

(3) Provide that the IV-D agency shall have responsibility for securing compliance with the requirements of the cooperative agreement by individuals or agencies outside the IV-D agency performing medical support enforcement functions.

(b) *Maintenance of records.* The cooperative agreement must specify that the IV-D agency will establish and maintain case records of medical support enforcement activities in accordance with the provisions of § 302.15 of this chapter.

(c) *Safeguarding information.* The cooperative agreement must provide that the use or disclosure of information concerning applicants for, or recipients of, medical support enforcement services is subject to the limitations in § 303.21 of this chapter.

(d) *Fiscal policies and accountability.* (1) The cooperative agreement must provide that the IV-D agency will maintain an accounting system and supporting fiscal records adequate to assure that claims for reimbursement from the Medicaid agency are in accordance with applicable Federal requirements in 45 CFR Part 74.

(2) The cooperative agreements must provide for the establishment of a method for properly allocating those

costs that cannot be directly charged to the medical support enforcement effort.

§ 306.20 Prior approval of cooperative agreements.

(a) Prior to implementation, the IV-D agency must submit two copies of any cooperative agreement entered into under this part to the Regional Representative for approval.

(b) The Regional Representative will review the cooperative agreement for conformity with the requirements of this part and 42 CFR 433.152.

(c) The Regional Representative will promptly notify the State of approval or disapproval. The State may consider the agreement approved if notification is not received within 60 days after the agreement is received by the Regional Representative.

§ 306.21 Subsidiary cooperative agreements with courts and law enforcement officials.

The IV-D agency will enter into subsidiary written cooperative agreements with appropriate courts and law enforcement officials to the extent necessary to perform those functions specified in the cooperative agreement between the IV-D agency and the Medicaid agency. These agreements must be made in accordance with the

requirements of § 302.34 (Cooperative agreements).

§ 306.22 Purchase of service agreements.

The IV-D agency will enter into written purchase of service agreements to the extent necessary to fulfill the requirements of its cooperative agreement with the Medicaid agency.

§ 306.30 Source of funds.

The cooperative agreement must specify that the IV-D agency will receive full reimbursement from the Medicaid agency for all medical support enforcement activities performed under the agreement. (See § 306.11(d) for requirements on fiscal policies and accountability.)

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666, 667 and 1302.

§ 307.10 [Amended]

2. Section 307.10 is amended by changing the reference in paragraph (a)(2)(xiii) to "45 CFR part 306" to "§§ 303.30 and 303.31".

[FR Doc. 89-18178 Filed 8-1-89; 12:50 pm]

BILLING CODE 4150-04-M

Friday
August 4, 1989

FRIDAY AUGUST 4, 1989

Part V

Department of the Interior

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information To Be Made Available to the Public; Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB34

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information to be Made Available to the Public

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service's (MMS) regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS) include provisions for making data and information available to the public. The MMS believes that the rules need clarification to assure that the items of data and information submitted on Forms MMS-1866, Request for Reservoir Maximum Efficient Rate; MMS-1867, Request for Well Maximum Production Rate; MMS-1868, Well Potential Test Report; MMS-1869, Quarterly Oil Well Test Report; and MMS-1870, Semiannual Gas Well Test Report that are made available for public inspection are clearly identified in the regulations. This notice proposes to amend 30 CFR 250.18 to clarify which data and information submitted in association with the regulation of drilling and production operations in the OCS will be available to the public.

DATE: Comments must be postmarked or hand delivered by October 3, 1989.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 646; 381 Elden Street; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Offshore Rules and Operations Division; Branch of Rules, Orders, and Standards; Telephone: (703) 787-1600 or FTS 393-1600.

SUPPLEMENTARY INFORMATION: The rules at 30 CFR Part 250 governing offshore oil and gas and sulphur operations, which were published in the *Federal Register* on April 1, 1988, included provisions in § 250.18 governing the release of data and information to the public. Section 250.18 specifies periods of time that certain geological and geophysical data and information will be protected from disclosure to the public. Section 250.18(d) identifies specific items of data and information on Forms MMS-330, MMS-331, and MMS-331C which are to be protected from disclosure for the

specified time periods. The release dates for data and information on other MMS reporting forms are not mentioned in 30 CFR part 250. This apparent inconsistency makes it necessary to determine whether data and information submitted on Forms MMS-1866, MMS-1867, MMS-1868, MMS-1869, or MMS-1870 should be available for public inspection when similar data or information is protected from disclosure for specified periods of time under § 250.18 when submitted on Forms MMS-330, MMS-331, or MMS-331C.

Under OCS Order No. 12, Public Inspection of Records, which was rescinded by the *Federal Register* Notice published April 1, 1988 (53 FR 10596), lessees were advised regarding the release of specific data and information and the specified time periods that certain data and information would be protected from disclosure. The provisions of § 250.18 are not as inclusive and specific as OCS Order No. 12.

Under revised Part 250, the Gulf of Mexico OCS Region issued further guidance in the form of a Notice to Lessees and Operators (NTL). The NTL 88-03 was issued on June 29, 1988, and provided an interpretation on the release of data and information which is to be made available to the public. The MMS is considering the need for additional specificity in the regulations which became effective May 31, 1988. Revision of the governing regulations would ensure that data and information are made available to the public on a uniform basis in all OCS Regions. Use of the rulemaking process to propose a revision of the governing rule will provide the public an opportunity to provide comments concerning the release of data and information to the public.

This proposed rule would amend § 250.18 to identify specific items of data and information which are submitted on MMS reporting Forms MMS-1866 and MMS-1868 and the specific timetables for the release of that data and information to the public. The proposed rule also provides that all data and information submitted on Forms MMS-1867, MMS-1869, and MMS-1870 would be available for public inspection. The treatment and timetables for release of protected data and information under the proposed rule are generally consistent with the treatment of similar data and information under the regulations in effect prior to May 31, 1988, as interpreted by OCS Order No. 12. Under OCS Order No. 12, information (other than that which was clearly geological) submitted on Forms MMS-330, MMS-331, and MMS-331C

was made available to the public after the well went on production. Under the current rule, the release of data and information is not triggered by the commencement of production. The proposed rule does not change this situation.

The proposed rule would allow release of data and information submitted on production Forms MMS-1869 and 1870 upon receipt, while similar information submitted on operating Form MMS-330 would be protected from disclosure until the applicable time period for protection expired. Comments are specifically requested on this aspect of the rule.

Interested persons wishing to comment on the proposed rule should forward written comments to the address specified above.

The Department of the Interior (DOI) has determined that this rule proposes to codify existing practices and will not have any effect on the economy and is not a major rule.

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

This proposed rule does not affect any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 14, 1989.

Barry A. Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204 Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.18 is proposed to be amended by republishing the introductory text of (d) and by adding new paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified below shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

* * * * *

(4) On Form MMS-1866, Request for Reservoir Maximum Efficient Rate:

(i) Item 1, Cut offs ϕ Upper Lower, k Upper lower—md,

(ii) Item 2, G/O Interface,

(iii) Item 3, W/O Interface,

(iv) Item 4, Area @ G/O,

(v) Item 5, Area used to determine Rock Volume,

(vi) Item 6, V_o Oil Zone Rock Volume,
(vii) Item 7, V_g Gas Zone Rock Volume,

(viii) Item 8, H_o , h_o ,

(ix) Item 9, H_g , h_g ,

(x) Item 10, ϕ ,

(xi) Item 11, S_w ,

(xii) Item 12, S_g ,

(xiii) Item 13, S_o ,

(xiv) Item 14, B_{oi} , B_{gi} ,

(xv) Item 15, N , G ,

(xvi) Item 16, R_i ,

(xvii) Item 17, R_iN , R_iG ,

(xviii) Item 18, N_p/N , G_p/G ,

(xix) Item 19, Average Well Depth,

(xx) Item 20, K_h ,

(xxi) Item 21, K_v ,

(xxii) Item 22, $^{\circ}\text{API}$ @ 60°F ,

(xxiii) Item 23, SG ,

(xxiv) Item 24, R_{si} ,

(xxv) Item 25, μ_{oi} ,

(xxvi) Item 26, μ_{or} ,

(xxvii) Item 27, T_{avg} ,

(xxviii) Item 28, P_i ,

(xxix) Item 29, P_{ws} ,

(xxx) Item 30, P_b ,

(xxxi) Item 31, Datum Depth,

(xxxii) Item 32, GOR ,

(xxxiii) Item 33, WOR .

(5) On Form MMS-1867, Request for Maximum Production Rate, all items of data and information are available for public inspection.

(6) On Form MMS-1868, Well Potential Test Report (this form does not use item numbers):

(i) Type well,

(ii) Perforation interval,
(iii) Choke size (for pretest),
(iv) Number of hours tested (for production test),

(v) Choke size (for production test),
(vi) Production during test period:

(A) Oil,

(B) Gas,

(C) Water,

(D) GOR ,

(E) Water cut,

(F) Flowing tubing pressure.

(vii) Calculated 24-hr. rate:

(A) Oil,

(B) Gas,

(C) Water,

(D) Oil gravity,

(E) Specific gravity of gas.

(viii) Static bottom hole pressure, and

(ix) Cumulative production during entire testing period:

(A) Oil,

(B) Gas,

(C) Water.

(7) On Form MMS-1869, Quarterly Oil Well Test Report, all items of data and information are available for public inspection.

(8) On Form MMS-1870, Semiannual Gas Well Test Report, all items of data and information are available for public inspection.

* * * * *

[FR Doc. 89-18253 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Protection Agency

Friday
August 4, 1989

Part VI

Environmental Protection Agency

40 CFR Parts 261 and 302

Hazardous Waste Management Systems;
Identification and Listing of Hazardous
Waste; Reportable Quantity Adjustment;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 302

[FRL-3545-3; EPA/OSW-FR-89-012]

RIN 2050-AC78

Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to modify the scope of the EPA Hazardous Waste No. F019 contained in the list of hazardous wastes from non-specific sources. See Subpart D of Part 261. The Agency is proposing to amend the F019 listing to exclude wastewater treatment sludges from the zirconium phosphating step when such phosphating is an exclusive process in the aluminum can washing process because the Agency believes that such sludges do not pose a substantial hazard to human health or the environment and should not be regulated as a listed hazardous waste. The Agency also is proposing to remove these zirconium phosphating sludges from the list of hazardous substances under § 302.4. This modification to the F019 listing would not affect any other wastewater treatment sludges from the chemical conversion coating of aluminum. EPA does not solicit any comments regarding any other aspect of the F019 listing and will not respond to any such comments that are received.

DATES: EPA will accept comments on this proposed rule until September 5, 1989.

Any person may request a public hearing on this proposed amendment by filing a written request with EPA, to be received no later than August 21, 1989.

ADDRESSES: Comments on the RCRA portions of the proposal should be sent in triplicate to: EPA RCRA Docket Clerk (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Room SE-2427, Washington, DC 20460. All comments must be marked "Docket Number [F-89-F19P-FFFFF]."

Comments on the CERCLA portions of the proposal should be sent in triplicate to: Emergency Response Division, Docket Clerk, ATTN: Docket No. RQ, Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this proposed rulemaking are located at U.S. EPA, 401 M Street SW., Washington, DC 20460. The RCRA portions are located in

the Room SE 2427; the public must make an appointment in order to review them by calling (202) 475-9327. The CERCLA portions are contained in Room LG-100; for an appointment call (202) 382-3046. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The public may copy 100 pages from the docket at no charge; additional copies are \$0.15 per page.

Requests for a public hearing should be addressed to Mr. Devereaux Barnes, Director, Characterization and Assessment Division (OS-300), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/CERCLA Hotline at (800) 424-9346 or, in the Washington, DC area, (202) 382-3000. For technical information on the RCRA portions of the proposal, contact Ms. Denise A. Wright, Listing Section, Office of Solid Waste (OS-333) at (202) 245-3519. For technical information on the CERCLA portion of the proposal, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS-210) at (202) 475-7369. Both are available at U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

The contents of today's preamble are listed in the following outline:

- I. Background
- II. Reasons and Basis for Today's Proposed Rule
- III. Relationship to Other Regulatory Authorities
- IV. State Authority
 - A. Applicability of Rules in Authorized States
 - B. Effect on State Authorities
- V. Effective Date
- VI. Regulatory Impact
- VII. Regulatory Flexibility Act
- VIII. Paperwork Reduction Act

I. Background

On May 19, 1989, EPA published an interim final rule listing "wastewater treatment sludges from electroplating operations" as EPA Hazardous Waste No. F006. See 40 CFR 261.31 (45 FR 33112). The hazardous constituents for which this waste was listed are cadmium, chromium, nickel, and complexed cyanide. In response to comments on this regulation, the listing was modified on November 12, 1989 (45 FR 74884) to read as follows: "wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated

basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.¹

Additionally, in response to other comments, EPA separated "wastewater treatment sludges from the chemical conversion coating of aluminum" from the F006 listing and listed them as F019. Commenters had argued that these sludges should not be listed as F006 because they did not contain all four of the constituents for which F006 was listed. That is, they contended that these wastes do not typically contain cadmium and nickel. The Agency agreed that these wastes do not typically contain cadmium and nickel but maintained that, since the wastes contain hexavalent chromium and complexed cyanides, they should nevertheless be regulated. The Agency therefore listed them as hazardous waste, F019, and only listed hexavalent chromium and complexed cyanides as constituents of concern in Appendix VII of part 261.

On December 2, 1986 (51 FR 43350), the Agency issued an interpretive rule stating that it had re-evaluated its previous interpretations of the scope of application of F006 and had determined that those interpretations were overly broad. As a result, the Agency stated that the following processes were not included in the F006 listing: chemical conversion coating, electroless plating, and printed circuit board manufacturing.² The Agency further clarified that the F006 listing includes wastewater treatment sludges from: (1) Common and precious metals electroplating, except tin, zinc (segregated basis),³ aluminum and zinc plating on carbon steel; (2) anodizing, except sulfuric acid anodizing of aluminum; (3) chemical etching and milling, except when performed on aluminum; and (4) cleaning and stripping, except when associated with tin, zinc, and aluminum plating on

¹ The Agency also indicated that hexavalent chromium rather than total chromium would be listed as a constituent of concern in Appendix VII of part 261.

² Wastewater treatment sludges from printed circuit board manufacturing operations that include processes which are within the scope of the F006 listing (e.g., chemical etching) continue to be regulated as F006.

³ "Zinc plating (segregated basis)" refers to non-cyanidic zinc plating processes (i.e., where no cyanides are used). Where both cyanidic and non-cyanidic plating baths are used, the sludges from non-cyanidic are excluded provided they are segregated from sludges resulting from cyanidic plating processes.

carbon steel. While this interpretation removed chemical conversion coating from the scope of F006, it did not affect the F019 listing. That is, wastewater treatment sludges from chemical conversion coating of aluminum continued to be regulated as F019.

II. Reasons and Basis for Today's Proposed Rule

In the Listing Background document for electroplating wastes, the Agency agreed with commenters that the hazardous constituents used in the chemical conversion coating of aluminum were different from those used in electroplating (i.e., F006), but still contained complexed cyanides and chromium. In describing the hazards associated with these wastes, the Agency noted that sodium chromate or potassium dichromate is used in common oxide-conversion coating solutions, potassium dichromate is used in phosphate-conversion coatings solution, and sodium dichromate is used in chromate-conversion coating solutions. Additionally, the Agency indicated that cyanides are known to be used in the coloring of anodized aluminum. Thus, EPA believed that chemical conversion coating processes on aluminum typically resulted in hazardous sludges.

The Agency has since learned that one of the chemical conversion coating operations—zirconium phosphating performed during the washing of aluminum cans—is not expected to result in a hazardous wastewater treatment sludge. This process uses only one hazardous constituent (hydrofluoric acid) which is chemically changed into a non-hazardous salt as described below. Additionally, no hazardous constituents are formed during the process. EPA is therefore proposing today to amend the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

In the aluminum can making process, cans are rinsed with water in a multi-step can washing process. After forming, the cans are cleaned in a dilute sulfuric acid/hydrofluoric acid solution containing surfactants. This operation is performed to remove excess lubricants and aluminum fines. The acid treatment exposes the aluminum metal which then reacts with air to form an aluminum oxide, Al_2O_3 , film. The can is next rinsed with water to remove any excess acid. This step causes the Al_2O_3 to become hydroxylated to form a continuous layer of $Al_2O_3-Al(OH)_3$. This layer is formed as a result of the reaction $Al_2O_3 + H_2O \rightarrow 2Al(OH)_3$. The aluminum hydroxide $Al(OH)_3$ will further react

with water, if unhindered, to form a porous colloidal aluminum hydroxide, $Al(OH)_3$, through the reaction $Al(OH)_3 + H_2O \rightarrow Al(OH)_3$. Light reflecting through this $Al(OH)_3$ film causes discoloration of the can. This porous colloidal aluminum hydroxide does not provide as good a base for organic finishes as compared to the former $Al_2O_3-Al(OH)_3$ layer. Thus, a zirconium phosphate solution is used to prevent the conversion of the desirable $Al(OH)_3$ to $Al(OH)_3$. The zirconium phosphating step allows an ion exchange between the monovalent hydrogen on the hydroxide group with tetravalent zirconium resulting in an inert and nonporous aluminum oxide-zirconium species on the can surface.

Based on the process chemistry, the Agency believes that, although the sludge currently meets the F019 listing description, this sludge should not have been included in the F019 listing because it is not hazardous. In particular, in reviewing the solutions that are used in the zirconium phosphating process, no hazardous constituents (listed in Appendix VIII of 40 CFR 261) are contained or used in this conversion coating step, except for hydrofluoric acid. The zirconium phosphate solution typically used includes fluorozirconic acid (as a source of zirconium), nitric and hydrofluoric acids, and phosphoric acid. The hydrofluoric acid, which is present in the can washing wastewater in low concentrations that are readily treated, is chemically converted in the wastewater treatment process into calcium fluoride or calcium aluminum fluoride, which is non-hazardous. Thus, the slightly alkaline sludge would not be expected to contain any hazardous constituents, nor exhibit any of the characteristics of hazardous waste. The Agency has also evaluated analytical data on these wastewater treatment sludges. These data, which are available in the RCRA docket supporting this proposed rule, do not indicate the presence of significant concentrations of Appendix VIII constituents. Additionally, the data shows that these sludges do not exhibit any hazardous waste characteristics. The Agency is, therefore, proposing to modify the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

The proposed exclusion applies only to sludges from processes that exclusively use zirconium phosphating solutions that do not contain hexavalent chromium and cannot produce complexed cyanides. Further, these processes are not associated with

electroplating or conversion coating steps where hazardous constituents are used. For example, if a can maker employs a chromating step, separately or in conjunction with such zirconium phosphating, the wastewater treatment sludges would meet the F019 listing and would not be excluded under this rulemaking.

Other wastewater treatment sludges from conversion coating processes falling within the scope of the F019 listing may not in fact contain or produce hazardous constituents. At this time, the Agency is not excluding these sludges from the scope of the F019 listing, is not soliciting comments regarding these sludges or processes, and will not respond to any such comments received. Prior to proposing today's action the Agency had received data from industry on this zirconium phosphating process and the composition of the wastewater treatment sludge on which to base this proposed exclusion. Because such data are not currently in the Agency's possession for other processes that may not use hazardous constituents, the Agency will not at this time consider excluding them from the scope of the F019 listing.

III. Relationship to Other Regulatory Authorities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The CERCLA hazardous substances are listed at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the release. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a hazardous substance or an extremely hazardous substance to the appropriate state emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance, or one pound when no RQ has been set.

When this rulemaking becomes effective, the description of hazardous

waste stream F019 in Table 302.4 will change to exclude wastewater treatment sludges from the zirconium phosphating step of aluminum can washing process. These zirconium phosphating sludges will no longer be listed hazardous substances under CERCLA Section 101(14) and 102(a). Reporting of releases of sludge from the zirconium phosphating of aluminum cans process will no longer be required under either section 103 of CERCLA or section 304 of SARA. Although the Agency has no reason to believe that releases of zirconium phosphating sludges will contain hazardous constituents subject to reporting under section 103 of CERCLA or section 304 of SARA, the Agency reminds the regulated community that reporting of releases of such sludges is required if a RQ or more of a hazardous substance (which is contained as a constituent of the sludge) is released to the environment. Reporting also is required when the wastewater treatment sludge meets one or more of the characteristics of unlisted hazardous waste for ignitability, corrosivity, reactivity, or EP Toxicity and 100 pounds or more is released to the environment (50 FR 13456, April 4, 1985).

The existing 10-pound RQ of waste stream F019 will not be affected by this rule, except for the exclusion of sludges from processes that use only zirconium phosphating. Releases of wastewater treatment sludges from the chemical conversion coating of aluminum (other than from exclusive zirconium phosphating) remain subject to the reporting requirements of section 103 of CERCLA and section 304 of SARA when a RQ or more is released to the environment. EPA is not soliciting comments on the existing applicable RQ for F019, and will not respond to any such comments received.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains inspection authority under section 3007 and enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste

program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in non-authorized States. The rulemaking proposed today, however, would not be imposed pursuant to HSWA.

B. Effect on State Authorizations

Today's proposed rule will not be effective in authorized States since the regulations are not being imposed pursuant to HSWA. Thus, the regulation will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations proposed today at § 261.31 are considered to be less stringent or to reduce the scope of the existing Federal regulations. Therefore, authorized States will not be required to modify their programs to adopt regulations

equivalent or substantially equivalent to the provisions listed above.

V. Effective Date

This rule will be effective immediately upon promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule will reduce, rather than increase, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the regulated community by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule will be effective immediately upon promulgation. Once effective, this modification to the listing will be applied retroactively to the above described previously generated zirconium wastes, because these particular wastes should not have been included within the scope of the 1980 listing. Thus, where this rule applies, EPA will not consider such wastes, whenever they were generated, to be F019. EPA's decision does not effect authorized State regulation of such waste if a State is more stringent or broader in scope.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an effect on the economy of \$100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State or local government agencies, or geographic regions. Finally, there would be no adverse impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this proposed amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking, for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects**40 CFR Part 302**

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.31 is amended by revising the hazardous waste entry "F019" to read as follows:

§ 261.31 Hazardous waste from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

4. Table 302.4 of § 302.4 is amended by revising the first column containing the description of Hazardous waste stream F019.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[see footnotes at end of Table 302.4]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code	RCRA waste No.	Category	Pounds (kg)
F019 Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.							

[FR Doc. 89-18256 Filed 8-3-89; 8:45 am]

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August 4, 1989

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Emergency Determination of
Endangered Status for the Mojave
Population of the Desert Tortoise;
Emergency Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB35

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Mojave population of the desert tortoise (*Gopherus agassizii*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). An emergency situation, in the form of a recently documented outbreak of a virulent desert tortoise upper respiratory disease syndrome (Respiratory Disease Syndrome), has been identified and has caused significant declines to certain tortoise subpopulations and threatens to become pandemic in subpopulations already stressed as a result of habitat degradation, predation, and other factors. Because of the need to make Federal funding, protection, and other measures immediately available to combat the Respiratory Disease Syndrome, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

The status of the Beaver Dam Slope desert tortoises, which were listed as threatened with critical habitat in 1980, will not change. The Service does not expect additional benefits would accrue to this subpopulation by changing its listing to endangered at this time. A proposed rule to list the Mojave population of the desert tortoise will be published shortly to provide for public comment, and hearings (if requested). The Service will accept comments on the status of the species at any time.

EFFECTIVE DATES: This emergency rule is effective on August 4, 1989 and expires on April 2, 1990.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, Division of Endangered Species and Habitat Conservation, 1002 NE Holladay Street, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith—Assistant Regional

Director for Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:**Background**

The desert tortoise is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, and Sonoran deserts in the southwestern United States and adjacent Mexico.

Recent studies based on shell shape and variations in genetic composition indicate that the species has two distinct populations, one of which is divided into two subpopulations (Spang et al. 1988). A summary of this information is as follows:

The two populations are the Mojave and the Sonoran. These are separated in the U.S. and Mexico by the Colorado River, with the former populations being found to the west and north of the river and the latter being found to the east and south. The Mojave population is further divided into two subpopulations.

The western Mojave subpopulation includes parts of the west Mojave, east Mojave, and Colorado Deserts in California and extreme southern Nevada. Tortoises occur in creosote bush, alkali sink, and tree yucca habitats in valleys, on alluvial fans, and in low rolling hills at elevations generally ranging from 2,000 to 4,000 feet above sea level. Study plot data from eight sites indicate that populations have declined at rates of 10 percent or more per year for the last six to eight years. Vandalism, collections, raven predation, and disease are a few of the many causes for population declines. Habitat is deteriorating and being lost from urban, energy, and mineral development, vehicle-oriented recreation, grazing, and other uses.

The eastern Mojave subpopulation includes tortoises in eastern California, southern Nevada, and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah and extreme northwestern Arizona (north of the Grand Canyon). For the purposes of this rule, the status of Beaver Dam slope tortoises will remain unchanged. Eastern Mojave tortoises occur in creosote bush-burro bush or creosote bush-tree yucca vegetation types. Downward trends in this subpopulation and its habitat are

believed to be a result of urban development, long-term livestock grazing, mining, large-scale water development, off-road vehicle use, collecting, and many other human-related uses.

The Sonoran population is found in Arizona, south and east of the Colorado River, and in Mexico. Tortoises in this area are found on steep, rocky slopes of mountain ranges, primarily in Arizona upland vegetation dominated by palo verde and saguaro cactus. The distribution of the present population and habitat is disjunct. Some habitat has been lost to expansion of urban areas. Grazing, mining, and fire have adversely affected some areas of tortoise habitat.

The Beaver Dam Slope population of desert tortoises in Utah was listed as threatened with critical habitat on August 20, 1980 (45 FR 55654). The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Endangered Species Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

For the purpose of this rule, the Mojave population of the desert tortoise includes all desert tortoises north and west of the Colorado River, including desert tortoises in the Colorado and Mojave Deserts of California, southern Nevada, southwestern Utah, and northwestern Arizona, other than the Beaver Dam Slope population of desert tortoises, which is already listed as a threatened species under the Act.

Data collected on the Mojave population in recent months indicate that many local tortoise populations throughout the range of the species have declined precipitously. The rapid spread of Respiratory Disease Syndrome, rarely seen before in wild tortoises, has been identified as a significant contributing factor in the current high level of tortoise losses.

On May 31, 1989, the same three environmental organizations that petitioned the Service in 1984 petitioned the Service to list the desert tortoise as an endangered species throughout its United States range under the expedited

emergency provisions of the Act. This petition was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on the Respiratory Disease Syndrome, other reported diseases in Arizona, and tortoise status. As a result of this and other information, the Service determines the Mojave population of the desert tortoise to be an endangered species. The Service will not take emergency action to reclassify the Beaver Dam Slope population in Utah to endangered because it is already protected by the Act. The Service does not concur with the requested action under the petition to emergency list the Sonoran population of desert tortoises. The rationale leading to this decision is as follows:

1. Historically, desert tortoises in the Sonoran population occur in numerous small groups, more or less patchy or disjunct, inhabiting steep-sided canyons.

2. The very patchiness of the distribution in the Sonoran population leads the Service to believe that the Respiratory Disease Syndrome affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of a respiratory disease have been documented in the Sonoran population and are of concern to the Service, it appears that respiratory disease is: (a) Usually present in tortoise populations to varying degrees, (b) has not shown any evidence of becoming pandemic, (c) has not been shown to be Respiratory Disease Syndrome, and (d) is currently being addressed by the Service and the Arizona Game and Fish Department, who will continue to gather and evaluate data. A report on the results of these studies will be available after two field seasons.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Mojave population of the desert tortoise should be classified as endangered. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mojave population of desert tortoise are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As indicated above, habitat is deteriorating and has been lost due to an accelerating rate of urban, energy,

and mineral development, military activities, vehicle-oriented recreational activities, grazing, and land exchanges.

Changes in perennial vegetation, essentially the reduction in cover of small and large shrubs and perennial grasses, are believed to be the result of cattle and sheep grazing pressures. These changes have created openings and barren areas in desert landscape and have deteriorated the quality of habitat for the tortoise. Losses of plant cover may contribute to the excessive raven predation on small tortoises being recorded. Changes in annual vegetation have also affected food supplies for tortoises. Weedy plant species that have been introduced for grazing can germinate, flower, and fruit before the native plants. Native plant species are essential to meet the nutritional needs of the tortoise and are their favored forage. The exotic weedy species are outcompeting many native plant species (Berry 1988). Additional potential adverse impacts to the tortoise from cattle and sheep grazing include: damage to shrubs used for tortoise shelter, crushing of burrows and nests, and trampling of young tortoises. Cattle grazing has contributed to declines in many tortoise populations. The degree and nature of impacts from cattle grazing is dependent upon habitat, grazing history, seasons of use, stocking rates, and density of the tortoise population (Sievers et al. 1988).

The following discussions are summarized from Alden Sievers and the California Desert Tortoise Workgroup's 1988 Recommendations for Management of the Desert Tortoise in the California Desert, submitted to the Bureau of Land Management (BLM), Riverside, California, and to the California Department of Fish and Game, Long Beach, California (Sievers et al. 1988):

Vehicle free-play in tortoise habitat results in cumulative adverse impact to tortoise habitat. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play areas may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer from loss of forage, loss of vegetative cover, and loss of burrow sites and then become subject to increased mortality from crushing, collection, and vandalism.

Competitive off-highway vehicle racing events adversely impact tortoise habitat. They usually involve several hundred race participants and thousands of spectators. The camping and race start and finish areas receive intensive vehicle use and become

devoid of vegetation. Tortoises are eliminated from these areas entirely due to the loss of food, cover, and burrow sites. Affected areas become enlarged with continued use.

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collection, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion.

Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause longterm, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction. Increased human activity results in increased vehicle kills, vandalism, and collecting of tortoises.

Land exchanges may result in habitat loss and increased fragmentation of populations. Even where tortoise habitat is exchanged by the Bureau of Land Management for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat, on the new private holdings.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Desert tortoises have long been a popular pet in the Southwest. It is not currently known to what extent collecting has impacted wild populations. It is estimated that 100,000 desert tortoises exist in captivity. Many tortoises held in captivity, however, are known to exhibit signs of contagious Respiratory Disease Syndrome. The release of diseased captive tortoises is considered by the BLM to be the source of introduction of the currently identified Respiratory Disease Syndrome found in wild populations. The release of captive tortoises to the wild population following listing as Endangered could be considered to constitute harm to the wild population.

C. Disease or Predation

Predation of young tortoises by ravens is a growing threat to the species. Common raven populations in the southwestern deserts have increased significantly since the early 1940's, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. In recent years, raven predation

on juvenile desert tortoises has increased to a point where recruitment of young tortoises into the adult population has been significantly reduced or eliminated in certain localities. Ravens are highly adaptable as to their feeding patterns, and concentrate on easily available seasonal food sources such as juvenile tortoises, including live, healthy animals. In the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert, even though tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises, raven predation appears to have prevented the recruitment of the young into the adult population (BLM 1989).

The BLM's 1989 Environmental Assessment (BLM 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, further summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years for the following deserts:

In the Mojave Desert, raven populations have increased 15-fold between 1968 and 1988, at a rate of nearly 15 percent per year.

A new threat to certain desert tortoise populations has recently been identified. A fatal disease, currently referred to as Desert Tortoise Respiratory Disease Syndrome, is spreading and appears to target the mature, reproductively active segment of the population.

The disease has been known for some time in captive tortoises throughout the world (Shipes et al. 1980), although the exact cause, or etiological agent, has not been clearly identified. The disease is probably the result of multiple factors working in concert. It is known that the disease may be readily transmitted from an infected tortoise to a non-infected tortoise (Roskopf 1988). A virus (herpes-like) has been observed by electron microscopic studies in other species of turtles with respiratory tract infections (Jacobson et al. 1986). A paramyxovirus is also considered as a primary pathogen capable of initiating the disease (Jacobson, personal communication, in Roskopf 1988). Infected animals may not necessarily exhibit obvious signs of the disease.

Once the disease is initiated, bacteria may invade and become the primary pathological agent. *Pasturella testudinatus* was recently isolated from a series of sick tortoises collected for disease study from the Desert Tortoise Natural Area in California. Species of *Pasturella* Bacteria are commonly associated with disease syndromes initiated or enhanced by other

predisposing factors, including poor nutrition, stress, and immune system compromise.

The disease appears to be spread via contact between infected and non-infected animals (Roskopf 1988). Adult male tortoises may contact many females in a single breeding season and, thus, the occurrence of the disease in the adult breeding population would reinforce the conclusion that direct nose contact during courtship activities could spread the pathogen to susceptible tortoises. Once the disease is contracted, there appears to be little chance of full recovery and the affected individual eventually becomes debilitated and dies. Even individuals given extensive treatment in captivity usually succumb to the disease eventually. Furthermore, if an individual appears to overcome the disease, relapse may occur under stress conditions (Roskopf 1988).

Although the transmittance of an infectious agent from one tortoise to another occurs by contact, the actual infection of the newly inoculated individual may be associated with other factors that increase its susceptibility. Some of the original information published about this disease suggested a nutritional and/or stress-related cause with a secondary bacterial infection of debilitated animals (Fowler 1977). The combination of an infectious agent along with lowered resistance is typical of these types of disease syndromes in many other animals.

Based on current knowledge of the incidence, morbidity, and the mortality rates, the disease appears to be escalating in surveyed populations in the western Mojave Desert. The disease was first recognized as a major problem in wild populations in the spring of 1988 (Fauna West Wildlife Consultants 1989). Signs of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California in the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent of all tortoises in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot.

While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease can have on any given area. Infection rates in multiple grid areas in the southern California study area range from 7 to 50 percent. The disease symptoms have also been observed in individual tortoises from a variety of populations (Berry 1989) including the

Fremont Valley (50 percent infection rate), Saguaro National Monument in Arizona (2 of 12 radio tagged infected, and died), and Beaver Dam Slope, Utah-Arizona (10 to 20 percent infection rate with high mortality in radio tagged animals). Interviews of personnel at veterinary hospitals in the Las Vegas, Nevada area by Service personnel have revealed that most cases of Respiratory Disease Syndrome are found in captive tortoises, but that wild tortoises have been brought in with symptoms of respiratory disease. The potential exists for the Respiratory Disease Syndrome to reach epidemic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from California subpopulations to Nevada, Utah, and Arizona subpopulations in the Mojave desert. In addition to the identified respiratory disease in the Beaver Dam Slope population, an apparent nutritional disease causing osteoporosis of the bones has been identified (Jarchow 1988).

D. The Inadequacy of Existing Regulatory Mechanisms

All four involved States have laws that provide varying levels of protection for the desert tortoise.

State of Nevada laws concerning fish, game, and watercraft, as amended in 1987, afford limited protection in the desert tortoise. Nevada Revised Statutes (NRS), Section 501.110.1(d) sets forth that reptiles must be classified as either protected or unprotected. NRS Section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. The Nevada Administrative Code (NAC), Section 503.080.1(a) classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS Section 503.597, states that it is unlawful, unless with written consent of the Nevada Department of Wildlife, to transport a desert tortoise from one portion to another portion of the State or across State lines.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, Section 670.5(b)(4) of Title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, Article 3, Section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State

law or regulation. Violations of these provisions relating to endangered species may result in both fines (up to \$5,000.) and/or imprisonment (up to one year).

The California Fish and Game Code, Article 4, Section 2090 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State listed species.

In Arizona, the collecting season has been closed on the desert tortoise since January 1, 1988, under Arizona Game and Fish Commission Order 43: Reptiles. Under Arizona Administrative Code, Title 12, Chapter 4, Article 319.3, the desert tortoise is considered "prohibited wildlife" and may not be imported, exported, possessed, transported, propagated, purchased, bartered, sold, leased, or offered for sale except as expressly authorized by State law.

In Utah, the status of the desert tortoise is considered by the State to be endangered (Utah Division of Wildlife Resources 1987). The desert tortoise is also considered a "prohibited reptile" under Utah Rule, Collection, Importation, Transportation and Subsequent Possession of Zoological Animals (R608-3). In Utah, the desert tortoise is prohibited from collection, importation, transportation, possession, sale, transfer, or release.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the Bureau of Land Management (Bureau) and is considered a factor in reducing the number of tortoises in their natural habitat. Bureau studies on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. The highest incidence of gunshot is found in the western Mojave Desert. At one plot, the highest frequency of carcasses with evidence of gunshot was 28.9 percent (Sievers et al. 1988).

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the desert tortoise, are classified endangered species in the area north and west of the Colorado River and are protected under the Act. Tortoises found released outside of the known Mojave population range will be considered as captive animals.

Under section 9(b)(1) of the Act, prohibitions applicable to the Mojave

population will not apply to tortoises that were held in captivity or in a controlled environment on the date of the publication of this notice, provided, that such holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that critical habitat for this population is not determinable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Such increased recognition and an active recovery program would provide a means to ensure survival for the desert tortoise. Available funding would be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding would also be used for, but would not necessarily be limited to, the identification of and isolation of healthy populations, carrying out raven control to reduce loss of immature tortoises, and public education to discourage further releases of diseased captive tortoises.

The protection required of Federal agencies and the applicable prohibitions are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to

destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Over 63 percent of occupied desert tortoise habitat is managed by the BLM. Other Federal Managers of tortoise habitat include the Department of Defense, National Park Service, Fish and Wildlife Service, and lands managed by Indian tribes. All current and proposed actions and plans for management of the habitat will require considerations for the protection of the tortoise, as required by the Act. Such activities may include, but may not be limited to, grazing, off-highway-vehicle use, mining, construction of developments and rights-of-way, and activities in tortoise habitat that kill tortoises and fragment their habitat.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any desert tortoise in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All *Gopherus* tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The only exception within the genus is *G. flavomarginatus*, which was listed as an Appendix I species.

Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may

determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the *Federal Register*. The reasons for taking this action with respect to the desert tortoise are discussed below. If at any time after this rule has been issued, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As noted above, an emergency posing a significant risk to the well-being of the desert tortoise exists as a result of the outbreak and rampant spread of a contagious disease that is often, and may always be, fatal and for which no known cure currently exists. Even before the recent outbreak of a virulent respiratory disease, the desert tortoise was in serious peril for the many reasons already noted.

In 1985, when the Service found that the listing of the remaining populations of the desert tortoise as endangered was warranted, disease was not known to be a major factor affecting the species' survival. Today, however, a highly contagious and often fatal Respiratory Disease Syndrome is known to exist in tortoise populations in California, Utah, Arizona, and Nevada. Tortoises in some of these areas have experienced extraordinary population collapses within the very recent past and infection rates of surviving animals often exceed 50 percent. The outbreak of this disease syndrome, particularly when viewed against the background of the many other serious factors detrimentally affecting wild tortoise populations, poses a significant risk to the immediate well-being and survival of the species.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with

listing species under the Endangered Species Act of 1973, as amended.

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Author

The primary author of this emergency rule is Miss Jackie Campbell, Division of Endangered Species and Habitat Conservation, Regional Office, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232-4181, (503) 231-6131 or FTS 429-6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, until April 2, 1990, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3835 (16 U.S.C. 1531 *et seq.*), Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the entry of the "Tortoise, desert * * *" under REPTILES to read as follows:

§ 17.11 Endangered and Threatened Wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Tortoise, desert.....	<i>Gopherus</i> (= <i>Xerobates</i> , = <i>Scaptochelys</i>) <i>agassizii</i> .	U.S.A. (AZ, CA, NV, UT), Mexico.	Entire, except AZ south and east of Colorado R., Mexico, and where listed as threatened below.	E	357E	NA	NA
Do.....	do.....	do.....	Beaver Dam Slope, UT.	T	103, 357E	17.95(c)	NA

Dated: August 2, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and
Parks.

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