must accelerate general permit issuance and focus on general permits to achieve efficient implementation of the program, (4) participants felt that technical outreach should be targeted at the State and local level as opposed to the national level and should provide better guidance on the regulations and how to implement

[7] Currently, DE, IA, KS, MI, NV, NY, OH, SC, VT and the Virgin Islands have authorized NPDES programs, but do not have general permit authority.

them, and (5) groups noted that coverage under certain industrial storm water categories should be clarified.[8] EPA agrees with these recommendations and is taking steps, some of which are outlined above, to follow up in each of these areas.

The second objective of the Rensselaerville study, consistent with the purpose of today's notice, is to get as much input as possible on different options for identifying and addressing those Phase II storm water discharges not regulated under the current program. Under the study, however, the mechanism for encouraging feedback was more targeted and interactive. The Rensselaerville Institute has obtained input from national experts (representing permitting authorities, the environmental community, and regulated interests) and then followed up with a series of 3 expert discussion forums that were open to the public in June.

The public meetings were held in Denver, San Francisco and Washington, DC. Attendees were divided into task teams and asked to develop their own strategy for addressing Phase II sources. There were 16 task teams: Five each at the Denver and San Francisco meetings, and six in Washington, DC. They were given a strategy template to guide them in their discussion, but were not confined to the template in developing their strategies and recommendations.

Each team considered and then presented the option they had developed over a four hour period. There were common strategy characteristics mentioned across groups within meetings and also across meetings. The recommendations of the focus groups covered four specific areas: Targeting strategies, controls that should be put in place, timetable, and the role of EPA in Phase II. The recommendations made by focus groups regarding the first three areas are discussed below along with the options presented for comment.

With regard to the role of EPA, participants identified the areas of responsibility they felt it would be appropriate for EPA to assume under Phase II. Their recommendations can be classified by four common themes: (1) Teams felt that EPA should provide technical assistance, information dissemination, and do any research necessary as a part of Phase II; (2) participants suggested that EPA should provide funding for research or demonstration projects, but not for program implementation; (3) groups stressed that EPA should set broad guidelines for the program, but allow State and local governments to determine the level of specificity needed to effectively implement the program; and (4) teams felt that EPA should be responsible for training regulators in the program.

II. Today's Notice

A. Purpose and Intent

CWA sections 402(p)(5) and (6) require EPA to identify storm water discharges not covered under Phase I which should be regulated to protect water quality.[9] The purpose of this notice is to solicit public comment on ways to implement the second phase of the storm water permitting program for sources and activities not regulated under the existing program. EPA is seeking comments on approaches for meeting CWA Phase II storm water requirements while at the same time minimizing the economic impacts and regulatory and administrative burdens associated with additional Phase II storm water controls. There are a number of ways to identify additional categories of storm water activities for further controls and EPA requests comment on the alternatives listed below as well as on any other approaches that may not be identified in today's notice.

B. Alternative Approaches

EPA is interested in comments from the general public, state and local government, the regulated community and environmental groups on each of the options outlined below. The goal of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In practice, programs implemented under the Clean Water Act have two basic goals: To reduce pollutant loadings to the environment and to require more stringent controls where necessary to assure attainment of State water quality standards and designated uses. These goals are compatible. However, the specific regulatory strategy and pollution reduction alternatives to be chosen for addressing Phase II storm water discharges could have a large impact on the size of the regulated universe and regulatory burden associated with the program.

To generate discussion and input from commenters, today's notice discusses several alternative approaches for controlling storm water discharges from currently unregulated sources under Phase II of the storm water program. A number of different control strategies, with variations in scope and timing, are outlined below. They range from comprehensive permitting of all municipal, light industrial, and commercial activities that generate storm water runoff to little or no NPDES permitting of Phase II sources.

A major distinction between several of the options listed below is whether Phase II efforts should focus on developing requirements for targeted municipalities to develop source controls and management programs for storm water discharges within their jurisdictions (for example, see options (b) and (c) below) or whether Phase II should, instead, focus on point source discharges of storm water without reference to the municipality in which they may be located. Under the first approach, EPA would develop NPDES requirements that required targeted municipalities to develop and implement storm water management programs which address storm water discharges within their jurisdiction [10] to the maximum extent practicable. This approach would allow for flexibility based on local factors, but could lead to varying levels of control from one area to another. EPA requests comments on the ability of municipalities to effectively regulate storm water discharges. In addition, the Agency requests comment on appropriate funding mechanisms for municipal programs, in particular the feasibility of implementing storm water utilities, which are currently being used in more than 100 communities nationwide.[11]

To facilitate comment and analysis, the following discussion is organized in terms of three issues: Targeting, control strategies, and deadlines. Each of these areas overlap and any final decision must reflect choices from each group. However, the objective is to solicit input

[8] The regulatory definition of storm water discharge associated with industrial activity identifies 11 categories of industrial facilities (see 40 CFR 122.26(b)(14)). In particular, category viii (certain transportation facilities) and category xi (certain manufacturing facilities with materials and/or materials handling equipment exposed to precipitation) were identified as needing clarification.

[9] Section 502(14) of the CWA excludes agricultural storm water runoff from the definition of point source. Section 402(1)(2) prohibits EPA from requiring an NPDES permit for certain "uncontaminated" storm water discharges from mining sites and oil and gas operations. EPA cannot regulate these discharges under section 402(p)(6) of the CWA.

[10] One issue that needs to be resolved is whether targeted municipalities should be responsible for controlling all priority storm water discharges within their jurisdiction or only those that discharge directly to the MS4.

[11] For more information see "Storm Water Utilities: Innovative Financing for Storm Water Management", EPA, Water Policy Branch, OPPE, 1992.

on three basic questions. First, what should be covered under Phase II; that is, what additional municipal separate storm sewer systems, municipal industrial activities, commercial, light industrial, retail, or residential activities not presently covered under Phase I of the storm water program should be targeted or identified as needing additional controls? Second, what control strategies should be developed and implemented to address these Phase II activities? Third, what deadlines or time frames should apply in implementing Phase II of the storm water program?

In addressing each of these questions, commenters are requested not only to provide their views on appropriate alternatives (including approaches that may not be included in this notice), but also where possible detailed rationales and additional data or other information which address the practical, administrative and legal feasibility and/or the environmental benefits, of a particular option. In addition, each of the approaches presented could be combined with others to achieve specific environmental objectives. For example, dischargers of specific pollutants in particular water bodies could be targeted for permits or more stringent controls. Along with input on individual options EPA requests comments on possible combinations or other approaches not outlined above. Commenters are also asked to address the roles and responsibilities of Federal, State and local governments under various approaches, particularly with respect to: (1) Identifying approaches that target MS4s in currently unregulated municipal areas as needing permits, and (2) approaches that identify classes of individual facilities (e.g. commercial or retail facilities) as needing permits.

The Agency also requests input on what type of information should be used in identifying sources to be covered and whether commenters believe there is presently sufficient information or monitoring data at the state and local level to expeditiously implement a particular option listed below. If on a national or regional basis there are not sufficient data, the next question to be addressed is whether a comprehensive monitoring and data gathering effort is warranted to assure effective implementation of one approach over another. In other words, there may be a trade off between: (1) Near term general targeting approaches combined with flexible control strategies based on information currently available, and (2) a heavier reliance on longer term specific geographic, watershed, or water body related targeting mechanisms which may require more comprehensive data gathering efforts on both a facility and stream reach basis.

1. Targeting

(a) Seek amendments to the CWA to eliminate Phase II and use designation authority to bring additional sources under Phase I. Section 402(p)(2)(E) presently provides that EPA or a State may designate non-industrial storm water discharges and discharges from MS4s other than those serving a population of 100,000 or more for control under Phase I where the discharge contributes to water quality violations or is a significant contributor of pollutants to waters of the U.S. Some commenters may conclude that the remaining unregulated discharges of storm water (associated with smaller municipalities, commercial activities, and some retail or residential activities) constitute, on the whole, a negligible source of environmental risks, relative to the discharges already regulated.

Under this option, Congress would amend the CWA to eliminate section 402(p)(6) (Phase II requirements) as a part of the NPDES program and expand use of the existing designation authority under 402(p)(2)(E) to designate individual or classes of storm water activities on a category, watershed, stream reach, loadings, or other basis for specific regulation under existing Phase I requirements. Under this option, those storm water activities not designated for Phase I controls could be addressed by an alternative means, possibly under the State nonpoint source management programs funded under section 319 of the CWA or coastal nonpoint pollution control programs developed pursuant to section 6217 of the CZARA. The Agency requests comments on: (1) Whether State programs funded under Section 319 can better ensure appropriate control of diffuse pollutant sources and; (2) whether heavier reliance on State nonpoint source programs to address Phase II storm water point source discharges would have adverse impacts on States' program resources and the ability of States to address agricultural sources. The selective nature of this designation option could reduce the potential economic impact on the economy and small entities. However, using 402(p)(2)(E) may be viewed by some commenters as a reactive approach which does not recognize the advantages of prevention of storm water pollution problems over remediation of these problems after they have been identified. This approach may also increase the administrative burden on States and local government to identify and undertake the necessary administrative process to include additional storm water activity under Phase I.

(b) Identify targeted MS4s as needing an NPDES permit under section 402(p)(6) of the CWA. The Phase I MS4 program currently only applies to municipal separate storm sewer systems serving a population of 100,000 or more. EPA has defined the scope of these Phase I requirements to specifically identify 173 incorporated cities with a population of 100,000 or more and 47 counties with a population of 100,000 or more in unincorporated, urbanized areas.[12] In general, this approach focuses on core cities of large metropolitan areas, but with the exceptions of 47 counties addressed, does not address urban fringes or suburban areas in large metropolitan areas, urbanized areas without large core cities, or smaller isolated cities or population centers.[13] EPA requests comments on factors that should be considered when evaluating options for addressing Phase II MS4s.[14]

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[12] The 220 cities and counties addressed by these definitions have a combined population of over 87.5 million people under the 1990 Census. However, a significant percentage of the population of the 220 municipalities are served by combined sewers (not addressed by the storm water program), which are found primarily in areas of older development.

[13] The 1990 Census indicates that 87.3 million people lived in areas designated as urbanized areas but outside of incorporated cities with a population of 100,000 or more. Portions of over 5,400 incorporated cities, towns and villages, 900 counties and about 1,500 minor civil divisions (unincorporated towns and townships) are in Phase II municipalities that are part of urbanized areas.

[14] EPA outlined seven factors it considered when defining the scope of large and medium MS4s (see December 7, 1988 (53 FR 49444), and November 16, 1990 (55 FR 48038)). These factors included: the advantages of developing system-wide storm water management programs for municipal systems; the inter-jurisdictional complexities associated with municipal governments; the fact that many municipal storm water programs have traditionally focused on water quantity concerns, and have not evaluated water quality concerns; the geographic basis necessary for planning comprehensive management programs to reduce pollutants in discharges from MS4s; the geographic basis necessary to provide flexibility to target controls on areas where water quality impacts associated with discharges from MS4s are the greatest and to provide an opportunity to develop cost effective controls; the need to establish a reasonable number of permits; Congressional intent to allow the development of jurisdiction-wide, comprehensive storm water programs with priorities given to the most heavily populated areas of the country. The Agency requests comment on which of these factors should be considered in identifying Phase II MS4 sources.

The Agency also requests comment on the advantages of municipalities associated with urbanized areas coordinating storm water management efforts on a regional basis. The Agency notes that a number of municipalities have developed regional administrative approaches to flood control management.[15] Regional administrative approaches appear to provide opportunities for municipalities to lower overall administrative burdens, consolidate efforts to study or evaluate approaches, and adequately plan cost-effective approaches to consider and address the needs of all represented municipalities. The Agency requests input on how it could or should encourage the development and use of regional approaches to storm water management under the NPDES program. Specifically, EPA requests comments on the following targeting options as well as any that may not be included in this notice.

(i) *Focus on population.* Expand coverage to address additional municipalities based on population. Following the Phase I approach, coverage of municipalities could be expanded by lowering the minimum population requirement across the board or by designating additional municipalities or municipal systems by name. EPA requests comments on the appropriate role of county governments and appropriate ways to characterize the population of counties under this approach.[16] This approach controls more sources of storm water, but imposes regulatory burdens on additional municipal entities.

(ii) Focus on population density. Alternatively, EPA could focus on the population density of metropolitan areas instead of the population within a particular municipality or municipal system, and require permits for discharges from municipal separate storm sewers in areas of a specified density. Urban storm water runoff is related to the density of urban development, the increase in impervious areas, and the reduction in the area of recharge and infiltration zones. EPA requests comment on the use of urbanized areas designed by the Bureau of Census as a tool for characterizing population density and development patterns.[17]

(iii) Focus on population growth. Focussing on population growth in addition to, or in place of, population density might be an additional consideration in implementing this option.[18] Studies have shown that it is much more cost effective to develop measures to prevent or reduce pollutants in storm water during new development than it is to correct these problems later on.[19] In addition, appropriate storm water measures for new development can prevent or minimize irreversible degradation to surface waters. This approach might serve to minimize the impact of small and lightly-developed population centers, but it would still increase the burden on a number of municipalities not presently regulated under Phase I.

(c) *Continued reliance on Phase I MS4s to control Phase II sources which discharge through their system.* Under this approach, EPA would generally not designate additional individual sources (such as commercial and light industrial sources) which discharge through a large or medium MS4 as needing their own NPDES permit. Instead, EPA would continue to rely on municipalities to identify priority storm water discharges and develop appropriate controls for those discharges as part of requirements to develop and implement municipal storm water management programs. This option addresses some currently unregulated sources, allows for flexibility and consideration of local factors, and avoids duplicative regulation at the local, national and State level. This approach also relies on existing institutional frameworks of municipalities[20] as well as the institutional framework that EPA envisions municipalities will develop pursuant to NPDES requirements.[21] However, it imposes additional administrative and regulatory costs on local governments and may result in varying levels of control among municipal programs. The Agency requests comment on whether municipalities are in the best position (with assistance from EPA and authorized NPDES States through technical guidance) to identify priority sources which discharge through their MS4, or whether EPA should attempt to designate such additional sources as needing an NPDES permit. The Agency also requests comments on the appropriate funding mechanisms for MS4s (e.g. storm water utilities, various fees, general revenues, etc.), and opportunities for municipalities to modify existing functions to address storm water concerns.

(d) *Identify additional Phase II activities other than MS4s based on comparative loadings.* EPA could use available information (such as case studies and other research) to prioritize Phase II sources in terms of their relative pollutant loadings as well as the type and nature of those loadings. On this basis the Agency could issue regulations to target those general activities which contribute the highest loadings of pollutants to receiving waters as needing an NPDES permit. This option is consistent with the technology-based approach reflected in the existing CWA. It would provide more comprehensive coverage and clarify the program. It would also avoid expensive and time consuming debates regarding the specific causal relationship between a particular storm water discharge and site by site specific receiving water quality impact. However, it would impose further administrative and analytical burdens in terms of gathering additional loadings information on a national basis. This approach may also result in including

[15] For more information see: William A. Macaitis, "Regional Storm Water Management Trends", and; L. Scott Tucker, "Current Programs and Practices in Storm Water Management", Water and the City: the Next Century, Public Works Historical Society, 1991.

[16] The 1990 Census indicates that 447 counties have a population of 100,000 or more. The current definitions of large and medium MS4 address 47 of these counties not already covered by Phase I of the program.

[17] The Bureau of Census defines urbanized areas comprised of a central city (or cities) with a surrounding closely settled area. The population of the entire urbanized area must be greater than 50,000 people, and the closely settled area outside the city, the urban fringe, must have a population density generally greater than 1,000 persons per square mile (just over 1.5 persons per acre) to be included. The Bureau of Census defined 396 urbanized areas in the United States based on the 1990 Census. These urbanized areas have a combined population of 158.3 million, or 63.6 percent of the nation's total population. However, these areas only account for 1.5 to 2 percent of the land surface of the country.

[18] Most Urban growth occurs in urban fringe areas outside of large core cities. For example, between 1970 and 1980, the population in those parts of Census designated urbanized areas that are outside of incorporated cities with a population of 100,000 or more increased by 18.9 million. During this same time period, the population of incorporated cities with a population of 100,000 or more (Phase I cities) increased by only 0.6 million, with the population of many of these cities decreasing.

[19] For example, see "Results from the Nationwide Urban Runoff Program, Vol 1—Final Report", EPA, 1983.

[20] Examples of municipal functions that can be adapted to provide for consideration of storm water concerns include oversight of new development, fire safety inspections, pretreatment program implementation, flood control activities, management of municipal lands and activities, and maintenance of public roads.

[21] The NPDES regulatory framework for permits for large and medium MS4s envision that municipalities will be required to develop and implement storm water management programs to reduce pollutants in non-storm water discharges (e.g. illicit connections and improper dumping); storm water from residential and commercial areas; storm water discharges from industrial activities; and storm water discharges from construction activities.

more sources than necessary due to differences in loadings and existing storm water controls, both structural and non-structural, across similar activities. The regulatory burden would be determined in large part by the overall control strategy chosen to implement this approach.

This approach differs from those outlined under options (b) and (c) in that it relies on direct permitting by EPA and authorized NPDES States rather than requiring municipalities to develop programs to address sources. The Agency requests comments on which sources of pollutants are better addressed by specific NPDES permit requirements rather than through municipal storm water management programs required pursuant to NPDES permits for MS4s. For example, activities generally located in rural areas such as feedlots, orchards, and golf courses most likely are not suited for control through municipal storm water management programs required under permits for MS4s. Although large feedlots (those subject to effluent limitations guidelines) presently are covered under Phase I, smaller feedlots represent a significant source of pollutants such as suspended solids, BOD, and nutrients such as nitrates and phosphates. In addition, storm water discharges from commercial activities such as greenhouses, nurseries, and golf courses might be more effectively controlled under a separate NPDES permit requirement than through a MS4 program. As another example, many commenters from all levels of State and local government have expressed concern about municipalities being required to control pollutants from State highways (see November 16, 1990 (55 FR 48041)).

(e) Geographic targeting. EPA could regulate Phase II storm water activities on a watershed, waterbody, or regional basis to protect water quality, control water quality problems and attain designated uses in specific areas. EPA could:

(i) Designate additional municipal and individual sources for permitting in specific areas. A key aspect of this approach would be developing a list of waters that are not meeting designated uses due to pollution from storm water runoff (from section 305(b) reports or from the section 304(l) list of waters) or where sensitive waters or outstanding national resource waters need special protection. This approach could help to achieve water quality goals and would avoid imposing a burden on other dischargers, but would not be uniformly applied on a national basis. This option is also reactive in nature, and overlooks the advantages of prevention over remediation. The availability of technical information and water quality data limitations and the administrative and regulatory burden associated with collecting and analyzing additional data would have to be carefully considered in evaluating the feasibility of this approach.

(ii) Designate additional sources for permitting or special requirements within rainfall zones. The nature of storm water problems varies between areas with frequent rainfall, where storm water flows are high with continual pollutant loadings, and areas with low or seasonal rainfall, where intermittent flows carry highly concentrated loadings of pollutants accumulated during dry weather which result in high shock loadings to receiving waters. This option would recognize these regional variations and tailor regulatory requirements for Phase II discharges (monitoring, best management practices, reporting) to the local nature of rain events. However, immediate environmental benefits could be delayed due to the inexact nature of rainfall zones and the scarcity of comprehensive information upon which to base regulatory requirements.

(f) Establish requirements for State storm water management programs. Under this approach, EPA could develop requirements for State storm water management programs under section 402(p)(6) for the CWA which would require States to identify additional classes of storm water discharges for control. This approach may offer the advantages of additional flexibility for States to target sources based on State specific factors (climate, water resources, development patterns) and provide additional flexibility in the type of administrative program developed. However, the disadvantages of this approach include the need for generating additional resources at the State level at a time when State capacity is also strained, and possible disparities in programs in different States. Such disparities could make it hard for a State to develop an aggressive program when neighboring States have lesser requirements. Further, this approach may create additional burdens on EPA to provide adequate oversight of the State programs. EPA also requests comments on the appropriate role of EPA in reviewing State plans or developing minimum requirements for State plans and how that role should change, if at all, for States without authorized NPDES programs. The Agency requests comments on appropriate criteria for evaluating the adequacy of State programs, and appropriate procedures for periodic review and evaluation of such programs. EPA also requests comments on whether this approach could be harmonized with the requirements of section 402(p)(6) for EPA to take the lead in developing management practices and controls for Phase II sources, or whether this approach might also require statutory change.

(g) Rensselaerville focus groups. There were several common themes recognized by the focus groups with regard to identifying potential sources to be included in Phase II:

(i) Groups suggested that targeting be done on a watershed basis, with information gathered as a part of Phase I used to help identify sensitive watersheds. It was noted that this type of targeting approach may require intergovernmental agreements for effective implementation.

(ii) Teams emphasized that the focus of Phase II should be on "bad actors", i.e. those sources that are known to cause significant water quality problems. Sources identified by team members included: Gas/auto service industries, transportation, highway systems, land use development and agricultural sources. There was a consensus among groups that facilities not contributing to impairment of water quality should be able to gain an exemption from controls, permits, fees, and implementation of BMP's. Teams concluded that SIC categories are an ineffective way to designate covered sources and that targeting should be done based on the degree of risk that a given facility poses, due to possible differences between facilities in any one industry.

(iii) Focus groups recommended that small municipalities be included in Phase II but with simplified application requirements. Participants felt that municipalities impacting watersheds of concern or those connected to larger MS4s should be targeted.

(iv) Participants in the study felt that EPA should hold off on selecting sources for Phase II until the Agency has carefully looked at the date gathered during Phase I. It was noted that numerous sources of information are available which could help determine targeting priorities, for example, 305(b) reports, information from Phase I program sources, NURP, and the first Report to Congress.

2. Control Strategies

The current Phase I storm water program for industrial sources is implemented through the NPDES program with a heavy emphasis on the use of general NPDES permits which require the implementation of best management practices including development of site specific pollution prevention plans. Phase I requirements for large and medium MS4s focus on system-wide permits which require the development and implementation of municipal storm water management programs:

Regardless of how additional Phase II storm water activities are identified—whether they are designated under 402(p)(2)(E), comprehensively covered, or selectively targeted for further controls, a key issue on which EPA requests comment is what are the appropriate tools or control strategies to put in place which assure pollutant loading reductions and water quality improvement?

(a) Continued reliance on NPDES program. One option is the continued reliance on individual or general NPDES permits for individual sources, and system-wide permits for MS4s. Developing or processing specific application forms for and issuing individual permits for all Phase II sources may well be the most resource intensive of any control approach. Consistent with EPA's four tier Phase I permitting strategy for industrial storm water sources, individual permits may be most appropriate in those case specific situations where a particularly difficult or complex discharge situation needs to be addressed. By contrast, input from the public and regulated community to date suggests that heavy reliance on general permits may well be a very effective alternative within the NPDES system. EPA solicits comments on whether continued reliance on NPDES permitting as the overall control strategy for Phase II is the most appropriate approach. An extensive State and national administrative NPDES infrastructure already exists and is being relied upon for Phase I and reliance on the general permit is increasingly favored as an appropriate storm water control strategy. However, the capacity of the current system with its existing resources to accommodate a significant number of additional permittees has already been called into question for Phase I. A very real issue exists as to whether the permitting Agencies have the resources to address more than a limited number of additional Phase II permittees.

(b) Continued reliance on nonpoint source program. Another approach includes continued reliance on the State nonpoint source programs under section 319 of the CWA and future reliance on programs under section 6217 of the CZARA in coastal areas to control Phase II storm water sources not explicitly addressed or designated under Phase I.

The structure, organization, and working relationship within EPA and State offices for the section 319 program are established and proven successful. The States have taken the lead under section 319 to develop assessments of storm water/nonprofit source impacts and management programs to implement controls. EPA has approved all States assessments, 44 complete management programs, and portions of all the remaining State management programs. The States management programs typically include continued problem assessments and monitoring, voluntary control measures, mandatory control measures established under State and local authorities, State funding assistance, public outreach, technical assistance, enforcement, targeting of priority waters, and coordination with other Federal and State programs and agencies. Therefore, the section 319 program's potential ability to control Phase II sources is high. Also, section 319 programs are founded on a watershed planning and pollution prevention/source reduction approach which may be an effective vehicle to provide program and technical assistance to State and local governments.

In addition, the new CZARA program provides an excellent tool to address Phase II sources in the coastal zone in a comprehensive manner. EPA emphasizes that the goals of the NPDES and CZARA programs are complementary. Many of the techniques and practices used to control urban runoff are equally applicable to both programs. While different legal authorities and geographic coverage may apply to specific sources, States have the option to implement CZARA section 6217(g) management measures throughout the coastal zone, as long as NPDES requirements are met for those entities subject to NPDES requirements. States outside of the coastal zone may also voluntarily incorporate the management measures appropriate to particular sources or specific problems into the State's CWA section 319 program.

(c) Mandatory performance standards, guidelines, management practices and/or treatment requirements. An alternative option might also be to develop a set of mandatory national Phase II control guidelines that apply directly to Phase II storm water activities without a permit. The national pretreatment categorical effluent guidelines is an example of this approach. Permits by rule or general permits without application or reporting requirements are a similar concept. A variation on this approach might include the development of minimum categories or classes of BMP's or pollution prevention approaches with a requirement that elements from each class be chosen and implemented on a facility or system specific basis. At one level, this approach would appear to reduce the regulatory and administrative burden associated with submission of Phase II storm water applications. However, as a technical matter, it may be extremely difficult to develop one national rule that appropriately addresses all Phase II storm water activities. Developing such a rule may take a significant amount of time and may also entail substantial monitoring and data collection. A further issue upon which EPA solicits comment is whether a national rule would be the most effective approach given that many members of the Phase II universe may not be familiar with national regulations and may not even be aware that such requirements apply to them. EPA recognizes that implementation of control strategies other than NPDES permitting would probably require statutory change and requests comments on what changes would be appropriate.

(d) Rensselaerville focus groups. Focus groups identified several common themes with regard to controls that should be put in place for Phase II:

(i) Focus groups recommended that if a permitting process is to be continued for Phase II sources, NPDES general permits should be used, and the focus should be on the implementation of effective BMP's. Participants felt that permits should be simpler, less costly, and that EPA should make absolutely clear to applicants what information is required through the use of checklists of inclusion, a menu of potential BMP's, and other documents to assist permitees. The team members again stressed that exemptions from permitting should be available for sources not contributing to water quality problems.

(ii) The teams concluded that education is often overlooked and that it should be a primary component of any Phase II program. Team members felt that education is important for all audiences and that local level education

for the public and affected industry is critical to the success of the program.

(iii) There was an agreement among teams that there should be more emphasis on voluntary programs, perhaps similar to those under the 319 nonpoint source program. Groups also suggested that for facilities that have contact with storm water, there should be limited additional governmental intervention, but rather an emphasis on pollution prevention incentives, BMP's, and specific pollution prevention techniques. Participants stressed that pollution prevention should be emphasized, particularly with new development. Some suggested prevention methods included: recycling storm water, good housekeeping practices, plantings to minimize runoff, street sweeping of work areas on a daily basis, storm water collection methods, coverage of storage areas, changing manufacturing processes to minimize pollutants and better controls of air emissions.

(iv) Groups felt that there should be correlation between the severity of the problem and the degree of controls required and that fines and fee structures could be used as "carrot-stick" measures to aid implementation.

3. Deadlines

Section 402(p) presently provides that the current prohibition against permitting Phase II sources expires on October 1, 1992. EPA solicits comment on the possible options for alternative deadlines for Phase II permit application requirements and statutory revisions of the CWA. One option is for Congress to extend the current October 1, 1992 deadline for Phase II sources. Under this option, EPA requests comment on what the new Phase II date should be and why one particular extension is more appropriate than another. For example, one possible date might be October 1, 1995, to allow one year for additional data gathering and public input on appropriate Phase II sources and control strategies and then two additional years to propose and finalize Phase II regulations.

Another strategy might be to adopt a phased set of Phase II deadlines with high priority storm water sources covered first and lower risk sources addressed at a later date.

A third approach follows option 1 under Targeting; that is, to eliminate the Phase II deadlines and follow option 1 or direct EPA to follow some other option.

Focus group recommendations from the Rensselaerville study suggested that a minimum of 2–3 years is needed to prepare for Phase II, with at least a year dedicated to looking at data gained from Phase I of the storm water program and other documents such as the first Report to Congress. Participants also felt that the effectiveness of presently used BMP's needs to be looked at to determine variations in effectiveness between different geographic locations and pollutants.

III. Request for Comments

EPA is requesting comments on all aspects of the Phase II storm water permitting program. EPA is soliciting general comments on environmental objectives and economic impacts, as well as specific recommendations and implementation advice on each of the options outlined above. Based on comments received and the results of the two studies required under CWA section 402(p)(5), EPA may propose a rule under section 402(p)(6) or solicit additional comments on options again when more data becomes available. In addition, EPA welcomes data or information from ongoing studies that support specific comments or recommendations.

A. General Issues for Comment

Based on the discussion above and the President's memorandum on reducing the burden of government regulation, EPA requests comment on the advantages and disadvantages of each option outlined above as well as any other potential approaches in terms of the following factors.

1. How well does the approach perform with respect to the environmental goals of protecting water quality, reducing pollutant loadings, and achieving designated uses in impaired waters? EPA requests comment on which of these approaches most lends itself to the documentation and establishment of environmental baselines and identification of appropriate environmental indicators against which to evaluate progress. EPA specifically solicits input on appropriate environmental indicators in connection with any of the approaches outlined above or identified by a commenter.

2. Does the option balance the need for regulation to protect/improve the environment with the desire to minimize the regulatory burden and maximize the cost effectiveness of the approach?

3. Does the option help to reduce the regulatory burden on potential permittee, while still maintaining environmental benefits?

4. Does the option help to reduce the administrative burden on Federal, State and local government, so that resources are used to address important environmental problems efficiently?

5. To what extent does the option support or provide an incentive or additional flexibility for implementing pollution prevention and other innovative permit approaches?

6. Does the option allow or encourage the use of market incentives or trading to promote greater or more effective loadings reductions and water quality improvements?

7. What is the impact of the proposed approach on small businesses [22] and communities?

8. does the option allow consideration of the issue of affordability as a factor in determining which Phase II sources should be controlled? For example, some data indicates that average per capita income in suburban fringe areas is substantially higher than in core cities. Does the option allow this to be factored in when identifying high priority groups or selecting appropriate control strategies?

EPA requests specific implementation recommendations based on the respondent's general evaluation of the options outlined above. EPA also seeks detailed comments on how the option will be implemented and ways to refine the respondent's preferred approach. For example, address issues of affordability, cost effectiveness and possible funding mechanisms and sources, in addition to providing case examples where available of successful State or local implementation of a preferred option. Respondents should also consider the need for statutory changes or rulemaking to implement recommended approaches.

B. Current Classification of Regulated Discharges

The current regulatory framework of Phase I is summarized in appendix A. This information may help respondents to understand which types of municipalities and commercial and light industrial activities are not currently regulated under Phase I of the program. Sources exempted from Phase II and some sources potentially covered under Phase II are summarized in appendix B.

IV. Review and Analysis Requirements

Various reviews and analyses are required to assess the economic or paperwork impact of new rulemaking activities under Executive Order 12291, the Paperwork Reduction Act (44 U.S.C. 3501. et. seq.), and the Regulatory Flexibility Act (5 U.S.C. 601, et. seq.).

[22] With respect to impacts on municipalities, the agency requests comments on options municipalities have for generating the revenue required to run such programs.

These assessments are not necessary for this notice, which merely requests comments on ways to reduce the regulatory burden of potential future rulemaking.

Dated: September 1, 1992.

Martha G. Prothro,

Acting Assistant Administrator.

Appendix A. Facilities Covered in Phase 1

1. Industrial Facilities

EPA has defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to address over 100,000 facilities. All storm water discharges associated with industrial activity that discharge directly to waters of the United States or through municipal separate storm sewer systems are required to obtain NPDES permits, including those which discharge through systems located in municipalities with populations of less than 100,000. Discharges of storm water to a combined sewer system or to a Publicly Owned Treatment Works (POTW) are excluded. Facilities with storm water discharges associated with industrial activity include: manufacturing/industrial facilities; construction operations disturbing five or more acres; hazardous waste treatment, storage, or disposal facilities; landfills; certain sewage treatment plants; recycling facilities; powerplants; mining operations; some oil and gas operations; airports; and certain other transportation facilities. Operators of industrial facilities that are Federally, State or municipally owned or operated (with the exception of certain facilities owned or operated by a municipality of less than 100,000 people [1] that meet the description of the facilities listed in 122.26(b)(14) (i)–(xi), described below, must also submit applications.

SUMMARY OF INDUSTRIAL ACTIVITIES COVERED UNDER PHASE I OF THE STORM WATER PROGRAM

40 CFR 122.26(b)(14) Subpart	
(i)	Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutants effluent standards under 40 CFR, Subchapter N [except facilities which are exempt under category (xi)].
(ii)	Facilities classified as: SIC 24 (except 2434)—Lumber and wood products. SIC 26 (except 265 and 267)—Paper and allied products. SIC 28 (except 283 and 285)—Chemicals and allied products. SIC 29—Petroleum and coal products. SIC 311—Leather tanning and finishing. SIC 32 (except 323)—Stone, clay and glass products. SIC 33—Primary metal industries. SIC 3441—Fabricated structural metal. SIC 373—Ship and boat building and repairing.
(iii)	Facilities classified as: SIC 10—Metal mining. SIC 11—Anthracite mining. SIC 12—Coal mining. SIC 13—Oil and gas extraction. SIC 14—Nonmetallic minerals, except fuels.
(iv)	Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA).
(v)	Landfills, land application sites, and open dumps that receive or have received any industrial wastes including those that are subject to regulation under subtitle D or RCRA.
(vi)	Facilities involved in the recycling of material, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as: SIC 5015—Motor vehicle parts, used. SIC 5093—Scrap and waste materials.
(vii)	Steam electric power generating facilities, including coal handling sites.
(viii)	Transportation facilities covered by the following SIC codes which have vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport de-icing operations, or which are otherwise listed in another category, are included. SIC 40—Railroad transportation. SIC 41—Local and suburban transit. SIC 42 (except 4221-25)—Motor freight and warehousing. SIC 43—U.S. Postal Service. SIC 44—Water transportation. SIC 45—Transportation by air. SIC 5171—Petroleum bulk stations and terminals.
(ix)	Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of the sewage sludge that are located within the confines of the facility, with a design flow of 1.0 Million Gallons per Day (MGD) or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA.
(x)	Construction activity including clearing, grading, and excavation activities except operations that result in the disturbance of less than 5 acres of total land area which are not part of a larger common plan of development or sale[1].
(xi)	Facilities under the following SICs [which are not otherwise included in categories (ii)–(x)], including only storm water discharges where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery are exposed to storm water[1]. SIC 20—Food and kindred products. SIC 21—Tobacco products. SIC 22—Textile mill products.

[1] In the Intermodal Surface Transportation Efficiency Act of 1991, Congress provided that industrial activities owned or operated by municipalities with a population of less than 100,000 be placed into Phase II of the storm water program with the exception of airports, power plants and uncontrolled sanitary landfills.

SUMMARY OF INDUSTRIAL ACTIVITIES COVERED UNDER PHASE I OF THE STORM WATER PROGRAM—Continued

40 CFR 122.26(b)(14) Subpart	
	SIC 23—Apparel and other textile products. SIC 2434—Wood kitchen cabinets. SIC 25—Furniture and fixtures. SIC 265—Paperboard containers and boxes. SIC 267—Converted paper and paper board products (except containers and boxes). SIC 27—Printing and publishing. SIC 283—Drugs. SIC 285—Paints, varnishes, lacquer, enamels. SIC 30—Rubber and misc. plastics products. SIC 31—(except 311)—Leather and leather products. SIC 323—Products of purchased glass. SIC 34 (except 3441)—Fabricated metal products. SIC 35—Industrial machinery and equipment, except electrical. SIC 36—Electronic and other electric equipment. SIC 37 (except 373)—Transportation equipment. SIC 38—Instruments and related products. SIC 39—Miscellaneous manufacturing industries. SIC 4221—Farm products warehousing and storage. SIC 4222—Refrigerated warehousing and storage. SIC 4225—General warehousing and storage.

[1] On June 4, 1992 the United States Court of Appeals for the Ninth Circuit found that EPA's rational for exempting construction sites of less than five acres and certain uncontaminated storm water discharges from category xi light industrial facilities from Phase I of the storm water program to be invalid and has remanded these exemptions for further proceedings (see *Natural Resources Defense Council* v. *EPA* No. 91-70176).

Source: FEDERAL REGISTER, Vol. 55, No. 222, p. 48065, November 16, 1990.

2. Municipal Facilities

"Municipal separate storm sewer" is defined as any conveyance or system of conveyances that is owned or operated by a State or local government entity designed for collecting and conveying storm water which is not part of a Publicly Owned Treatment Works. The application requirements do not apply to discharges from combined sewers (systems designed as both a sanitary sewer and a storm sewer). Municipal separate storm sewer systems that are addressed by the November 16, 1990 regulations include storm sewers located in one of 173 cities with a population of 100,000 or more; located in one of the 47 counties identified by EPA as having large populations in unincorporated, urbanized areas; and systems that are designated by the Director based on consideration of the location of the discharge with respect to waters of the United States, the size of the discharge, the quantity and nature of the pollutants discharged to waters of the United States, and other relevant factors. These are named in Appendices F–L of the November 16, 1990, regulation.

INDUSTRIAL AND MUNICIPAL PERMIT APPLICATION DEADLINES

Type of Application	Deadline	
● Individual	October 1, 1992	
● Group	Part 1	Part 2
All industrial activities except those owned or operated by a municipality with a population of less than 250,000..	September 30, 1991	October 1, 1992
Industrial activities owned or operated by a municipality with a population of 100,000 to 250,000.,	May 18, 1992	May 17, 1993
● General Permit NOI	Deadline established in the general permit, but no later than October 1, 1992 for existing sources.	

	Part 1	Part 2
Large Municipalities	November 18, 1991	November 16, 1992
Medium Municipalities	May 18, 1992	May 17, 1993

Appendix B. Potential Universe of Phase II Dischargers

Phase II potentially includes all point source discharges of storm water to waters of the United States (including Municipal Separate Storm Sewer Systems) that are not regulated under Phase I of the storm water program (See Appendix A). The following table illustrates those types of operations which have been statutorily exempted from both Phase I and Phase II of the NPDES storm water program along with a general list of potential Phase II sources:

Statutory / Regulatory exemptions:	● Non Point Source Silviculture Activities. ● Agricultural Runoff and Irrigation Return Flows.
General categories of sources	● Uncontaminated discharges from Mining, Oil and Gas Operations ● All municipalities with populations less than 100,000.

	● All industrial activities not regulated under Phase I (including those owned/operated by municipalities under 100,000) (tank farms, "auxiliary facilities"). ● Commercial activities with industrial components (gas stations, dry cleaners). ● Construction activities involving less than 5 acres [1] ● Large parking lots (shopping malls, stadiums). ● Residential property. ● Recreational areas (ski areas, golf courses, amusement parks). ● Livestock facilities (stables, feedlots not addressed by Phase I regulations [2], etc.). ● Greenhouses, nurseries.

[1] On June 4, 1992 the United States Court of Appeals for the Ninth Circuit found that EPA's rational for exempting construction sites of less than five acres from Phase I of the storm water program to be invalid and has remanded the exemption for further proceedings (see *Natural Resources Defense Council* v. *EPA* No. 91-70176).

[2] Feedlots, as a class of facilities, have been associated with high loadings of pollutants such as suspended solids, BOD, and nutrients such as nitrogen and phosphorus, and could be an example of a targeting approach based on high loadings.

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Wednesday
September 9, 1992

Part V

Federal Emergency Management Agency

Radiological Emergency Preparedness Program Interim-Use Portal Monitor Standard; Availability Announcement; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Availability of Radiological Emergency Preparedness Program Interim-Use Portal Monitor Standard

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA announces the availability of two documents: "Contamination Monitoring Standard for a Portal Monitor Used for Emergency Response" (the Standard); and "Background Information for the Portal Monitor Standard for Emergency Response" (Background Information), and requests comments on either or both documents. In the event of an accident at a commercial nuclear power plant, the public may become exposed to airborne or deposited radioactive material if significant amounts of radioactive particulates are released to the atmosphere. The Standard sets the level for detection of radioactive contamination for the general public that, if detected, would necessitate decontamination measures. The objective is to minimize the risk of radiation effects to an individual from external contamination on the skin and clothing. The Background Information is a more detailed discussion of the scientific basis and rationale supporting selection of the level for this Standard.

DATES: Comments should be sent on or before December 31, 1992.

ADDRESSES: Comments on either or both documents should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (fax) 646–4536.

FOR FURTHER INFORMATION CONTACT: Marlow J. Stangler, Office of Technological Hazards, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2856.

SUPPLEMENTARY INFORMATION: The portal monitor must have the capability to detect at least one microcurie (μCi) of radionuclides that emit beta and gamma radiation, regardless of the distribution of this contamination over an individual. One or more cesium–137 (Cs–137) sealed source(s) with a total activity not exceeding one μCi must be used for determining compliance with the Standard. Detectability of this amount of radioactivity shall be demonstrated with the Cs–137 source(s) located at several points along a vertical line centered between the two side columns of the unit between 1½ feet and 5½ feet above the base upon which the individual stands when being monitored.

One microcurie, as a minimum level for detection, is also incorporated in the Radiological Emergency Preparedness (REP) Exercise Manual, FEMA–REP–14, as an interim-use standard. This is used in conjunction with FEMA evaluation of offsite emergency planning and preparedness when determining the capability of response personnel in providing adequate radiological monitoring of an individual (adult or child) when a whole-body portal monitor is used.

Comments on this standard will be reviewed and evaluated by FEMA, in consultation with other Federal agencies. Changes will be made as appropriate and the final Standard will be published as a notice in the **Federal Register**. The final Standard will also be incorporated in a revision of FEMA–REP–14, as indicated at 57 FR 10957, Tuesday, March 31, 1992.

Dated: August 3, 1992.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–21640 Filed 9–8–92; 8:45 am]

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Wednesday
September 9, 1992

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 21, et al.
Primary Category; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, 43, 91, and 147

[Docket No. 23345; Amdt. Nos. 21-70, 36-19, 43-34, 91-230, 147-6]

RIN 2120-AB53

Primary Category

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a new primary category of aircraft, and new simplified procedures for type, production, and airworthiness certification, and associated maintenance procedures. Aircraft in this category are of simple design intended exclusively for pleasure and personal use. Primary category aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) may be unpowered or powered by a single, naturally aspirated engine, with a 61-knot or less stall speed limitation for airplanes and a 6-pound per square foot main rotor disc loading limitation for rotorcraft. Primary category aircraft may have a maximum certificated weight of no more than 2,700 pounds, maximum seating capacity of four, and unpressurized cabins. Although these aircraft may be available for rental and flight instruction under certain conditions, the carrying of persons or property for hire is prohibited. This final rule also adds a new section addressing the falsification of documents submitted as part of certification for products and parts.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Macedo, Aircraft Engineering Division (AIR-110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9566.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number of this amendment.

Persons interested in being placed, on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 7, 1989, the Federal Aviation Administration (FAA) published Notice of Proposed Rulemaking (NPRM) Notice No. 89-7 (54 FR 9738), which proposed the adoption of a new category of aircraft to be known as "primary category." Such aircraft would be of simple design and intended exclusively for pleasure and personal use. These aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single, naturally aspirated engine having a certificated takeoff rating of 200 horsepower or less, would have a maximum weight of 2,500 pounds or less, and would have unpressurized cabins. The NPRM also discussed proposals for type, production, and airworthiness certification standards and procedures that would be simpler than those currently contained in Federal Aviation Regulations (FAR) parts 21, 23, and 27 that are applicable to aircraft of this size and type.

The NPRM incorrectly stated that, within the primary category, only small propeller-driven airplanes would be subject to the noise requirements of FAR part 36. On August 1, 1991, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM) (56 FR 36972) that indicated that helicopters in the primary category would also be subject to part 36 requirements.

On August 1, 1991, the FAA also published Notice No. 89-7A (56 FR 36976) which reopened the comment period on the NPRM. The reopening was based on a February 1990 meeting between representatives of the Experimental Aircraft Association (EAA), the Aircraft Owners and Pilots Association (AOPA), and the FAA. The EAA and AOPA requested an opportunity to discuss and revise their original comments concerning primary category aircraft maintenance, the parameters used to define primary category aircraft, and the rental and use of those aircraft for pilot training. During the meeting, the EAA stated that there had been significant developments in the general aviation industry since the date of its original petition in 1984. Specifically, the EAA pointed out that many small aircraft manufacturers had gone out of business, and that kit manufacturers would not want to begin large-scale production of primary category aircraft if the rules were adopted as proposed. Because of the higher cost of preassembled kit aircraft, the EAA indicated that kit manufacturers believe that the major domestic market would consist of fixed-base operators (FBO's) and flying clubs, not individuals.

The EAA also stated that kit manufacturers export 36.5% of their total kit production and believe this percentage would be the same for preassembled kit aircraft. However, the EAA was concerned that other civil airworthiness authorities might not accept preassembled kit aircraft into their respective countries because the aircraft would not meet International Civil Aviation Organization Annex 8 requirements which, the EAA believes, compel the exporting State's certification authority to set aircraft airworthiness standards, and no airworthiness standard was envisioned for primary category aircraft. Consequently, the EAA wished to submit additional comments based on its re-evaluation of the proposed rules. A summary of this meeting has been placed in Docket No. 23345. Following the meeting, the FAA received additional written comments from the EAA, which have also been placed in the docket.

Since the EAA was afforded the opportunity to revise its original proposal, the FAA determined that it was necessary to reopen the comment period for Notice No. 89-7 to afford interested persons the opportunity to comment on those issues addressed by the EAA.

The EAA recommends changing the criteria for primary category aircraft from a maximum weight of 2,500 pounds and a single, naturally aspirated engine with a takeoff rating of 200 shaft horsepower or less, to a maximum weight of 2,700 pounds and a single, naturally aspirated engine, with a stall speed of 61 knots or less for airplanes, and a 6-pound per square foot main disc loading limitation for rotorcraft. According to the EAA, the increased weight would permit manufacturers to produce a four-place aircraft with sufficient performance to operate in high-density altitude conditions. The EAA recommends a stall speed limit instead of an engine horsepower limit because stall speed would better define airplane performance and the airplane's landing speed in the event of a power failure. The EAA believes that, for the last 50 years, the 61-knot stall speed limitation in part 23 has established acceptable levels of single-engine airplane performance for safe operation by general aviation pilots. The EAA also states that 6-pound per square foot disc loading limitation more accurately describes rotorcraft performance but did not provide any rationale for this belief.

The EAA also urges that the proposed rule be revised to permit the rental of primary category aircraft for pilot training and personal use, noting that the number of normal, utility and acrobatic category training aircraft available has decreased dramatically since the time of its original petition. The EAA asserts that rental for personal use would open a substantial market with FBO's. The EAA continues to support the concept of pilot-owners performing certain maintenance and inspection functions on their own aircraft after appropriate training. The EAA views the conversion of aircraft from the normal, utility and acrobatic categories to the primary category as a means to extend this maintenance privilege. This conversion would be made through the already existing supplemental type certificate (STC) process. For example, an individual owner or a type certificate holder of an aircraft originally type certificated under FAR part 23 or CAR 3 would submit an application for a STC to convert a specific aircraft or a number of specifically identified aircraft to primary category. As part of the application, the applicant would also submit its proposed special inspection and maintenance program that specifically identifies the inspection and preventive maintenance tasks that may be performed by a pilot-owner. The EAA recommends that those primary category aircraft used for rental or pilot training be maintained only by certificated mechanics or repair stations. However, the EAA states that these aircraft maintenance requirements should not apply to those primary category aircraft, maintained by the pilot-owner, when the pilot-owner is giving a demonstration in the operation of that individual aircraft.

At the request of the EAA, the FAA extended the comment period for the two notices to November 29, 1991 (56 FR 49660). The EAA stated that the extent of the issues involved in the reopening required extensive evaluation and review by the aviation community. Many of the organization's members and others in the aviation community receive notification of rulemaking actions through aviation magazines. The EAA stated that it intended to publish the NPRM in it publication Sport Aviation, and believed that other aviation magazines would also publish information on the NPRM.

Discussion of Comments

The FAA received 369 comments in response to the original NPRM and 773 comments in response to the reopening of the comment period and the SNPRM regarding noise. The comments were evaluated to determine the nature of the commenters (individuals, flying clubs, FBO's, manufacturers) and their major concerns. The number of comments received breaks down as follows: Individuals—546 comments; Pilots—447 comments; Manufacturers—29 comments; Associations—32 comments; Businesses—50 comments; State and local government—6 comments; and Other—23 comments. The following is a discussion of comments by issue.

Pilot-Owner Maintenance

In the original NPRM, the FAA proposed to allow properly qualified pilot-owners to perform inspection and maintenance tasks prescribed and specifically identified as preventive maintenance. To be properly qualified, a pilot-owner would have to successfully complete an FAA-approved course given by an FAA-approved aviation maintenance technician school, or by the holder of the production certificate for the pilot-owner's aircraft.

This proposal generated 246 responses of which 184 favored the proposal. The commenters generally agreed that safety will actually increase since owner-pilots would be encouraged to perform maintenance as soon as the need arises rather than wait until an annual inspection and/or the availability of a certified mechanic. By being allowed to perform maintenance, the FAA anticipates that owner-pilots will also become more familiar with the maintenance needs of their aircraft and thus maintain them more diligently.

Almost all of the 62 responses that oppose the proposal were from individuals who are in maintenance-related occupations or who are members of maintenance-related associations.

The FAA is not persuaded by comments that suggest that the level of safety will decrease as a result of pilot-owner maintenance. Any pilot-owners who aspire to perform additional maintenance tasks on their primary category aircraft must be licensed as private pilots. Each must also be issued a certificate of competency upon completion of an approved inspection and maintenance course. Such courses may be offered by a certificated school, by the holder of the production certificate for the individual aircraft, or by another entity that has a course approved by the Administrator. These special inspection and maintenance courses must be specific to the make and model of the owner's aircraft. With these conditions, the FAA expects that pilot-owner maintenance on these primary category aircraft will not result in decreased safety. Accordingly, pilot-owner maintenance provisions are included in the final rule.

The availability of an optional maintenance program in this rule does not in any way exempt primary category aircraft from the maintenance provisions of part 43. The FAA does not anticipate approving any special inspection and maintenance program that allows pilot-owners to do their own annual inspections, work on engines, or accomplish any inspection or repair required by an airworthiness directive. Further, all special inspection and maintenance programs will be subject to the recordkeeping requirements that exist for other aircraft under the regulations.

If a pilot-owner operates a primary category aircraft that has had an inspection or maintenance task that is part of its special program performed improperly, certificate action may be taken against that pilot-owner.

Weight Limit

The weight limit of 2,500 pounds proposed in the original NPRM generated 55 comments. Four commenters oppose the concept, suggesting that the horsepower and occupancy restrictions in the proposal would serve to effectively keep the weight within reason. The majority of commenters suggest increasing the weight limit, and offer a variety of suggestions ranging up to 4,000 pounds.

The weight limit of 2,700 pounds proposed in the reopening of the comment period generated 165 comments of which 134 favor the increase. AOPA states that the revised weight limit more accurately reflects the type of aircraft that will be designated as primary category. The EAA states that the increased weight limit allows for a broader scope of design, including additional weight from additional safety features. A number of commenters and other individuals favor the increased limit because it would embrace a larger number of aircraft on the market and allow more aircraft to convert from the normal, utility and acrobatic categories, allowing more pilot-owners to take advantage of the opportunity to do more of their own maintenance.

A few commenters, including the Sport Aircraft Manufacturers Association, suggested adopting the Canadian microlight weight limit of 3,200 pounds. The Professional Aircraft Maintenance Association (PAMA) opposes the increase, suggesting that it would encompass complex aircraft never intended to be included in the primary category. The PAMA also suggests that the increase would allow

greater conversion from the normal, utility and acrobatic categories, thus allowing many older aircraft to avoid annual inspections. The Joint Aviation Authorities (JAA) opposes the 2,700 pound weight limit, suggesting that it would undermine attempts to develop a common code of aircraft certification regulations, resulting in primary category aircraft facing European import restrictions.

In response to the proposed 6-pound per square foot main disc loading limitation for rotorcraft, one commenter states that this is twice the average disc loading limitation of a training helicopter. A 4-pound per square foot main disc loading limitation was offered as an alternative. Another commenter states that the 6-pound per square foot limit is unsafe and unrealistic but gave no rationale for this claim. The FAA disagrees. The FAA is aware of at least one rotorcraft model that is compatible with the proposed primary category rule. It is of simple design, weighs less than 2,700 pounds and has a main disc loading of slightly over 5 pounds per square foot.

The FAA agrees that the proposed weight limit of 2,700 pounds best describes the type of aircraft that the FAA envisions as primary category. The weight of an aircraft is not necessarily indicative of its complexity. The 2,700 pound limit allows sufficient design latitude to accommodate new technology, safety features, and the conversion of a greater number of aircraft from the normal, utility and acrobatic categories.

The FAA does not agree that the 2,700 pound weight limit will undermine efforts toward the harmonization of aircraft certification regulations. As discussed below in the section on the development of certification standards, primary category was developed to provide a stimulus to small aircraft manufacturers in the United States, not to facilitate exportable products. Nor are new aircraft designed and certificated as primary category barred from export; a person wishing to export one must simply obtain the approval of the importing country. Accordingly, the final rule adopts the 2,700 pounds weight limit.

Horsepower/Stall Speed Limitations

The 200-horsepower engine limitation proposed in the original NPRM generated 28 comments. Five commenters favor the 200-horsepower limitation and 23 offer alternatives, ranging from 210–350 horsepower. Five of these alternatives suggest a weight-to-horsepower ratio as more appropriate in defining a primary category aircraft.

The EAA proposed to replace the 200-horsepower limitation with a 61-knot or less stall speed limitation. This suggestion generated 165 comments of which 150 favor the concept. Those in favor indicate that a stall speed limitation provides a superior indication of an aircraft's handling predictability and performance, whereas a horsepower limitation dictates only cruising speed. A low stall speed, they urge, would enhance safety because most accidents occur during landing and take-off.

Six commenters oppose the use of a stall speed limitation. Of these, two believe that 61 knots is too high, two suggest there should be no stall speed if the pilot can demonstrate proficiency, and two do not give any reason for their opposition.

Nine commenters offer some alternative to the proposal. Of these, seven propose stall speeds varying from 45 to 55 knots and two believe that the 61-knot stall speed limitation should accompany rather than replace the 200-horsepower limitation.

The FAA agrees that a 61-knot or less stall speed limitation is appropriate and that it will encourage the production of safe primary category aircraft. The FAA is persuaded that the 50-year track record of the 61-knot stall speed limitation in part 23 has established it as an acceptable level of single-engine airplane performance for safe operation by general aviation pilots. Accordingly, the final rule adopts the 61-knot or less stall speed limitation.

Rental and Flight Instruction

The original NPRM stated that primary category aircraft were not intended for compensation, hire, or flight instruction. Eight comments were received on this issue, suggesting that the proposal be revised to allow primary category aircraft rental and flight instruction. The notice reopening the comment period included an EAA-requested change that would allow such rental and flight instruction provided that the aircraft is maintained by an FAA-certificated mechanic or repair station.

This change in the proposal generated 174 comments, 167 favoring the concept, three opposing it, and four offering alternatives. Those in favor indicate that allowing aircraft rental and flight instruction is essential to the success of the proposal, since the possibility of aircraft rental is a primary motivation to produce primary category aircraft. Commenters stress that the largest market for new primary category aircraft will be FBO's and flight schools. Only after the aircraft have depreciated will private parties be able to afford them. Therefore, if the largest anticipated market is unable to use these aircraft, manufacturers will not produce them.

Three helicopter associations oppose the rental of primary category aircraft. They state that rental of primary category helicopters will have an adverse impact on the rental revenue of operators of existing normal and transport category helicopters. Four commenters offer alternatives that permit rental and pilot training. One recommends allowing flight training in primary category aircraft but only for the pilot-owner's immediate family. One recommends that rental be expanded to include transportation of cargo and passengers. One recommends that rental be allowed for crop dusting. One recommends that primary category be expanded to include complex single-engine designs suitable for training commercial and certified flight instructor applicants.

The FAA agrees that it is reasonable to allow the rental of primary category aircraft, provided that these aircraft are maintained by an FAA-certificated mechanic or repair station. This maintenance requirement is necessary to ensure the most consistent performance of maintenance for aircraft used by non-owner pilots. The FAA does not agree that usage should be expanded to include use for compensation or hire, such as the transport of goods or passengers. The primary category was intended to create a new class of personal and recreational use aircraft, not an additional vehicle for commercial purposes. Thus, the rule allows rental of primary category aircraft for the personal use of the pilot, but would not extend this use to that pilot's taking on paying passengers, hauling freight, or any other compensated activity.

Subject to the operating limitations of § 91.325 and § 91.409(b), primary category aircraft may be used for flight instruction. Pilot certification in these aircraft is limited to aircraft that otherwise meet the requirements of FAR § 61.45.

Primary Category-Light

The original NPRM proposed "Primary category-light" as a sub-category of aircraft. This proposal generated considerable opposition from the ultralight community, as well as some confusion. Of the 148 comments received on this issue, 106 opposed the proposed new designation.

The NPRM did not identify clearly that primary category-light was proposed as an option for ultralights of

expanded design. It would have offered optional certification for certain ultralights to become certificated and issued special airworthiness certificates as primary category aircraft, provided that they weighed no more than 1,000 pounds. Currently these expanded-design ultralights must receive either special or standard airworthiness certificates since they exceed the weight criteria to be considered an ultralight vehicle under part 103. In general, the commenters suggest that the proposed classification would separate the two-seat ultralight trainers from the rest of ultralight aircraft, forcing aspiring ultralight pilots to obtain flight training in heavier, conventional aircraft. This would cause problems, many believe, because ultralight student pilot would be unaccustomed to the handling qualities of an ultralight. Approximately 90 ultralight advocates suggest revising part 103 as an alternative to the primary category-light classification. One ultralight manufacturer makes a similar suggestion, recommending that part 103 be revised to accommodate a two-seat ultralight trainer. The commenter also notes that several foreign countries are operating mandatory ultralight programs in airworthiness, pilot and instructor ratings, and aircraft registration.

The FAA agrees that the primary category-light classification is in appropriate, and it is not included in the final rule. Comments concerning amendments to part 103 are beyond the scope of this rulemaking, since no amendments to part 103 were proposed.

Impact on Manufacturers

The FAA requested comments on the EAA/AOPA claim that a primary category aircraft would be less costly to manufacture, thereby allowing manufacturers to fill a demand for low cost aircraft. In response to the original NPRM, 11 commenters responded to this claim. Ten state that it will have a positive impact, but submitted no support for their statements. One manufacturer states that the creation of a primary category will not offer any substantial benefits to manufacturers unless savings reach 35% compared to existing certification costs. The commenter claims that anything less would offer no incentive to divert production from aircraft that qualify for standard airworthiness certificates, which offer greater marketability. However, the manufacturer submitted no support for this claim.

The reopening of the comment period generated 128 comments on the impact of the primary category on manufacturers. All but two commenters state that the proposed rule would have a positive impact. The commenters agree that the proposal will encourage manufacturing and offer incentives to employ new technology. The FAA agrees with the original petitioners that this rule will stimulate aircraft manufacturing and benefit the general aviation industry overall.

The final rule permits kit aircraft supplied by the holder of a production certificate to be assembled by another person under the supervision and quality control of the production certificate holder. Under these circumstances, the production certificate holder retains its responsibilities under FAR § 21.165; these responsibilities cannot be delegated to the person assembling the aircraft. Enforcement may be taken against the production certificate holder for any noncompliance with its approved qualify control procedures discovered by the FAA at the assembly location. Further, the reporting requirements of § 21.3 remain the responsibility of the type certificate holder.

Alternatively, if a kit aircraft supplied by the holder of a production certificate is assembled by another person who is not under the supervision and quality control of the production certificate holder, the completed aircraft is eligible only for an experimental airworthiness certificate.

Pilot-Owner Cost Reduction

The FAA requested comments on whether primary category aircraft would be less costly to own and operate as a result of the pilot-owner's ability to perform certain maintenance tasks. Forty comments were received in response to the original NPRM, and 78 in response to the reopening of the comment period. All but two indicate a belief that aircraft in the new primary category would benefit from reduced operational costs. Almost all of the commenters suggest that the reduced costs that result from the ability to perform additional maintenance would allow owner-pilots to afford additional flight time, which would benefit the industry as a whole. However, the PAMA states that any savings would be nominal and not worth the trade-off in safety that would result from increased pilot-owner maintenance, although PAMA did not submit any analysis to support its claim.

The FAA does not agree that increased pilot-owner maintenance tasks will result in reduced safety. All pilot-owners who aspire to perform additional maintenance tasks on their primary category aircraft must hold a private pilot's certificate and be issued a certificate of competency upon completion of an approved special inspection and maintenance course offered by a certificated school, by the holder of the production certificate for the specific aircraft, or by another entity that has a course approved by the Administrator. The FAA anticipates that this feature of the rule will encourage regular maintenance and provide pilot-owners an economic incentive to become more familiar with their aircraft.

Growth in Personal-Use Aircraft

The FAA requested comments on the petitioners' claim that primary category aircraft would stimulate the introduction of new, less costly, personal-use aircraft. All 99 commenters responding to the original NPRM and the reopening state that the proposal would have a positive impact on the number of personal-use aircraft, indicating that there is an untapped market for kit aircraft in completed form. Twenty-two of the commenters note that the need to replace aging training aircraft will ensure the demand, while the proposed rule offers sufficient incentive to ensure the supply.

Limited Checkouts

The reopening of the comment period included a proposal by the FAA to allow the use of primary category aircraft that are maintained by the pilot-owner to be used for limited checkouts. A limited checkout is an opportunity for a pilot to become familiar with the aircraft flight manual, receive a briefing on the aircraft characteristics from the pilot-owner, and conduct a short local flight that includes at least three takeoffs and landings. Of the 91 responses to this issue, 89 favor allowing limited checkouts. Only nine commenters offer any rationale for their support of limited checkouts in pilot-owner maintained primary category aircraft, stating that they are necessary to the eventual commercial resale of these aircraft.

The FAA agrees. Pilot-owners authorized to perform additional maintenance tasks who wish to allow a prospective buyer to examine the aircraft, or wish to receive flight instruction in their own aircraft are not required to have their aircraft maintained by an FAA-certificated mechanic or repair station. Without this allowance, the pilot-owners would be forced to use FAA-certificated mechanics or repair stations to maintain their aircraft in order to eventually offer it for sale and allow a prospective purchaser to fly it, or the pilot-owners would be forced to rent an aircraft in order to receive flight instruction. Accordingly, § 91.325 permits a person

other than the pilot-owner to operate a primary category aircraft maintained by the pilot-owner as long as the pilot-owner is not compensated for its use. This allows a pilot-owner to lend the aircraft to a pilot friend, for example, or to demonstrate the aircraft to a prospective buyer.

In addition, a pilot-owner whose certificate is not current may regain currency using a certificated flight instructor in the pilot-owner's self-maintained primary category aircraft. Flight instruction for hire in self-maintained primary category aircraft is limited by the restrictions in § 91.325, and by § 91.409(b), which prohibits paid flight instruction from being given in an aircraft provided by the instructor unless that aircraft has been inspected as described in § 91.409(b).

Development of Certification Standards

The original NPRM proposed that private industry be allowed to develop certification design standards through associations and consensus groups, and submit those standards to the FAA for approval. The original NPRM generated 36 comments on this issue, while 46 were received in response to the reopening. Approximately 75 of the commenters favor using the private sector to develop and streamline certification standards. Only 7 commenters oppose the concept. Commenters recommend that FAR part 23, Civil Aviation Regulations (CAR) part 3, and the Civil Aeronautics Manuals (CAM) 3 and 18 are viable bases from which primary category aircraft certification standards could be established. Eleven commenters suggest that reliance on the private sector would be the best way to develop standards for approving design and materials use. The Australian Civil Aviation Authority suggests part 23 Appendix B as an appropriate resource from which to develop suitable simplified control surface loadings.

Nineteen commenters suggest streamlining the current certification process rather than creating a new one. The benefits of this streamlined certification process would include a stimulation of light aircraft production, the development of new technology, and the introduction of training aircraft of new design.

One manufacturer states that part 23 certification standards are neither difficult nor costly, and suggests revising part 23 appendix A instead of allowing industry to submit new standards. The commenter states that small manufacturers will not benefit from the creation of a primary category because the lack of certification standards will inhibit the international marketability of the products.

The FAA agrees that the development of certification standards by the private sector represents the most productive and cost-effective manner of streamlining the certification process. The development of airworthiness design criteria by the private sector would be similar to the FAA's Technical Standards Order (TSO) authorization program. The FAA's TSO program has been highly successful in promoting design, production, and quality control of many articles which are critical to aircraft safety. The FAA's TSO approval process enables the public to benefit from the collective technical knowledge of the private sector. This is discussed in more detail in the following section on type certification.

The FAA does not agree that the creation of a primary category will not benefit small manufacturers. The rule is intended to provide an economic stimulus to the U.S. small aircraft industry by reducing certification and manufacturing costs. Moreover, although the rule was not designed to facilitate the development of aviation products for export, primary category aircraft may be eligible for export certificates of airworthiness issued under part 21 subpart L.

Comments received on this issue reflect a misunderstanding of the requirements for the export and import of aeronautical products. Under the provisions of the Chicago Convention, a signatory country may permit aircraft from other countries to operate in its airspace. To do so, an aircraft must have an airworthiness certificate issued by the country of registration, based on a detailed and comprehensive airworthiness code as described in ICAO Annex 8 to the Chicago Convention. An aircraft that does not meet Annex 8 Standards may nonetheless be permitted to fly in an ICAO country, but only with the prior permission of the cognizant airworthiness authority. Thus, owners of U.S.-registered primary category aircraft seeking to operate outside of the United States would require prior permission of the appropriate airworthiness authority.

Annex 8 represents an operating limitation entirely separate from the ability to export or import a product. Under § 21.329, export certificates of airworthiness may be issued only for aircraft eligible for a standard airworthiness or restricted airworthiness certificate unless the importing country indicates that an aircraft with a special airworthiness certificate is acceptable. Thus, an applicant can obtain an export certificate of airworthiness for a primary category aircraft if it presents the evidence required under § 21.327(e)(4) that the importing country's airworthiness authority has agreed. The export certificate of airworthiness would include a notation that the product does not meet Annex 8 Standards.

Type Certification

Excluding the weight and horsepower/stall speed issues discussed previously, 39 comments were received concerning development of other primary category criteria. One manufacturer suggests that powerplant certification be addressed in the type certification process, as suggested in the original NPRM.

The JAA suggests that occupancy be limited to two people. The PAMA suggests that the definition of primary category aircraft be revised to exclude complex systems such as constant speed propellers, retractable landing gear, and hydraulic systems.

The FAA disagrees with the limitations suggested by some commenters because those limits would exclude many present simple aircraft types that have excellent safety records from converting to primary category. These lower limits would also preclude a number of kit aircraft currently being manufactured and certificated in the experimental category from obtaining a primary category type certificate, production certificate, and a special airworthiness certificate. The FAA finds no safety-related reason to restrict primary category eligibility to less than that contained in the revised proposal. The FAA suggests that the conversion of aircraft originally type certificated under FAR part 23 or CAR 3 to the primary category could be accomplished using the STC process. The FAA agrees with this method as an acceptable means of conversion. When making an STC application for conversion, the applicant must submit the special inspection and maintenance program which specifically identifies the inspection and preventive maintenance tasks that may be performed by the pilot-owner, as provided in new § 21.184(c).

The simplified type certification process envisioned for primary category aircraft is expected to draw heavily from airworthiness standards already in the regulations, existing delegation procedures, and statements of compliance made by applicants for type certification. Applicable airworthiness standards may be approved using a procedure similar to the FAA's Technical Standards Order

authorization program, which is used currently to approve the design and production quality control of aviation products that are critical to safety and that are installed on normal category aircraft.

To complete its type certification program, an applicant must submit a compliance checklist addressing all applicable airworthiness standards. This checklist must contain a summary of the methods used to determine compliance with the airworthiness standards previously approved, and must reference all reports or records of engineering analysis and test data used to establish compliances. This checklist must be retained by the applicant as a permanent part of its certification file. These simplified procedures will result in less FAA involvement as compared to current aircraft certification procedures. While the ultimate responsibility to make findings regarding the issuance of type certificates remains with the FAA, the agency anticipates remaining selectively involved in the administration of individual type certification applications.

Primary Category Aircraft Operating Limitations

The original NPRM proposed three basic operating limitations: (1) Primary category aircraft could not be used for carrying persons or property for hire or compensation, (2) primary category-light aircraft could not be used in any controlled area, and (3) primary category-light aircraft could only be operated using visual flight rules (VFR). The notice reopening the comment period included an FAA-requested change that would allow the use of primary category aircraft for training and for rental if the aircraft is maintained by an FAA-certificated mechanic or repair station. Thirty-five comments were submitted in response to the original NPRM, while the reopening generated four comments on this issue. Four commenters suggest that the proposed prohibition against carrying persons or property for compensation or hire is unreasonable for those primary category aircraft certificated to a level of safety equivalent to aircraft having standard airworthiness certificates.

The FAA disagrees. As discussed previously, primary category is an effort to develop a simplified certification process to stimulate the production and use of simpler personal use and recreational aircraft. The process was never intended to create another form of commercial aircraft. The FAA considers the current choice of aircraft certification categories and standards sufficient for the safe development of commercial aircraft. Since no commercial use was ever intended or proposed, discussions of specific uses for compensation or hire are beyond the scope of this rulemaking.

Also as discussed previously, the FAA agrees that primary category aircraft may be used for rental or flight instruction. Primary category aircraft rental is permitted under § 91.325 if the aircraft is maintained by an FAA-certificated mechanic, and for flight instruction pursuant to the limitations of §§ 91.325 and 91.409(b). This availability for rental and flight instruction is expected to create a demand for privately owned aircraft that is sufficient to stimulate their production.

Inspections

The original NPRM included a proposal that (1) would allow properly qualified pilot-owners to perform specific inspection tasks that are specifically identified in an FAA-approved special inspection and maintenance program developed for the particular aircraft, and (2) would allow a 24-month inspection in place of the standard annual inspection. A total of 27 comments were received concerning these proposals. Thirteen comments favor the proposal but offer no rationale. Eight comments suggest various alternative periods for the periodic inspection, but offer no justifications for the suggested alternatives. Six comments oppose the proposal, stating that safety will decrease by allowing pilot-owners to perform inspection functions and by extending the periodic inspection period. The FAA disagrees with the statements that pilot-owner inspection and maintenance would reduce safety. Pilot-owners will be required to satisfactorily complete an FAA-approved special inspection and preventive maintenance training program, and to obtain a certificate of competency for the particular aircraft involved, before being allowed to perform the specified inspection and maintenance tasks.

The FAA agrees that an increase in the required inspection interval could be detrimental to overall safety. There is significant, successful history supporting the standard 12-month inspection period required for all other certificated aircraft, and little viable rationale was submitted in support of extending it for primary category aircraft. Accordingly, the 12-month annual inspection interval required by FAR § 91.409(a) (or the 100-hour interval required by § 91.409(b)) is applicable to primary category aircraft.

Noise Standards

Five commenters object to the application of part 36 noise standards to primary category aircraft, suggesting that compliance with appendix H, in particular, will jeopardize the production of primary category helicopters. As stated previously, the applicability of part 36 Appendix H noise standards is mandated for all aircraft for which a type certificate is sought on or after March 6, 1986. As discussed in the SNPRM, the FAA is required to determine whether noise abatement is achievable by prescribing standards. The Noise Control Act of 1972 amended the Federal Aviation Act, leaving the FAA no discretion in this matter when issuing a type certificate.

In general, no noise certification under part 36 is required for a small airplane that was type certificated before the requirements of part 36 became effective. However, these airplanes must demonstrate compliance with part 36 if there is an acoustical change made to the airplane, or if there is a change in the type or airworthiness certification, such as a change from a normal to a special type certificate, or from a standard to a restricted airworthiness certificate.

The final rule makes an exception for certain older airplanes that were type certificated before part 36 existed, that are to be converted to primary category, and that have not undergone an acoustical change. Section 36.501(a)(3) states that an airplane that (1) was type certificated in the normal, utility or acrobatic category, (2) has a standard airworthiness certificate, (3) has not undergone an acoustical change from its type design, (4) has not previously been certificated under appendix F or G of part 36, and (5) that will be converted to primary category need not undergo noise certification under part 36.

Without this exception, an owner of an older airplane that seeks to gain the other benefits of primary category certification would have to show compliance with part 36 through a noise certification test because of the simple paperwork conversion to a primary category type certificate. Such tests may be beyond the financial resources of many of the pilot-owners that were meant to benefit by the creation of the primary category and its optional maintenance program features.

This exception will be narrowly construed to include only those older airplanes for which noise certification was not required at the time the original type certificate was issued. Any airplane that has undergone an

alteration from its original type design that would cause an acoustical change is not covered by this exception, and must demonstrate compliance with part 36 appendix G before a primary category type certificate will be issued. Only airplanes with the noted type and airworthiness certifications are eligible for this exception; other airplanes that change their type certification to primary category must demonstrate compliance with part 36 appendix G.

Section 36.805(d)(2) makes this same exception for helicopters that have type or airworthiness certificates that are not subject to compliance with part 36.

Pilot Certification

The proposed rule did not allow pilot schools to use primary category aircraft for pilot certification. Two manufacturers and one pilot objected to this prohibition, indicating that pilot certification should be allowed.

Upon further review, the FAA has concluded that primary category aircraft are appropriate for pilot certification. The FAA anticipates that many normal category aircraft that could have been used for pilot certification will be converted to primary category. The FAA has found no reason why these aircraft, or newly type certificated primary category aircraft, should not be used for pilot certification, provided that the aircraft meet the requirements of FAR § 61.45. Conversely, any primary category aircraft, whether converted or newly type certificated, that does not meet the requirements of § 61.45 may not be used for pilot certification. However, experience gained in these aircraft may be creditable toward other pilot certification requirements.

Falsification of Documents

The NPRM proposed a new § 21.2 addressing the falsification of certificates, approvals, and delegations submitted under part 21. Section 21.2 is intended to deter fraudulent or intentionally false information from being submitted. The regulation was modeled after similar provisions found in FAR parts 43, 61, 63, 65, and 143 for certificates, authorizations, and ratings issued under those parts.

No comments were received regarding this proposal. Accordingly, § 21.2 is adopted as proposed.

Other Airworthiness Issues

Section 21.184(c) provides for an aircraft with a standard airworthiness certificate to obtain a primary category airworthiness certificate. The FAA cautions, however, that these same aircraft cannot reconvert to a standard airworthiness certificate without a showing that they meet all of the criteria for a standard airworthiness certificate as prescribed by the regulations. Such showings have historically been difficult when an aircraft has remained in a different classification or category for a lengthy period. To facilitate the return to a standard airworthiness certificate, the aircraft records should indicate that the aircraft has been maintained according to the manufacturer's instructions, and that any modifications to the aircraft were either removed or are approved by the FAA, in addition to indicating that all other applicable requirements have been met.

Section 21.184(b) creates a new classification of special airworthiness certificate designated special airworthiness certificate-primary category. Section 21.184(a) allows an applicant to obtain this primary category special airworthiness certificate when the provisions of FAR part 21 are met for a specific primary category aircraft.

Maintenance Training

The reopening of the comment period on the proposed rule included an amendment to FAR part 141, Pilot Schools, to include provisions for the instruction of pilot-owners in the maintenance of their primary category airplanes. After further consideration, the FAA has determined that this proposal is inappropriate. The FAA does not consider pilot schools to be the proper forum for instruction in maintenance tasks. The maintenance tasks for primary category aircraft must be tailored for the specific make and model aircraft. In most cases, this would present a curriculum development burden on pilot schools. The FAA considers FAR part 147, Aviation Maintenance Technician Schools, to be the proper vehicle for such regulations. The amendments to part 147 containing these provisions are adopted as proposed. In addition, the final rule allows the holder of the production certificate for a primary category aircraft to give instruction in maintenance and to issue certificates of competency in maintenance for that aircraft. Such maintenance programs and instruction must be approved as part of the aircraft's type certificate. The final rule also allows other entities to provide maintenance instruction to pilot-owners provided that the course is approved by the Administrator.

Aircraft Identification

To remain consistent with current regulations and policy concerning the identification of an aircraft with a data plate, the FAA found that kit-built aircraft had to be included in FAR § 21.182(b). No comments were received on this proposal. Accordingly, the final rule incorporates this addition.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides information on the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, to have a major increase in consumer costs, or to have a significant adverse effect on competition.

The FAA has determined that this rule is not major as defined in the Executive Order. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to the rule has not been prepared. Instead, the agency has prepared a more concise regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* and an international trade impact assessment. The complete regulatory evaluation is available for inspection in the docket.

Cost-Benefit Analysis

Because of several confounding factors, the FAA is unable to plausibly estimate the number of aircraft that will be certificated under the provisions of this rule and the associated cost differentials. These factors include alternative certification options, manufacturers' legal liability, owner's insurance, resale value of primary category aircraft, and the cost of pilot-owner maintenance training. Nevertheless, the rule can be deemed to be cost-beneficial by virtue of its optional nature and retention of current

safety levels. Manufacturers and pilot-owners will elect primary category certification only if it is in their economic interests to do so.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The entities that will be affected by this rule are aircraft manufacturers. Based on FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, a small aircraft manufacturer is one with fewer than 75 employees; a substantial number is one that is not less than eleven and that is more than one-third of the affected small entities; and the significant economic threshold for aircraft manufacturers is an annualized cost of $18,200 in 1992 dollars.

Based on the identification and analysis of 17 small manufacturers of conventional categories of aircraft and 110 kit manufacturers of amateur-built airplanes and helicopters, the FAA concludes that this rule could have a significant positive economic impact on a substantial number of small entities. Because of the optional nature of the rule, however, an analysis of alternatives as would otherwise be required by the RFA is unwarranted.

International Trade Impact Assessment

This rule will have little impact on international trade. Both foreign and domestic manufacturers applying for certification in the United States will have the option of using this final rule or an alternative means of certification. Other aviation authorities may not accept primary category aircraft; however, kit manufacturers may continue to sell their unassembled kits abroad.

Federalism Implications

The regulations herein will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. The FAA certifies that this regulation could have a significant positive economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 21

Aviation safety, Aircraft, Safety, Type certification.

14 CFR Part 36

Aircraft noise.

14 CFR Part 43

Aircraft, Aviation safety, Safety.

14 CFR Part 91

Aircraft, Aviation safety, Safety.

14 CFR Part 147

Aircraft, Aviation safety, Education, Educational facilities, Schools.

The Amendments

The Federal Aviation Administration amends 14 CFR parts 21, 36, 43, 91, and 147 of the Federal Aviation Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 7572; E.O. 11514; 49 U.S.C. 106(g).

2. A new § 21.2 is added to read as follows:

§ 21.2 Falsification of applications, reports, or records.

(a) No person shall make or cause to be made—

(1) Any fraudulent or intentionally false statement on any application for a certificate or approval under this part;

(2) Any fraudulent or intentionally false entry in any record or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or the exercise of the privileges of any certificate or approval issued under this part;

(3) Any reproduction for a fraudulent purpose of any certificate or approval issued under this part.

(4) Any alteration of any certificate or approval issued under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any certificate or approval issued under this part and held by that person.

3. Section 21.17 is amended by adding a new paragraph (f) to read as follows:

§ 21.17 Designation of applicable regulations.

* * * * *

(f) For primary category aircraft, the requirements are:

(1) The applicable airworthiness requirements contained in parts 23, 27, 31, 33, and 35 of this subchapter, or such other airworthiness criteria as the Administrator may find appropriate and applicable to the specific design and intended use and provide a level of safety acceptable to the Administrator.

(2) The noise standards of part 36 applicable to primary category aircraft.

4. A new § 21.24 is added to read as follows:

§ 21.24 Issuance of type certificate: primary category aircraft.

(a) The applicant is entitled to a type certificate for an aircraft in the primary category if—

(1) The aircraft—

(i) Is unpowered; is an airplane powered by a single, naturally aspirated engine with a 61-knot or less V_{so} stall speed as defined in § 23.49; or is a rotorcraft with a 6-pound per square foot main rotor disc loading limitation, under sea level standard day conditions;

(ii) Weighs not more than 2,700 pounds;

(iii) Has a maximum seating capacity of not more than four persons, including the pilot; and

(iv) Has an unpressurized cabin.

(2) The applicant has submitted—

(i) Except as provided by paragraph (c) of this section, a statement, in a form and manner acceptable to the Administrator, certifying that: the applicant has completed the engineering analysis necessary to demonstrate compliance with the applicable airworthiness requirements; the applicant has conducted appropriate flight, structural, propulsion, and systems tests necessary to show that the aircraft, its components, and its equipment are reliable and function properly; the type design complies with the airworthiness standards and noise requirements established for the aircraft under § 21.17(f); and no feature or characteristic makes it unsafe for its intended use;

(ii) The flight manual required by § 21.5(b), including any information required to be furnished by the applicable airworthiness standards;

(iii) Instructions for continued airworthiness in accordance with § 21.50(b); and

(iv) A report that: summarizes how compliance with each provision of the type certification basis was determined; lists the specific documents in which the type certification data information is provided; lists all necessary drawings and documents used to define the type design; and lists all the engineering reports on tests and computations that the applicant must retain and make available under § 21.49 to substantiate compliance with the applicable airworthiness standards.

(3) The Administrator finds that—

(i) The aircraft complies with those applicable airworthiness requirements approved under § 21.17(f) of this part; and

(ii) The aircraft has no feature or characteristic that makes it unsafe for its intended use.

(b) An applicant may include a special inspection and preventive maintenance program as part of the aircraft's type design or supplemental type design.

(c) For aircraft manufactured outside of the United States in a country with which the United States has a bilateral airworthiness agreement for the acceptance of these aircraft, and from which the aircraft is to be imported into the United States—

(1) The statement required by paragraph (a)(2)(i) of this section must be made by the civil airworthiness authority of the exporting country; and

(2) The required manuals, placards, listings, instrument markings, and documents required by paragraphs (a) and (b) of this section must be submitted in English.

§ 21.31 [Amended]

5. Section 21.31(c) is amended by adding after the word "chapter" the phrase ", or as otherwise required by the Administrator."

6. Section 21.31 is further amended by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows:

§ 21.31 Type design.

* * * * *

(d) For primary category aircraft, if desired, a special inspection and preventive maintenance program designed to be accomplished by an appropriately rated and trained pilot-owner.

* * * * *

§ 21.35 Flight tests.

7. Section 21.35(a) introductory text is amended removing the reference "§ 21.25" and adding the reference "§ 21.24" in its place.

§ 21.93 [Amended]

8. Section 21.93(b)(3) introductory text is amended by adding the word "primary," before the world "normal,".

9. Section 21.163 is revised to read as follows:

§ 21.163 Privileges.

(a) The holder of a production certificate may—

(1) Obtain an aircraft airworthiness certificate without further showing, except that the Administrator may inspect the aircraft for conformity with the type design; or

(2) In the case of other products, obtain approval for installation on type certificated aircraft.

(b) Notwithstanding the provisions of § 147.3 of this chapter, the holder of a production certificate for a primary category aircraft, or for a normal, utility, or acrobatic category aircraft of a type design that is eligible for a special airworthiness certificate in the primary category under § 21.184(c), may—

(1) Conduct training for persons in the performance of a special inspection and preventive maintenance program approved as a part of the aircraft's type design under § 21.24(b), provided the training is given by a person holding a mechanic certificate with appropriate airframe and powerplant ratings issued under part 65 of this chapter; and

(2) Issue a certificate of competency to persons successfully completing the approved training program, provided the certificate specifies the aircraft make and model to which the certificate applies.

§ 21.165 [Amended]

10. Section 21.165(b) is amended by adding the phrase ", including primary category aircraft assembled under a production certificate by another person from a kit provided by the holder of the production certificate," after the word "product".

§ 21.175 [Amended]

11. Section 21.175(b) is amended by adding the word "primary," after the word "are".

§ 21.181 [Amended]

12. Section 21.181(a)(1) is amended by adding the words "; special airworthiness certificates-primary category," after the words "Standard airworthiness certificates".

13. Section 21,182 is amended by revising paragraph (b)(2) as follows:

§ 21.182 Aircraft Identification.

* * * * *

(b) * * *

(2) An experimental certificate for an aircraft that is not amateur-built or kit-built.

* * * * *

14. A new § 21.184 is added to read as follows:

§ 21.184 Issue of special airworthiness certificates for primary category aircraft.

(a) *New primary category aircraft manufactured under a production certificate.* An applicant for an original, special airworthiness certificate-primary category for a new aircraft that meets the criteria of § 21.24(a)(1), manufactured under a production certificate, including aircraft assembled by another person from a kit provided by the holder of the production certificate and under the supervision and quality control of that holder, is entitled to a special airworthiness certificate without further showing, except that the Administrator may inspect the aircraft to determine conformity to the type design and condition for safe operation.

(b) *Imported aircraft.* An applicant for a special airworthiness certificate-primary category for an imported aircraft type certificated under § 21.29 is entitled to a special airworthiness certificate if the civil airworthiness authority of the country in which the aircraft was manufactured certifies, and the Administrator finds after inspection, that the aircraft conforms to an approved type design that meets the criteria of § 21.24(a)(1), and is in a condition for safe operation.

(c) *Aircraft having a current standard airworthiness certificate.* An applicant for a special airworthiness certificate-primary category, for an aircraft having a current standard airworthiness certificate that meets the criteria of § 21.24(a)(1), may obtain the primary category certificate in exchange for its standard airworthiness certificate through the supplemental type certification process. For the purposes of this paragraph, a current standard airworthiness certificate means that the aircraft conforms to its approved normal, utility, or acrobatic type design, complies with all applicable airworthiness directives, has been inspected and found airworthy within the last 12 calendar months in accordance with § 91.409(a)(1) of this chapter, and is found to be in a condition for safe operation by the Administrator.

(d) *Other aircraft.* An applicant for a special airworthiness certificate-primary category for an aircraft that meets the criteria of § 21.24(a)(1), and is not

covered by paragraph (a), (b), or (c) of this section, is entitled to a special airworthiness certificate if—

(1) The applicant presents evidence to the Administrator that the aircraft conforms to an approved primary, normal, utility, or acrobatic type design, including compliance with all applicable airworthiness directives;

(2) The aircraft has been inspected and found airworthy within the past 12 calendar months in accordance with § 91.409(a)(1) of this chapter and;

(3) The aircraft is found by the Administrator to conform to an approved type design and to be in a condition for safe operation.

(e) *Multiple-category airworthiness certificates* in the primary category and any other category will not be issued; a primary category aircraft may hold only one airworthiness certificate.

15. Section 21.187 is amended by revising paragraph (a) introductory text to read as follows:

§ 21.187 Issue of multiple airworthiness certification.

(a) An applicant for an airworthiness certificate in the restricted category, and in one or more other categories except primary category, is entitled to the certificate, if—

* * * * *

16. Section 21.191 is amended by adding a new paragraph (h) to read as follows:

§ 21.191 Experimental certificates.

* * * * *

(h) *Operating kit-built aircraft.* Operating a primary category aircraft that meets the criteria of § 21.24(a)(1) that was assembled by a person from a kit manufactured by the holder of a production certificate for that kit, without the supervision and quality control of the production certificate holder under § 21.184(a).

PART 36—NOISE STANDARDS; AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

17. The authority citation for part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a) 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b) 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 *et seq.*; Sec. 124 of Pub. L. 98–473, E.O. 11514; 49 U.S.C. 106(g).

§ 36.1 [Amended]

18. The introductory text of § 36.1(h) is amended by adding the word "primary," before the word "normal,".

§ 36.9 [Amended]

19. The introductory text of § 36.9 is amended by adding the word "primary," before the word "normal,".

§ 36.11 [Amended]

20. The introductory text of § 36.11 is amended by adding "primary," before the word "normal,".

21. Section 36.501 is amended by adding a new paragraph (a)(3) to read as follows:

§ 36.501 Noise limits.

(a) * * *

(3) Airplanes in the primary category:

(i) Except as provided in paragraph (a)(3)(ii) of this section, for an airplane for which application for a type certificate in the primary category is made, and that was not previously certificated under appendix F of this part, compliance with appendix G of this part must be shown.

(ii) For an airplane in the normal, utility or acrobatic category that (A) has a type certificate issued under this chapter, (B) has a standard airworthiness certificate issued under this chapter, (C) has not undergone an acoustical change from its type design, (D) has not previously been certificated under appendix F or G of this part, and (E) for which application for conversion to the primary category is made, no further showing of compliance with this part is required.

* * * * *

§ 36.801 [Amended]

22. Section 36.801 is amended by adding the word "primary," before the word "normal,".

§ 36.805 [Amended]

23. Section 36.805(b) is amended by removing the phrase "paragraph (c)," and adding the phrase "paragraph (c) or (d)(2) of this section," in its place.

24. Section 36.805 is further amended by adding a new paragraph (d) to read as follows:

§ 36.805 Noise limits.

* * * * *

(d) Helicopters in the primary category:

(1) Except as provided in paragraph (d)(2) of this section, for a helicopter for which application for a type certificate in the primary category is made, and that was not previously certificated under appendix H of this part, compliance with appendix H of this part must be shown.

(2) For a helicopter that (i) has a normal or transport type certificate issued under this chapter, (ii) has a standard airworthiness certificate issued under this chapter, (iii) has not undergone an acoustical change from its type design, (iv) has not previously been certificated under appendix H of this part, and (v) for which application for conversion to the primary category is made, no further showing of compliance with this part is required.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

25. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. App. 1354, 1421 through 1430; 49 U.S.C. 106(g).

26. Appendix A to part 43 is amended by adding a new paragraph (c)(30) to read as follows:

Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance

* * * * *

(c) * * *

(30) The inspection and maintenance tasks prescribed and specifically identified as preventive maintenance in a primary category aircraft type certificate or supplemental type certificate holder's approved special inspection and preventive maintenance program when accomplished on a primary category aircraft provided:

(i) They are performed by the holder of at least a private pilot certificate issued under part 61 who is the registered owner (including co-owners) of the affected aircraft and who holds a certificate of competency for the affected aircraft (1) issued by a school approved under § 147.21(f) of this chapter; (2) issued by the holder of the production certificate for that primary category aircraft that has a special training program approved under § 21.24 of this subchapter; or (3) issued by another entity that has a course approved by the Administrator; and

(ii) The inspections and maintenance tasks are performed in accordance with instructions contained by the special inspection and preventive maintenance program approved as part of the aircraft's type design or supplemental type design.

PART 91—GENERAL OPERATING AND FLIGHT RULES

27. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g).

28. A new § 91.325 is added to read as follows:

§ 91.325 Primary Category Aircraft: Operating limitations.

(a) No person may operate a primary category aircraft carrying persons or property for compensation or hire.

(b) No person may operate a primary category aircraft that is maintained by the pilot-owner under an approved special inspection and maintenance program except—

(1) The pilot-owner; or

(2) A designee of the pilot-owner, provided that the pilot-owner does not receive compensation for the use of the aircraft.

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

29. The authority citation for part 147 continues to read as follows:

Authority: Section 313(a), 314, 601 and 607, 72 Stat. 752 49 U.S.C. 1354(a), 1355, 1421, and 1427.

30. Section 147.21 is amended by adding a new paragraph (e) to read as follows:

§ 147.21 General curriculum requirements.

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section and § 147.11, the holder of a certificate issued under subpart B of this part may apply for and receive approval of special courses in the performance of special inspection and preventive maintenance programs for a primary category aircraft type certificated under § 21.24(b) of this chapter. The school may also issue certificates of competency to persons successfully completing such courses provided that all other requirements of this part are met and the certificate of competency specifies the aircraft make and model to which the certificate applies.

Issued in Washington, DC on September 1, 1992.

Thomas C. Richards,

Administrator.

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federal register

Wednesday
September 9, 1992

Part VII

The President

Proclamation 6470—National Consumers Week, 1992

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

Presidential Documents

Title 3—

The President

Proclamation 6470 of September 4, 1992

National Consumers Week, 1992

By the President of the United States of America

A Proclamation

American consumers enjoy access to a marketplace of goods and services that is unparalleled in terms of variety and quality. This thriving marketplace has been made possible by our Nation's free enterprise system, which provides opportunities and incentives for businesses to improve productivity and performance while generating the competition and accountability that lead to greater options for consumers. During National Consumers Week, we recognize that the decisions that consumers make help to encourage innovation and technological progress, thereby spurring our Nation's economy.

The theme of this year's observance, "Operation Wise Buy," underscores the fact that educated, informed, and responsible consumers have an important role to play in ensuring the success of our free enterprise system. Education, of course, begins at home: where we choose safe, healthy foods and products, where we teach our children the value of saving and investing for the future, and where we help them develop the knowledge and skills that are necessary to perform basic tasks such as reading labels and following written instructions, comparing costs and balancing a checkbook, and protecting themselves against fraud. By instruction and example, we can help our children to become wise, responsible consumers.

Recognizing the rights and interests of consumers as well as the impact that their choices have on the marketplace, the United States has been working to empower consumers of all social and economic backgrounds through education. By supporting consumer education and basic economic instruction in schools and other institutions, and by encouraging the dissemination of consumer-related news and information through government agencies, civic organizations, business, and the media, we are giving consumers the tools they need to navigate successfully through the increasingly complex global marketplace.

Here in the United States, we have traditionally relied on consumers and private industry to balance each other's needs and interests in the marketplace, with government intervening only when it is required to ensure fairness and the safety of goods and services. As history shows, the strongest economies are those marked not by excessive government regulation, but by a philosophy of government, businesses, and consumers working together to build a brighter future for all.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 25, 1992, as National Consumers Week. I encourage all Americans—particularly business owners, educators, public officials, consumer advocates and members of the media—to observe this week with appropriate programs and activities that emphasize the role that consumers play in keeping our markets open, competitive, and fair. I also urge them to highlight the importance of education in helping citizens to become responsible consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 2607/P.L. 102-365

Rail Safety Enforcement and Review Act. (Sept. 3, 1992; 106 Stat. 972; 14 pages)
Price: $1.00

Last List September 8, 1992

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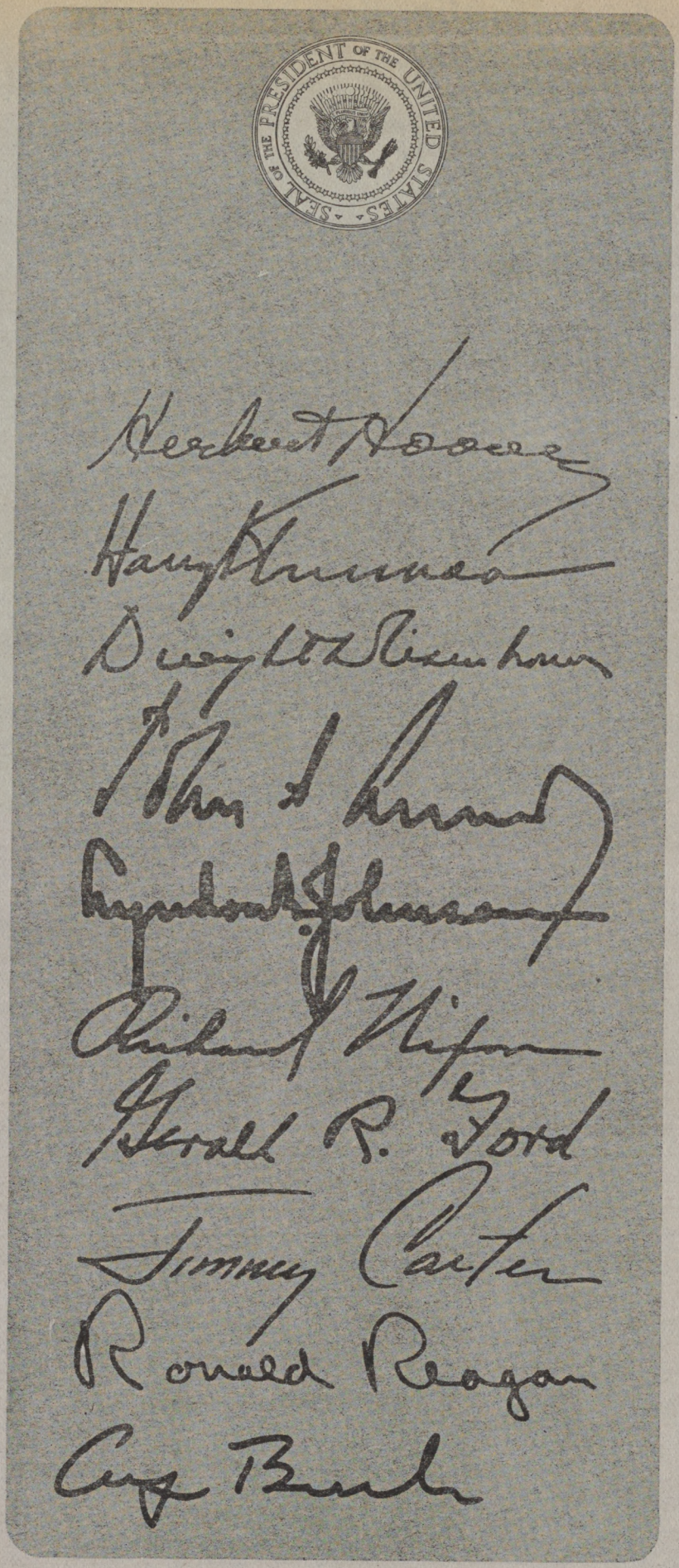

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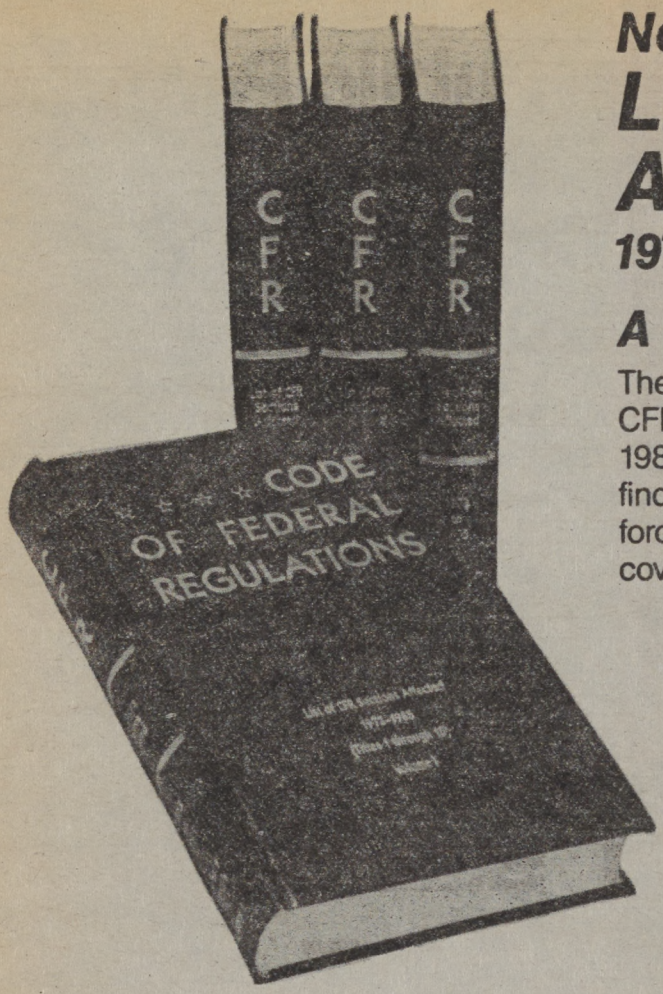

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