Environmental Protection Agency

[FRL-9115–1]

Notice of Availability of Class Deviation; Disputes Resolution Procedures Related to Clean Water and Drinking Water State Revolving Fund (CWSRF and DWSRF, Respectively) Reallocation Under the American Reinvestment and Recovery Act of 2009 (ARRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document provides notice of availability of a Class Deviation from EPA's assistance agreement dispute procedures and also sets forth the procedures that will apply to the resolution of disputes that may arise in connection with the CWSRF and DWSRF reallocation decisions made by EPA under the ARRA. Additionally, EPA has determined, however, that these procedures are not practicable to use for CWSRF and DWSRF reallocation disputes and that it is appropriate to replace those procedures with the procedures contained in this document. The Class Deviation and this action only affect the dispute resolution procedures for CWSRF and DWSRF reallocation decisions under the ARRA.

DATES: These procedures are effective as of February 17, 2010.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, (202) 564–0614.

SUPPLEMENTARY INFORMATION: Under EPA's appropriation provisions contained in Division A, Title VII of the ARRA, the Administrator is required to "reallocate funds appropriated * * * for the Clean and Drinking Water State Revolving Funds (Revolving Funds) where projects are not under contract or construction within 12 months of the date of enactment of this Act * * *." On December 24, 2009, EPA's Office of Water (OW) issued a memorandum to implement this requirement. See "Reallocation Process for Funds Deobligated after February 17, 2010 under the American Reinvestment and Recovery Act of 2009." That memorandum, among other things, requires states to certify by March 1, 2010, that they have complied with the statutory requirement that projects were under contract or construction, gives EPA the opportunity to assess the compliance, and describes the reallocation process. It also notes that EPA's Office of Grants and Debarment will provide guidance regarding the resolution of any reallocation disputes. In addition to the reallocation requirement, Section 1603 of the general provisions of the ARRA requires, with limited exceptions not applicable to the CWSRF or DWSRF programs, that all funds appropriated under the ARRA are available for obligation until September 30, 2010. To ensure that SRF funds are fully obligated for construction projects by September 30th, the OW guidance memorandum makes clear that any funds reallocated to a State that are not under assistance agreements and under contract by June 17, 2010 will be subject to further reallocation.

As described in 40 CFR 31.70, the dispute resolution process can involve up to four levels of review and take several months to complete. Specifically, a State disputing a decision can attempt to resolve the issue at the lowest level possible, request a final Agency decision, and request a reconsideration of the final decision. A possible fourth step is an EPA headquarters discretionary review of a final Regional decision. This timeframe is too long to permit the Agency to meet ARRA requirements for timely reallocation.

EPA's Office of Grants and Debarment has therefore issued a Class Deviation to streamline the 40 CFR 31.70 procedures. The Class Deviation will allow the Agency to comply with ARRA reallocation requirements and at the same time provide States with a meaningful disputes resolution process in the event a State disagrees with a reallocation decision.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have economic effects, as specified in Executive Order 13327 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

List of Subjects in 40 CFR Part 31

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

ARRA CWSRF and DWSRF Assistance Agreement Reallocation Decision Dispute Resolution Procedures: EPA establishes ARRA CWSRF and DWSRF Assistance Agreement Reallocation dispute resolution procedures as follows:

1. The authority citation for the ARRA CWSRF and DWSRF assistance agreement reallocation disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3).

2. The disputes resolution procedures that will apply to ARRA CWSRF and DWSRF assistance agreement reallocation disputes are as follows: Dispute Resolution Procedures:

1. After receiving certifications provided by states, but not later than March 2, 2010, EPA will assess the certifications. As soon as possible thereafter, EPA will notify states that have any amount of ARRA funds identified as not under contract by February 17, 2010, that those funds will be deobligated and reallocated to eligible states.

2. If a state disagrees with the decision to deoblige funds or the amount of funds that the Agency determined is appropriate for deobligation of the state’s CWSRF or DWSRF assistance agreement, it must
file a written request for reconsideration within thirty (30) calendar days of receiving the notification of intent to deobligate the funds. Any detail or arguments regarding why the state disagrees with the deobligation decision shall be provided at that time.

3. The written request for reconsideration shall be sent via E-Mail (PDF) or Facsimile to Jordan Dorfman. E-Mail address is Dorfman.Jordan@epa.gov; Fax is 202–501–2346.

4. The Assistant Administrator for the Office of Water shall review all reconsideration submissions, and shall issue a decision in writing within three (3) calendar days of receiving the reconsideration request. This decision shall be the final decision of the Agency.

5. The Agency will follow the same type of procedure for any subsequent reallocations.

Craig E. Hooks,
Assistant Administrator, Office of Administration and Resources Management.

EPA requests the public to provide comments on the following ten TMDLs for waters located within Louisiana:

<table>
<thead>
<tr>
<th>Subsegment</th>
<th>Waterbody name</th>
<th>Pollutant</th>
</tr>
</thead>
<tbody>
<tr>
<td>010301</td>
<td>West Atchafalaya Basin Floodway</td>
<td>Dissolved Oxygen.</td>
</tr>
<tr>
<td>070203</td>
<td>Devil’s Swamp Lake and Bayou Baton Rouge</td>
<td>Fecal Coliform.</td>
</tr>
<tr>
<td>070401</td>
<td>Mississippi River Passes (estuarine)</td>
<td>Fecal Coliform.</td>
</tr>
<tr>
<td>070403</td>
<td>Octave Pass and Main Pass (estuarine)</td>
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</tr>
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<td>070501</td>
<td>Bayou Sara</td>
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</tr>
<tr>
<td>070502</td>
<td>Thompson Creek</td>
<td>Fecal Coliform.</td>
</tr>
<tr>
<td>070503</td>
<td>Capitol Lake</td>
<td>Fecal Coliform.</td>
</tr>
<tr>
<td>070505</td>
<td>Tunica Bayou</td>
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</tr>
<tr>
<td>070601</td>
<td>Mississippi River Basin Coastal Bays and Gulf Waters to the State three-mile limit.</td>
<td>Fecal Coliform.</td>
</tr>
</tbody>
</table>


Miguel I. Flores,
Director, Water Quality Protection Division, EPA Region 6.

EPA Seeks Comment on Ten TMDLs

By this notice EPA is seeking comment on the following ten TMDLs that waive the notice on or before March 29, 2010.

ADDRESSES: Comments on the ten TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: smith.diane@epa.gov.