For the final general permit, EPA has retained the 29 industrial sectors as listed in the proposed rule, with the addition of supplementary subsectors that establish specific monitoring requirements for different types of facilities within industrial sectors. In response to comments expressing concern over monitoring requirements that apply to all facilities within the priority sectors, the Agency re-evaluated the monitoring data submitted by facilities in the 29 industrial sectors, and modified the methodology for determining the types of facilities that are required to conduct storm water monitoring. Accordingly, the final general permit has been changed to focus monitoring requirements on industrial sub-sectors which, according to the submitted monitoring data, pose the greatest potential risk to storm water runoff quality. The final permit also provides the opportunity for facilities in sub-sectors that are subject to storm water monitoring to apply the alternative certification provisions (see section VI.E.3 of the Fact Sheet). The alternative certification provisions provide facilities an opportunity to reduce or avoid storm water monitoring requirements under certain circumstances and is discussed in more detail below.

As noted above, some commenters questioned whether the consolidation process was consistent with NPDES and APA regulations. EPA conducted a thorough review of the consolidation process for consistency with the NPDES regulations. Section 122.28(a)(2)(i) allows EPA to issue general permits for "storm water point sources;" this section does not in any way limit or qualify the types of sources subject to regulation. EPA also has broad regulatory discretion regarding geographic boundaries pursuant to section 122.28(a)(1). In developing the general permit, the Agency attempted to strike a balance between recognizing the variety of facilities that comprise the group applicants and developing a permitting process that could be administered without an undue expenditure of Agency resources. In summary, all actions taken by EPA, including the consolidation process, are also within the discretion accorded to the Agency under the Clean Water Act and NPDES regulations.

In regards to consistency with the APA, Section 553 of the APA requires that public notice and opportunity for public comment be provided for all rulemakings. EPA published the proposed NPDES General Permit for Storm Water Discharges From Industrial Activities in the Federal Register and

provided a 90-day comment period on November 19, 1993 (58 FR 61146). Public hearings were also held in the EPA Regions. Furthermore, EPA invited comment on the 29 sector consolidation. These efforts by the Agency are consistent with the provisions of the APA.

As noted earlier, some commenters suggested that the use of SIC codes were inappropriate as a basis for consolidating industrial facilities into 29 industrial sectors. EPA notes that the nature of the industrial activities, as described in the group application information, in conjunction with SIC codes are an appropriate basis for sector consolidation. Although SIC codes are used to categorize industries based on economic activities, these codes are generally grouped together based on similar industrial activities. In addition, EPA was aware of the differences and similarities among the facilities included in a particular sector based upon the group application data that was submitted by the participants. Using this information in conjunction with the activity descriptors in the SIC codes, EPA was able to appropriately group similar industrial activities into the 29 sectors.

Credit for Group Members

EPA requested and received 75 comments that addressed the issue of whether EPA should grant some form of credit for facilities that participated in the group application process. Specifically, these commenters objected to EPA developing a permit that applies not only to group applicants but also to facilities that did not participate in the group application process. Thus, many of these commenters are seeking credit for the costs they incurred in the preparation of group permit applications.

A majority of the commenters expressed a desire for reduced monitoring as compensation for completing the sampling requirements and submitting the data for Part 1 and Part 2 of the application process. Specific suggestions included exemptions from one of the four samples taken during the first year, from the second year of monitoring, or from the first five years of monitoring. Other commenters suggested that EPA allow the monitoring requirements to be left to the discretion of the States and that civil fines be waived for inadvertent noncompliance of group members. In response to these comments, EPA wants to clarify that it is not allowing exemptions from monitoring requirements based on whether a facility participated in the group

application process. EPA based the monitoring requirements in the permit on data submitted during the application process and does not intend to allow those facilities to conduct less frequent monitoring because of their participation in the group application process. Rather, facilities that participated in the group application process are actually in a position to benefit from the permit in the sense that this permit is tailored directly to their industrial sector and is based specifically on information provided in their group application. Facilities that did not participate in group applications will be required to comply with the permit conditions regardless of their site-specific circumstances.

Many commenters also expressed concern that the multi-sector permit would be available to non-group members. Although EPA regrets that the group application process did not produce the results that some participants hoped for, it would be a misuse of tax dollars to limit coverage under the multi-sector permit to group members and then develop another permit for non-group members. However, EPA would like to point out that facilities that participated in the group application process are in compliance with the permit application requirements under the storm water program, whereas facilities that did not participate in a group application and that are not covered under another permit are not in compliance and remain subject to enforcement action until covered by a permit.

Several other commenters suggested providing compensation for group members by waiving permit fees equal to the amount spent on data collection fees. In response, EPA is unable to devise an equitable manner for credit to

be provided in this way.

Finally, some commenters advocated that group members be either exempted from the NOI submittal requirement or allowed to at least submit one NOI for the group. Other commenters suggested that the dates for submitting NOIs be extended for group members and that previously submitted NOIs be accepted. In today's general permit requirements, EPA requires each facility seeking coverage under the permit to submit their own NOI form. This requirement allows EPA to successfully track every facility covered by the permit. It will also increase the likelihood that facility operators will read the permit and makes enforcement actions easier to implement. EPA believes this is a justifiable requirement because the NOI form is a simple one-page form that requires little effort to complete.