contact Keith Cronin, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–8157 fax: (202) 260–1096; e-mail: cronin.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1989, EPA issued a final test rule requiring testing of three phenylenediamine isomers, *o*-pda, *m*-pda, and *p*-pda (54 FR 49285, November 30, 1989). The rule required specific aquatic acute toxicity testing and, depending on the results of that testing, further testing for chronic toxicity (a fish early life stage test). EPA notified E.I. DuPont Nemours Co. by letter on August 12, 1992 that based on its review, the acute testing data submitted triggered the fish early life stage testing for *p*-pda. DuPont questioned EPA's conclusions concerning the requirements for triggering chronic testing, challenged the usefulness of the triggered chronic testing for *p*-pda, and requested that EPA delete the requirement for the triggered flow-through fish early life stage test for *p*-pda. DuPont also claimed that completing this requirement would not yield any additional information as the half-life of the chemical is very short.

EPA has reviewed DuPont's request and now agrees with its assessment that the chronic toxicity testing required should be revoked. The decision to not require chronic toxicity testing is based on *p*-pda's very short half-life in water (115 minutes) and the data from the Toxic Release Inventory indicating that the environmental exposure to *p*-pda is limited. From a risk perspective, *p*-pda does not appear to pose an unreasonable risk to aquatic life.

Under 40 CFR 790.55(b)(3), EPA may make changes that affect the scope of the test rule, but EPA must provide notice and an opportunity for comment before such changes become effective. Furthermore, if adverse comments are received, EPA will issue a proposed rule addressing this issue and will provide a 30 day period for public comment. Interested parties therefore have 30 days from publication of this notice to provide written comments on the elimination of the fish early life stage study for *p*-pda from the final rule on unsubstituted phenylenediamines. If the 30-day deadline passes and no adverse public comments have been received, EPA will grant the proposed modification without further notice.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPPTS–42008K] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–42008K]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Dated: April 18, 1997.

Charles M.Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–10726 Filed 4–24–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5817–3]

Final General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho ID-G–01–0000

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of a final general permit.

SUMMARY: This general permit regulates CAFO activities in the state of Idaho. The permit establishes limitations, standards, prohibitions and other conditions for covered facilities. These conditions are based on existing national effluent guidelines and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit was given in the fact sheet and changes to the proposed general permit are documented in the Response to Comments.

EFFECTIVE DATE: The general permit will become effective on May 27, 1997 and will expire on May 27, 2002.

FOR FURTHER INFORMATION CONTACT: Information requests may be made to Jeanette Carriveau at (206) 553–1214 or to Joe Roberto at (206) 553-1669. Requests may also be electronically mailed to:
CARRIVE-AU.JEANETTE@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Written request for coverage and authorization to discharge under the general permit shall be provided to EPA, Region 10, as described in Part I.D. of the permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: April 3, 1997.

Philip G. Millam,

Director, Office of Water, Region 10.

Response to Comments; General NPDES Permit Concentrated Animal Feeding Operation

On August 28, 1995, EPA, Region 10, issued a notice for a proposed National Pollutant Discharge Elimination System (NPDES) General Permit (GP) for Concentrated Animal Feeding Operations (CAFO) in Idaho (60 FR 44489, Monday, August 28, 1995). During the public notice period, comments were received from Idaho Fish and Game (IDF&G), Idaho Department of Health and Welfare Division of Environmental Quality (DEQ), Idaho Farm Bureau Federation (IFBF), Army Corps of Engineers, Idaho Dairymen's Association (IDA), Idaho Pork Producers Association (IPPA), J.R. Simplot Company (Simplot), and Idaho Cattle Association (ICA). Public Hearings were held in Boise, Idaho on September 27, 1995, and in Twin Falls, Idaho on September 28, 1995. This document directly responds to the significant comments pertaining to the GP, made in writing and at the Public Hearings.

1. *Comment:* The IDF&G commented that ''The draft permit does not mention the possibility of groundwater contamination, which would seem a high priority as a result of a CAFO.'' Commenter claims that this, especially, would be true considering the number of new dairies in certain areas, such as Jerome County. The commenter also claims the need to maintain high quality water in the springs along the Snake River because of the fish hatcheries and wild fish populations make it paramount that the present good quality groundwater be maintained. The commenter requests that a discussion on CAFO and groundwater contamination should be included in the permit.

Response: The EPA agrees that groundwater contamination is a concern around CAFO facilities. However, the Clean Water Act does not give EPA the authority to regulate groundwater quality through NPDES permits.

The only situation in which groundwater may be affected by the NPDES program is when a discharge of pollutants to surface waters can be proven to be via groundwater. The GP already addresses this situation by requiring that lagoons be designed in accordance with Soil Conservation Service Technical Note 716.

2. *Comment:* Simplot and the ICA request that EPA delete the references to groundwater in parts II.C.2. and VII.L. and M. of the proposed permit. They claim that the Clean Water Act does not give EPA the authority to regulate groundwater through NPDES permits.

Response: As in the response to comment #1 above, the EPA agrees that the Clean Water Act does not give EPA the authority to regulate groundwater quality through NPDES permits. However, the permit requirements established in parts II.C.2. and VII.L. and M. of the proposed permit are not intended to regulate groundwater. Rather, they are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.

As mentioned in the fact sheet to the GP, this determination is supported by the following decisions:

—*Leslie Salt Co.* v. *United States*, 896 F.2d 354, 358 (9th Cir. 1990) (CWA jurisdiction existed over salt flat even though hydrologic connection between salt flat and navigable waters was man-made).

—*Washington Wilderness Coalition* v. *Hecla Mining*, 870 F. Supp 983 (E.D. Wash 1994) (Point source discharge of pollutants to surface waters of the United States, either directly or through groundwater, is subject to regulation by NPDES permit).

—*Sierra Club* v. *Colorado Refining Co.*, Civ. No. CIV.A.93–K–1713 (D. Col. Dec. 8, 1993) (''[The] Clean Water Act's preclusion of the discharge of any pollutant into 'navigable waters' includes such discharge which reaches 'navigable waters' through groundwater.'');

—*McClellan Ecological Seepage* v. *Weinberger*, 707 F. Supp. 1182, 1194 (E.D. Cal. 1988) (where hydrologic connection exists between groundwater and surface waters, NPDES permit may be required);

3. *Comment:* The IDF&G recommends that, in addition to fencing, the Best Management Practices portion of the GP be expanded to include such things as filter strips, straw bales, etc.

Response: The purpose of including fencing in the GP is to restrict animal access, within the CAFO boundary, to receiving waters, without which the ''no discharge'' requirement could not be achieved. While it is desirable to include filter strips and straw bales, these may or may not be necessary to achieve the ''no discharge'' requirement. However, it is the responsibility of the permittee to incorporate whatever best management practice is necessary to achieve the ''no discharge'' requirement.

4. *Comment:* The GP requires that the permittee notify the EPA verbally within 24 hours after a discharge. The IDF&G recommends that this language be changed so that immediate notification is mandatory.

Response: EPA agrees that immediate notification is preferred. However, this provision is consistent with 40 CFR 122.41(l)(6). Therefore, this provision will not be modified.

5. *Comment:* The IDF&G comments that concentrated duck feeding operations established prior to 1974 are exempt from regulations. The commenter claims that this regulation appears to be protecting a special interest party or group and should be deleted and that all operations should be covered without favoritism toward any one special group or operation.

Response: EPA disagrees with this assessment of the CAFO GP. This permit does not exempt the duck feeding operations established prior to 1974 from meeting regulations. Rather, it states that such operations will not be covered under this particular permit. This does not imply that they are exempt from regulation.

As mentioned in section III.C. in the fact sheet, ''EPA's regulations do authorize the issuance of ''general permits'' to categories of discharges (40 CFR 122.28) when a number of point sources are:

a. Located within the same geographic area and warrant similar pollution control measures;

b. Involve the same or substantially similar types of operations;

c. Discharge the same types of waste;

d. Require the same effluent limitations or operating conditions;

e. Require the same or similar monitoring requirements; and

f. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.''

In other words, this CAFO general permit would not be appropriate to cover CAFOs and electroplating operations (for example) because they are substantially different operations. The fact that we do not cover electroplating operations in this permit does not exempt electroplaters from regulation. It just means they are not covered by this particular permit and must obtain coverage under another permit.

The CAFO GP is not applicable for concentrated duck feeding operations established prior to 1974 because the requirements (established in 40 CFR 412 Subpart B) for such operations are substantially different. Unlike the duck feeding operations established after 1974, the duck feeding operations established prior to 1974 are allowed to have a discharge which must meet certain biochemical oxygen demand and fecal coliform levels. This GP is designed for facilities which are required to achieve ''no discharge.''

Again, not covering duck feeding operations established prior to 1974 under this permit does not exempt them from regulation. They are just not covered under this particular permit.

6. *Comment:* One of the criteria used in determining whether an animal feeding operation is a CAFO is the number of animals confined at the facility. The IDF&G expressed concerns regarding this criteria. The commenter claims that there are a number of instances when a single cattle operator has purposely kept slightly less than 200 mature dairy cattle because this number of dairy cows would not be considered a CAFO. In very close proximity this same operator keeps another group of less than 200 dairy cattle. IDF&G claims that by operating in this manner, an operator is able to circumvent the CAFO regulations. As a result, the commenter recommends that the number of animals required to be considered a CAFO be reduced.

Response: The regulations (40 CFR 122 Appendix B) specify the number of animal units that a facility must confine to be considered a CAFO. Therefore, the

agency cannot arbitrarily select a lower number for use in this permit.

The EPA agrees that there may be situations, as described by the commenter, where a facility may divide its animals into smaller farms to circumvent the regulations. The regulations have accounted for this. In 40 CFR 122.23(b)(2), it states that ''Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.''

In addition, even though a facility has fewer than the number of animals necessary to be considered a CAFO, 40 CFR 122.23(c) allows for the designation as a CAFO for any size facility on a case-by-case basis. This allows the flexibility to regulate smaller problem facilities which are determined to be significant contributors of pollutants.

7. *Comment:* Part II.A.2. of the draft permit states that control facilities must also be designed to contain the 25-year, 24-hour storm event. The DEQ inquires as to who will classify actual duration and intensity of the rainfall event should enforcement be required.

Response: Rainfall intensity information for a particular area can be obtained from the National Weather Service.

8. *Comment:* DEQ commented on the capacity of a waste holding facility to contain contaminated water accumulated over the winter. The commenter states that it should be noted that some geographical areas may require facilities to collect wastewater longer than four months which may result in larger holding capacities.

Response: The purpose of this requirement is to assure that water quality is not violated during the winter months. The reason for concern is the land application of wastewater onto frozen ground is likely to result in runoff into waters of the United States because of its low water holding capacity.

The EPA agrees there are areas in Idaho where the climate is such that fields are frozen for longer than four months. If these fields are located such that there is a potential for runoff, wastewater should not be applied.

The permit takes these site specific factors into account by allowing the use of the one-in-five-year winter precipitation amount when calculating the lagoon volume.

9. *Comment:* The IFBF recommends that Part V.C. of the draft permit (Need to Halt or Reduce Activity not a Defense) be eliminated from the permit.

Response: This provision of the permit is required pursuant to 40 CFR 122.41(c). Therefore, this request is denied.

10. *Comment:* The IFBF and IDA recommend that Part VI.D. of the draft permit (Duty to Provide Information) be eliminated from the permit. In addition, the IDA claims that this language is too broad.

Response: This provision of the permit is required pursuant to 40 CFR 122.41(h). Therefore, this part of the permit will not be modified or deleted.

11. *Comment:* The IFBF recommends that Part VI.I. of the draft permit (Property Rights) be eliminated from the permit.

Response: This provision of the permit is required pursuant to 40 CFR 122.41(g). Therefore, this request is denied.

12. *Comment:* The IFBF objects to the last sentence in part VII.E. of the permit. The commenter claims that giving the director the authority to establish other animal unit factors for animal types not listed in part VII.E. is lacking the safeguards afforded every other group. They recommend a language change to allow for proper notification and hearings prior to establishing these animal unit factors.

Response: Based on further review of available information, EPA has decided to delete this language. EPA regulations provide that animal feeding operations with animal types other than those identified in 40 CFR 122 Appendix B may be designated a CAFO on a case-by-case basis in accordance with 40 CFR 122.23(c).

13. *Comment:* The Army Corps of Engineers commented that the draft NPDES permit limits wastewater discharges by requiring containment of the discharge into constructed sedimentation ponds. The commenter states that if these sedimentation ponds or other methods to contain the wastewater discharge will involve the discharge of fill material into waters of the United States, including wetlands, a Department of the Army Permit will be required. The commenter requests that in such situations the owner of the concentrated animal feeding operation should contact the Department of the Army for permit requirements.

Response: EPA agrees that if fill material is or will be discharged into waters of the United States that the Department of the Army should be contacted for information on their permitting requirements.

14. *Comment:* The IDA objects to the language in Parts II.A.3.a. and b. of the permit. The commenter states that ''The addition of these elements into the minimum requirements for wastewater control facilities will substantially increase the cost of dairy operations without a demonstrated commensurate benefit to water quality protection. Additionally, the commenter states that the requirements contained in these parts are not found in the CAFO regulations under 40 CFR 122.23. Consequently, the requirements exceed the legal authority of EPA under its own implementing regulations.''

Response: The EPA agrees that the requirements established in Parts II.A.3.a. and b. of the permit are not found in 40 CFR 122.23. However, as mentioned in the fact sheet for the GP, these are not the only regulations which must be considered when developing NPDES permit requirements. These requirements are included in the permit to insure that State water quality standards are not exceeded as a result of CAFO discharges pursuant to Section 301(b)(1)(C) of the Clean Water Act.

Section 301(b)(1)(C) of the Clean Water Act states that * * * ''In order to carry out the objectives of the Act there shall be achieved not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any State law or regulations, or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.'' Note that this section of the Clean Water Act does not specify the consideration of economics when establishing limitations necessary to achieve water quality standards.

In addition to the above, the existing permit which was issued in 1987 incorporated these same requirements. In accordance with 40 CFR 122.44(l), limitations in reissued permits must be at least as stringent as the limitations in the previously issued permit. As a result, Parts II.A.3.a. and b. of the permit will not be modified.

15. *Comment:* The IDA objects to the language in part II.B.1. of the permit which specifies that plans and specifications for control facilities shall be submitted to the Idaho Department of Health and Welfare Division of Environmental Quality for review and approval prior to construction. The commenter claims that the review process of plans by DEQ conflicts with the Idaho Dairy Pollution Prevention Initiative Memorandum of Understanding which has been agreed to among DEQ, EPA, Idaho Department of Agriculture, and the IDA.

Response: The EPA agrees with this comment, with respect to dairy facilities, and will modify the permit to

reflect the roles and responsibilities established in the Memorandum of Understanding.

16. *Comment:* The IDA and the IPPA object to the inspection and entry language contained in part IV.D. of the permit. The IDA claims that this language is too broad and inclusive. The IPPA also states that this section of the permit should include more specific standards and circumstances for when and how inspections will occur.

Response: The inspection and entry provisions of the permit are consistent with 40 CFR 122.41(i). Therefore, this part of the permit will not be modified or deleted.

17. *Comment:* The IDA objects to the language in part VI.A. (Anticipated Noncompliance) of the permit. The commenter claims that this language will require the permittee to give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. The commenter also claims this language is far too broad and would require a permittee to notify EPA of any possible changes in the dairy facilities or daily operations which might, hypothetically, result in noncompliance regardless of realistic probability.

Response: Part VI.A. of the permit is consistent with 40 CFR 122.41(l)(2). Therefore, this part of the permit will not be modified or deleted.

There appears to be some confusion, however, about what is required by this provision. Advance notice does not have to be given to EPA for every change at a facility. This language is designed to accommodate such conditions as when a dairy increases its herd size to the point where the amount of waste generated exceeds the design capacity of the waste collection system. However, if the herd size is increased and the waste management system is capable of handling the additional waste, it is not necessary to report this planned change to EPA.

18. *Comment:* The IDA objects to the language in part VI.F.4. of the permit which establishes the certification statement that the permittee must sign when submitting particular documents. The commenter only indicates that the certification statement is unacceptable in its present form. The commenter did not explain the rationale behind the concern nor was any alternative language presented.

Response: This certification statement is required pursuant to 40 CFR 122.22(d). Therefore, this part of the permit will not be modified or deleted.

19. *Comment:* The IDA objects to the language in Appendix C of the permit. The commenter objects to paragraph 5 which reads as follows:

> Name of the receiving water(s) to which wastewaters are (or may be) discharged from the facility (receiving waters include canals, laterals, rivers, streams, etc.).

The commenter objects to the portion which identifies canals and laterals as receiving waters.

Response: Canals and laterals which empty into (or connect with) waters of the United States such as rivers, streams, lakes, etc. are themselves waters of the United States in accordance with the definition of waters of the United States in 40 CFR 122.2(e). As a result, discharges into canals and laterals are considered point source discharges which must be regulated under the NPDES permitting program. This position is supported by the following:

—Order of Summary Determination of Liability in the matter of Luis Bettencourt, Docket #1093–04–17–309(g),
—*Bailey* v. *U.S. Corps of Engineers,* 647 F. Supp 44 at 48 (D. Ida. 1986),
—*U.S.* v. *Saint Bernard Parish,* 589 F. Supp 617 at 620 (E. D. La., 1984), and
—Town of Buckeye, Arizona, NPDES Opinion #67, November 11, 1977.

20. *Comment:* The ICA commented on part I.B. of the permit. The commenter claims that ''Runoff from corrals, stockpiled manure . . .'' is too broad a statement.

Response: The intent of this section is only to give examples of what constitutes a discharge. Therefore, this part of the permit will not be modified.

Any discharge from corrals or stockpiled manure is considered process wastewater. This includes any runoff from these areas caused by precipitation, watering system overflows or any other way in which contaminated runoff emanates from such areas. If this process wastewater makes its way into waters of the United States, this constitutes a discharge of process wastewater.

Note that the requirement in part II.A. of the permit is ''no discharge'' of process wastewater to waters of the United States except during certain precipitation events.

21. *Comment:* The ICA commented on part I.B. of the permit. They claim that ''silage piles'' appear to be beyond the scope of law.

Response: The silage piles in question are those associated with CAFO operations. Typically, these piles are located near confinement areas. The wastes emanating from these piles may include moisture from within the silage pile or runoff resulting from precipitation on the pile. Silage wastewater can have extremely high levels of BOD.

40 CFR 412.11 of the Feedlot Point Source Category defines process wastewater as ''. . . any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).'' Silage is used in the production of animals. As a result, wastewaters from these piles are included as process wastewater from a CAFO in accordance with 40 CFR 412.11.

In addition, 40 CFR 122.1(b)(1) states that ''The NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States.'' CAFOs are a point source as defined in 40 CFR 122.1(b)(2). Any pollutants emanating from a silage pile associated with a CAFO is a discharge from a CAFO (or point source) which requires an NPDES permit for discharge.

22. *Comment:* The ICA commented on part II.C.3. of the permit. This provision of the permit prohibits the discharge or drainage of land applied wastes from land applied areas to waters of the United States. The commenter claims that this provision is a broad assumption of the interpretation of the Court ruling in Care vs. Southview Farm which spoke to a specific and unique situation which existed in that case.

Response: EPA will clarify this provision. The intent of this provision is to prohibit land application of wastewater which is applied at an excessive rate, i.e., in such a manner that it reaches waters of the United States. Therefore, the final permit is modified to reflect this intent.

23. *Comment:* The IPPA objects to section II.B.1. of the permit which references the Idaho State Waste Management Guidelines for Animal Feeding Operations: and the most recent edition of the Natural Resource Conservation Service (NRCS) National Handbook of Conservation Practices and associated State Addenda, SCS Technical Note #716. IPPA claims that because these documents have not been included as part of the necessary rule making process for the General Permit, they may not be used to establish legal standards for enforcement of the permit.

In addition, IPPA objects to EPA's reliance to these documents because of the moving target created by them. IPPA states that these documents can be modified at any time and that the EPA

has failed to identify a set point in time or other document description to ensure which version of the above documents applies to CAFOs.

Response: The documents referenced above have gone through the necessary steps to be included in this permit, including a 60 day comment period which was initiated by publication of the permit in the **Federal Register**. However, EPA agrees with the commenter that the version of the above documents should be specified in the permit. The final permit reflects the current documents.

24. *Comment:* The IPPA requests that EPA clarify the intent and applicability of part III.B. of the permit (Requiring an Individual Permit).

Response: Part III.B. of the permit is included for informational purposes only. A General Permit is a resource saving tool. As mentioned in section III.C. of the fact sheet, a General Permit is issued to categories of discharges when a number of point sources are:

a. Located within the same geographic area and warrant similar pollution control measures;

b. Involve the same or substantially similar types of operations;

c. Discharge the same types of waste;

d. Require the same effluent limitations or operating conditions;

e. Require the same or similar monitoring requirements; and

f. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

The purpose of Part III.B. of the permit is to point out that there are situations in which this permit is not appropriate. In such cases, the individual permit is an option. This part also identifies the procedures that must be followed if an individual permit is determined to be more appropriate or if a permittee requests to be covered by an individual permit.

25. *Comment:* The IPPA requests that within part V. of the permit (Compliance Responsibilities) a provision should be added so as to allow for good faith compliance and de minimis violations. The commenter claims that, as written, compliance is absolute and mandatory.

Response: Compliance Responsibility requirements in part V. of the permit are required pursuant to 40 CFR 122. There is no provision in this regulation concerning de minimis violations. Therefore, part V. of the permit will not be modified.

The significance of the violation, however, can be taken into consideration when determining the appropriate enforcement response by the agency.

26. *Comment:* IPPA objects to part VI.K. of the permit (State Laws). The commenter recognizes the responsibility of complying with both state and federal laws. However, the commenter claims that it is unfair to subject IPPA members to differing interpretations of the regulations from differing agencies. They request that, at a minimum, there should be one source where information can be obtained or questions answered.

Response: The EPA agrees that compliance must be achieved with both state and federal laws. However, EPA disagrees that there are differing interpretations of the laws and regulations from differing agencies. Rather, there are laws and regulations which establish differing roles and responsibilities for the state and federal government. For example, EPA is responsible for issuing NPDES permits in the state of Idaho. On the other hand, the state is responsible for establishing state water quality standards. Both of these tasks are required to regulate the CAFO industry.

Although it may be more convenient to establish one contact for CAFOs to deal with, the laws and regulations are currently written such that both the state and federal government have regulatory responsibilities. Therefore, part VI.K. will not be modified.

27. *Comment:* The IPPA objects to Appendix B of the permit which discusses Significant Contributors of Pollutants (SCP). The commenter claims that the SCP provisions are excessively broad such that operators are without notice of any legal standard under which this section applies. For example, this section simply allows EPA to consider ''other relevant factors.'' The commenter states that the determination of when to apply this provision cannot be made on an ad hoc basis and the EPA must apply the regulations in a uniform non-discriminatory basis. The commenter further states that this section should be rewritten to include specific criteria where an SCP can be made and restricted in its application by those criteria.

Response: The conditions in Appendix B of the permit are established pursuant to 40 CFR 122.23(c). Therefore, this part of the permit will not be modified.

28. *Comment:* Simplot and the ICA request that the language in parts I.B. and I.C.8. of the permit which pertains to runoff from land applied or irrigated fields and to waste application at agronomic rates be deleted. Simplot claims that it is EPA's responsibility to regulate point sources of pollution under the Clean Water Act. In addition, Simplot claims that the above identified sections of the permit are an attempt to regulate nonpoint source discharges and go beyond the authority of EPA as provided in the Clean Water Act.

The ICA stated that these sections are beyond the scope of the definition of a CAFO which refers to areas where animals are ''stabled, confined, fed or maintained.''

Response: See response to comment # 22 above. In addition, the language pertaining to agronomic rates will not be deleted from the permit. Rather, it will be modified to reflect the language suggested by to Division of Environmental Quality in the Section 401 Water Quality Certification, dated November 25, 1996.

29. Part I.C.3. of the permit has been modified to accurately reflect the requirements in 40 CFR 122.23(b)(1)(ii).

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)

General Permit No.: IDG010000

In compliance with the provisions of the Clean Water Act (CWA), 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 of CAFOs except those sites excluded from coverage in Part I of this NPDES permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A COPY OF THIS GENERAL PERMIT MUST BE KEPT AT THE SITE OF THE CAFO AT ALL TIMES.

This permit will become effective May 27, 1997.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire on May 27, 2002.

Signed this 3rd day of April 1997.

Philip G. Millam,

Director, Office of Water.

Table of Contents

I. Permit Coverage
A. Who needs to be covered by this permit?
B. What constitutes a discharge?
C. How to determine if your animal feeding operation is a CAFO?
D. Permit Coverage
E. Permit Expiration
II. Permit Requirements
A. Discharge Limitations
B. Best Management Practice (BMP)
1. Design of Control Facilities
2. Facility Expansion
3. Chemical Handling

4. Access Restriction
5. Land Application
6. Emergency Operation and Maintenance
C. Prohibitions
D. Discharge Monitoring and Notification
III. Limitations of the General Permit
A. Limitations on Coverage
B. Requiring an Individual Permit
IV. Monitoring, Reporting and Recording Requirements
A. When to Report?
B. What to report?
C. Other Noncompliance Reporting
D. Inspection and Entry
V. Compliance Responsibilities
A. Duty to Comply.
B. Penalties for Violations of Permit Conditions.
1. Administrative Penalty
2. Civil Penalty
3. Criminal Penalties
a. Negligent Violations
b. Knowing Violations
c. Knowing Endangerment
d. False Statements
C. Need to Halt or Reduce Activity not a Defense
D. Duty to Mitigate
E. Proper Operation and Maintenance
F. Removed Substances
G. Toxic Pollutants
VI. General Requirements
A. Anticipated Noncompliance
B. Permit Actions
C. Duty to Reapply
D. Duty to Provide Information
E. Other Information
F. Signatory Requirements
G. Availability of Reports
H. Oil and Hazardous Substance Liability
I. Property Rights
J. Severability
K. State Laws
L. Paperwork Reduction Act
VII. Definitions

I. Permit Coverage

A. Who Needs to be Covered by this Permit?

A permit is required for discharges of process wastewater from all operations classified as a Concentrated Animal Feeding Operation (CAFO).

B. What Constitutes a Discharge?

This permit does not allow the discharge of process wastewater except in accordance with Part II.A. of this permit.

A discharge of process wastewater is the release of pollutants from a CAFO which enters surface waters such as a river, stream, creek, lake, or other waters of the United States. Process wastewaters include, but are not limited to, the following:

—Runoff from corrals, stock piled manure, and silage piles;
—Overflow from storage ponds; and
—Runoff from irrigated fields in which wastewater is applied at excessive rates which allow runoff of applied wastewater to enter waters of the United States.

C. How to Determine if Your Animal Feeding Operation is a CAFO?

Review the following questions to determine if your facility is a CAFO.

1. Do you operate a facility where animals are confined and fed or maintained?

If yes, proceed to next question. If no, your facility is not a CAFO.

2. Are animals confined and fed or maintained for a total of 45 days or more in any 12 month period?

If yes, proceed to next question. If no, your facility is not a CAFO.

3. Are any crops, vegetation forage growth, or post-harvest residues sustained in the normal growing season over any portion of the lot or facility?

If no, proceed to next question. If yes, your facility is not a CAFO.

4. Does your facility confine greater than the following number of animals:

—700 mature dairy cattle,
—1000 slaughter or feeder cattle, or
—1000 animal units (See Appendix A for details)?

If yes, your facility is a CAFO. If no, proceed to next question.

5. Does your facility confine the following number of animals:

—between 200 and 700 mature dairy cattle,
—between 300 and 1000 slaughter or feeder cattle, or
—between 300 and 1000 animal units (See Appendix A for details)?

If yes, proceed to question 7. If no, proceed to next question.

6. For facilities with less than the animals established in Question 5. above, have you been notified by EPA, after an inspection, that your facility has been designated a CAFO? See Appendix B for details on significant contributors of pollution.

If yes, your facility is a CAFO.

7. Does your facility discharge directly into rivers, streams, creeks or other waters of the United States?

If yes, your facility is a CAFO. If no, proceed to next question.

8. Does your facility discharge through a man-made device such as a pipe, ditch, or field overflow from land application, into a river, stream, creek or other waters of the United States?

If yes, your facility is a CAFO. If no, your facility is not a CAFO.

9. Have you been otherwise notified by EPA that your facility is a CAFO? If yes, your facility is a CAFO. (The Regulations state that ''the Director may designate any animal feeding operation as a CAFO upon determining that it is a significant contributor of pollution to the waters of the United States.'')

If you answered YES to questions 4, 6, 7, 8 or 9 above, your facility is a CAFO.

See Part VII. of this permit for more details on the definition of a CAFO.

D. Permit Coverage

1. Owners or operators of CAFOs must submit an application (also known as a Notice of Intent) to the Environmental Protection Agency (EPA) to obtain coverage under this permit. A list of information required for a complete application can be found in Appendix C of this permit.

2. The application shall be signed by the owner or other authorized person in accordance with Part VI.F. of this permit.

3. The application must be submitted to EPA at least 90 days prior to discharge. Coverage under this permit requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the CAFO.

4. Signed copies of the application shall be sent to: U.S. EPA Region 10, OW–133 CAFO NOI, 1200 Sixth Avenue, Seattle, Washington 98101.

5. CAFOs in Idaho must also send a copy of the application to: Idaho State Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706–1255.

E. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance.

II. Permit Requirements

A. Discharge Limitations

There shall be no discharge of process wastewater to waters of the United States except when precipitation events cause an overflow of process wastewater from a control facility properly designed, constructed, maintained, and operated to contain:

1. All process generated wastewater resulting from the operation of the CAFO (such as wash water, parlor water, watering system overflow, etc.); plus,

2. All the contaminated runoff from a 25-year, 24-hour rainfall event; plus,

3. a. Three inches of runoff from the accumulation of winter precipitation; or

b. The amount of runoff from the accumulation of precipitation from a one in five year winter.

B. Best Management Practice (BMP)

At a minimum, the management practices established in the Idaho State Waste Management Guidelines for Animal Feeding Operations and the BMPs listed below shall be

implemented to prevent contamination of waters of the United States:

1. Design of Control Facilities

All control facilities constructed after the issuance date of this permit or any existing control facility which is redesigned and modified in any way after the issuance of this permit shall be designed, constructed and maintained in accordance with the Idaho State Waste Management Guidelines for Animal Feeding Operations, 1993 and the Natural Resource Conservation Service (NRCS) National Handbook of Conservation Practices and associated State Addenda, SCS Technical Note #716, September 1993. Plans and specifications for control facilities (except those at dairy operations) shall be submitted to the Idaho Department of Health and Welfare Division of Environmental Quality (IDHW–DEQ) for review and approval prior to construction. Plans and specifications for control facilities at dairy operations shall be submitted to the Idaho Department of Agriculture for review and approval prior to construction.

2. Facility Expansion

CAFO operations shall not be expanded, either in size or numbers of animals, unless the waste handling procedures and structures are adequate to accommodate any additional wastes that will be generated by the expanded operations. Such expansion shall be consistent with the Idaho State Waste Management Guidelines for Animal Feeding Operations, 1993.

3. Chemical Handling

All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutants from entering the waters of the United States.

4. Access Restriction

No flowing surface waters (e.g. rivers, streams, or other waters of the United States) shall come into direct contact with the animals confined on the CAFO. Fences may be used to restrict such access.

5. Land Application

In order to ensure protection of groundwater from nutrient contamination, the land application rates, of both process wastewater and manure, will be applied at recommended agronomic rates for the crop(s) grown on the land application site(s).

6. Emergency Operation and Maintenance

It shall be considered ''Proper Operation and Maintenance'' for a control facility which has been properly maintained and is otherwise in compliance with the permit, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge process wastewaters to land application sites for filtering. The volume discharged during such an event shall be limited to that amount reasonably expected to overflow from the waste storage pond. Such discharges shall be reported to EPA in accordance with Part IV of the permit.

C. Prohibitions

1. The discharge of any materials or substance other than process wastewater is strictly prohibited by this permit.

2. Discharges of process wastewaters to waters of the United States by means of a hydrologic connection is prohibited.

3. The discharge or drainage of land applied wastes (solid or liquid) from land applied areas to waters of the United States is prohibited. This includes discharges of land applied wastes from land applied areas, regardless of whether such discharges occur on rainy days, where rain is not the sole cause of the discharge.

D. Discharge Monitoring and Notification

If, for any reason, there is a discharge to a water of the United States, the permittee is required to monitor and report as established in Part IV. of this permit.

Discharge flow and volume from a CAFO may be estimated if measurement is impracticable.

III. Limitations of the General Permit

A. Limitations on Coverage

The following CAFOs are not covered by this permit:

1. CAFOs which have been notified by the Director to file for an individual permit in accordance with Part III.B. of this permit.

2. CAFOs that discharge all process wastewater to a publicly owned sanitary sewer system which operates in accordance with an NPDES permit.

3. Concentrated Duck feeding operations established prior to 1974.

B. Requiring an Individual Permit

1. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. The Director will notify the owner or operator in writing that an individual permit application is required. If an owner or operator fails to submit the permit application by the date specified in the Director's written notification, then coverage by this general permit is automatically terminated.

2. Any owner or operator covered by this permit may request to be excluded from the permit coverage by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, coverage by this permit is automatically terminated on the effective date of the individual permit.

4. When an individual NPDES permit is denied to an owner or operator otherwise covered by this permit, coverage by this permit is automatically reinstated on the date of such denial, unless otherwise specified by the Director.

IV. Monitoring, Reporting and Recording Requirements

A. When to Report?

If, for any reason, there is a discharge to a water of the United States, the permittee is required to:

1. Verbally notify the EPA of the discharge at (206) 553–1846 within 24 hours, and

2. Notify the EPA and the State of the discharge in writing within 5 days of the discharge. Written notification shall be sent to the addresses identified in Part I.D. of this permit.

B. What to Report?

The information required for notification shall include:

1. A description and cause of the discharge, including a description of the flow path to the receiving water body. Also, an estimation of the duration of the flow and volume discharged.

2. The dates and times of the discharge, and, if not corrected, the anticipated time the discharge is expected to continue, as well as procedures implemented to prevent the recurrence of the discharge.

3. If caused by a precipitation event(s), information from the National Weather Service concerning the size of the precipitation event.

4. If any samples are collected and analyzed the written report shall also include the following:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The analytical techniques or methods used; and

e. The results of such analyses.

5. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553–1669.

6. Any reports submitted to EPA must be signed by the owner or authorized person in accordance with Part VI.F. of the permit.

C. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Part IV.A. of this permit shall be reported in writing within 5 days after the permittee becomes aware of the violation. The reports shall contain the information listed in Part IV.B. of this permit.

D. Inspection and Entry

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), 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;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

V. Compliance Responsibilities

A. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by 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 by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by 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 by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act 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 this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

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. 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.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Anticipated Noncompliance

The permittee shall also give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. 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.

C. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the

permittee must apply for a new permit by resubmitting the information in Appendix C of this permit. The application should be submitted at least 180 days before the expiration date of this permit.

D. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or 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.

E. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

F. Signatory Requirements

All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency by either a principal executive officer or ranking elected official.

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, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, 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.)

3. Changes to authorization. If an authorization under paragraph VI.F.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.F.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document 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 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.''

G. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

H. 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 Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. 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.

K. State Laws

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.

L. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

VII. Definitions

A. *25-Year, 24-Hour Rainfall Event* means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, ''Rainfall Frequency Atlas of the United States'', May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

B. *Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

C. *Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

D. *Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of

sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

E. *Application* means a written ''notice of intent'' pursuant to 40 CFR 122.28.

F. *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 site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

G. *Concentrated Animal Feeding Operation (CAFO)* means an ''animal feeding operation'' which meets the criteria in 40 CFR Part 122, Appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23 (c). Animal feeding operations defined as ''concentrated'' in 40 CFR 122 Appendix B are as follows:

1. New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

a. 1,000 slaughter or feeder cattle;

b. 700 mature dairy cattle (whether milkers or dry cows);

c. 2,500 swine weighing over 55 pounds each;

d. 500 horses;

e. 10,000 sheep or lambs;

f. 55,000 turkeys;

g. 100,000 laying hens or broilers when the facility has unlimited continuous low watering systems;

h. 30,000 laying hens or broilers when facility has liquid manure handling system;

i. 5,000 ducks; or

j. 1,000 animal units.

2. New and existing operations which discharge pollutants into waters of the United States either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

a. 300 slaughter or feeder cattle;

b. 200 mature dairy cattle (whether milkers or dry cows);

c. 750 swine weighing over 55 pounds;

d. 150 horses;

e. 3000 sheep or lambs;

f. 16,000 turkeys;

g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;

h. 9000 laying hens or broilers when facility has a liquid manure handling system;

i. 1,500 ducks; or

j. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

Provided, however, that no animal feeding operation is a CAFO as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.

H. *Control Facility* means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

I. *Director* means the Regional Administrator of EPA.

J. *Feedlot* means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

K. *Ground Water* means any subsurface waters.

L. *Hydrologic Connection* means the flow between surface impoundments and surface water by means of a subsurface conveyance.

M. *Land Application* means the removal of wastewater and waste solids from a control facility and distribution to, or incorporation into the soil.

N. *Process Wastewater* means any process generated wastewater directly or indirectly used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

O. *Severe Property Damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonable be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

P. *The Act* means Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 USC 1251 *et seq.*

Q. *Toxic Pollutants* means any pollutant listed as toxic under section 307(a)(1) of the Act.

R. *Waters of the United States.* See 40 CFR 122.2.

Appendix A—Animal Units Calculations

''Animal unit'' is a term defined by the regulations and varies according to animal type; one animal is not always equal to one animal unit. Conversion to animal units is a procedure used to determine pollution equivalents among the different animal types; dairy cows produce more waste than sheep. This calculation is used on facilities with more than one animal type onsite.

The number of animal units is calculated as follows:

—number of slaughter and feeder cattle multiplied by 1.0, plus,
—number of mature dairy cattle multiplied by 1.4, plus,
—number of dairy heifers cattle multiplied by 1.0, plus,
—number of swine weighing over 55 pounds multiplied by 0.4, plus,
—number of sheep multiplied by 0.1, plus,
—number of horses multiplied by 2.0.

Example 1: Determine the number of animal units on a dairy operation which maintains 650 mature dairy cows and 300 dairy heifers.

[(# mature cows)(1.4)+(# heifers)(1.0)]=animal units

[(650×1.4)+(300×1.0)]=1210 animal units.

Such a facility exceeds the 1000 animal units as established in Part I.C.4. of this permit, thus this facility is a CAFO and is subject to NPDES requirements.

Example 2: Determine the number of animal units on a feeding operation which maintains 650 slaughter cattle, 100 horses, and 1000 sheep.

[(650×1.0)+(100×2)+(1000×0.1)]=950 animal units. This facility does not exceed the 1000 animal units required to be a CAFO in Part I.C.4. of this permit. However, it can be classified as a CAFO under Part I.C.5. of this permit if pollutants are discharged through a man-made conveyance or if pollutants are discharged directly to waters of the U.S. If this situation occurs, discharges are subject to NPDES requirements.

Appendix B—Significant Contributor of Pollutants

Definition:

''Significant Contributor of Pollutants'' (SCP) is a designation of an animal feeding operation made by the Director on a case-by-case basis. The purpose of this designation is to regulate animal feeding operations that are not automatically classified as CAFOs in Part I.C. of the permit and have the potential of causing environmental harm.

Designation Procedure:

—SCP determinations can only be conducted after an onsite inspection.
—The following factors are considered when making an SCP determination:

a. The size of the animal feeding operation and the amount of wastes reaching waters of the United States,

b. The location of the animal feeding operation relative to waters of the United States,

c. The means of conveyance of animal wastes and process wastewater to waters of the United States,

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the United States, and

e. Other relevant factors.

—An animal feeding operation is a CAFO upon notification by the Director.

Appendix C—Notice of Intent (Application) Information Requirements

The Application to be covered by this permit shall include the following:

1. Previous NPDES permit number if applicable,
2. Facility owner's name, address and telephone number,
3. Facility operator's name, address and telephone number,
4. Types of waste handling practices currently used for processing wastes (such as containment in a waste storage pond plus land application),
5. Name of receiving water(s) to which wastewaters are (or may be) discharged from the facility (receiving waters include canals, latterals, rivers, streams, etc.),
6. The type and number of animals confined, and
7. A sketch of the operation, including control facilities, diversion ditches, building structures, feeding areas, slope, direction of overland and surface water flow, and proximity to surface waters.

[FR Doc. 97–10704 Filed 4–24–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 21, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 27, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0704.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form No.: N/A.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 519.

Estimated Time Per Response:

	Hours per response	Total hours
Tariff cancellation requirement.	143.7	74,598
Information disclosure requirement.	120	62,280
Recordkeeping requirement.	2	1,038
Certification requirement.	½ hour ..	259.2

Total Annual Burden: 138,175 hours.

Total Costs to all Respondents: $435,000.

Needs and Uses: CC 96–61 eliminates the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange telecommunications services. In order to facilitate enforcement of such carriers' statutory obligation to geographically average and integrate their rates, and to make it easier for customers to compare carriers' service offerings, the attached Order requires affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate domestic, interexchange services.

The information collected under the tariff cancellation requirement must be disclosed to the Commission, and will be used to implement the Commission's detariffing policy. The information collected under the recordkeeping and certification requirements will be used by the Commission to ensure that affected interexchange carriers fulfill their obligations under the Communications Act, as amended. The information in the disclosure requirement must be provided to third parties, and will be used to ensure that such parties have adequate information to bring to the Commission's attention any violations of geographic rate averaging and rate integration requirements of Section 254(g) of the Communications Act.

OMB Approval Number: 3060–XXXX.

Title: 28 GHz Band Segmentation Plan amending the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate, the 29.5–30.0 GHz Frequency Band, and to Establish Rules and Policies for LMDS and for the Fixed Satellite Services.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 15 submitting paperwork at least 4 times per year.

Estimated Time Per Response: 1.5 hours.

Total Annual Burden: 90 hours.

Total Costs to all Respondents: $18,000. This is based on the assumption that applicants will hire outside counsel at an approximate cost of $150 per hour, it is estimated that the cost per submission will be $300.

Needs and Uses: The collections of information contained in Parts 25 and 101 are used by the Commission staff in carrying out its duties as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 308 and 309, to determine the technical qualifications of an applicant to operate