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Part II

Environmental Protection Agency

40 CFR Parts 122,123,127, et al.
NPDES Electronic Reporting Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 127, 403, 501, and 503

[EPA–HQ–OECA–2009–0274; FRL 9818–9]

RIN 2020–AA47

NPDES Electronic Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a regulation that would require electronic reporting for current paper-based NPDES reports. This action will save time and resources for permittees, states, tribes, territories, and EPA while improving compliance and providing better protection of the Nation's waters. The proposed Clean Water Act regulation would require permittees and regulators to use existing, available information technology to electronically report information and data related to the NPDES permit program in lieu of filing written reports. The proposal will also allow better allocation and use of limited program resources and enhance transparency and public accountability by providing regulatory agencies and the public with more timely, complete, accurate, and nationally-consistent sets of data about the NPDES program and potential sources of water pollution. The benefits of this proposed rulemaking should allow NPDES-authorized programs in states, tribes, and territories to shift precious resources from data management activities to those more targeted to solving water quality and noncompliance issues. This in turn may contribute to increased compliance, improved water quality, and a level playing field for the regulated community.

Given the large scope of this proposal, EPA commits to offer an additional opportunity for transparency and engagement by publishing a supplemental notice should we receive comments on the proposed rule that require significant changes. States, tribes, territories, permittees, and other stakeholders can review and comment on the supplemental notice. EPA plans to publish the supplemental notice within 180 days after the public comment period for this proposed rule has closed.

DATES: Comments on this proposed action must be received on or before October 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2009–0274 by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: docket.oeca@epa.gov,* Attention Docket ID No. EPA–HQ–OECA–2009–0274.
- *Mail:* Send the original and three copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center, Enforcement and Compliance Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OECA–2009–0274. In addition, if applicable, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Deliver:* Deliver your comments to: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC, 20004, Attention Docket ID No. EPA–HQ–OECA–2009–0274. Such deliveries are only accepted during the EPA Docket Center's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2009–0274. EPA's policy is that all comments received by the deadline will be included in the public docket without charge, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it within the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and, if applicable, with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, please visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard-copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard-copy at the Enforcement and Compliance Docket in the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC, 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket for the Office of Enforcement and Compliance Assurance (OECA) is (202) 566–1752. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and are subject to search. Visitors will be provided an EPA visitor's badge that must be visible at all times in the building and returned upon departure. The ''User Guide to the Docket for the NPDES Electronic Reporting Rule [DCN 0010]'' is document that provides easy to follow instructions on how to access documents through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, please contact John Dombrowski, Director, Enforcement Targeting and Data Division, Office of Compliance (mail code 2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–0742; email address: *dombrowski.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

How is this document organized?

The outline of this notice follows the following format:

I. General Information
II. Background

III. Purpose and Needs
IV. Discussion of Key Features of This Rule
V. Matters for Which Comments Are Sought
VI. Outreach
VII. Non-Monetary Benefits and Economic Analysis
VIII. Statutory and Executive Order Reviews

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

Pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 et seq., the U.S. Environmental Protection Agency (EPA) is proposing the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. The proposed rule would substitute electronic reporting for paper-based reports, and over the long term save time and resources for permittees, states, tribes, territories, and EPA while improving compliance and better protecting the Nation's waters. The proposed rule would require permittees and regulators to use existing, available information technology to electronically report information and data related to the NPDES permit program in lieu of filing written reports.

The purpose and need for the proposed rule was re-confirmed in the development of the Clean Water Act Action Plan. Announced by EPA Administrator Lisa Jackson in October 2009, the Plan was a collaborative effort by EPA and state environmental agencies to explore opportunities to improve water quality by emphasizing and adopting new approaches that will improve how the NPDES permitting and enforcement program is administered. The goals of the Plan include improving transparency of the information on compliance and enforcement activities in each state, connecting this information to local water quality, and providing the public with real-time, easy access to this information. The proposed NPDES Electronic Reporting Rule would make achievement of these goals possible through the use of available technology to electronically report facility locational and operational data, and discharge, monitoring, compliance, and enforcement data.

Historically, EPA and NPDES-authorized states have focused on the largest or ''major'' facilities as a way of prioritizing resources for permitting, enforcement and data reporting to EPA. Over time, there has been a growing recognition that other sources also impact water quality. Storm water discharges, concentrated animal feeding operations, mines, and raw sanitary sewage overflows are all significant contributors to water quality impairment but are not currently considered ''major'' facilities under the NPDES program. The proposed rule improves data quality for major and nonmajor facilities, thereby providing the states, tribes, territories, and EPA with more complete and comparable data on a substantial majority of NPDES permittees, and allowing targeted action to address the biggest water quality problems.

EPA is proposing this rule under CWA sections 101(f), 304(i), 308, 402, and 501. EPA notes that the Congressional Declaration of goals and policy of the CWA specifies, in CWA section 101(f), ''It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.''

Implementation of information technology that is now a common part daily life is an important step toward reaching these aspirations for implementation of the CWA. EPA is proposing this rule under the authority of CWA section 304(i) that authorizes EPA to establish minimum procedural and other elements of State programs under section 402, including reporting requirements and procedures to make information available to the public. In addition, EPA is proposing this rule under section 308 of the CWA. Section 308 of the CWA authorizes EPA to require information to carry out the objectives of the Act, including sections 301, 305, 306, 307, 311, 402, 404, 405, and 504. Section 402 of the CWA establishes the NPDES permit program for the control of the discharge of pollutants into the nation's waters. EPA is proposing this rule under CWA sections 402(b) and (c), which require each authorized state, tribe, or territory to ensure that permits meet certain substantive requirements, and provide EPA information from point sources, industrial users, and authorized programs in order to ensure proper oversight. Finally, EPA is proposing to issue this rule under the authority of section 501 of the Act, authorizing EPA to prescribe such regulations as are necessary to carry out provisions of the Act.

2. Summary of the Major Provisions

This proposed rule would require that reports submitted in writing now (i.e., Discharge Monitoring Reports (DMRs), Notices of Intent to discharge in compliance with a general permit, other general permit waivers, certifications, and notices of termination of coverage, and program reports) be submitted electronically by NPDES-permitted facilities to EPA through the National Environmental Information Exchange Network or to the authorized state, tribe, or territory NPDES program. Importantly, while the proposed rule changes the method by which information on NPDES notices of intent for coverage under general permits, facility discharges, monitoring of compliance, facility reports, and enforcement responses is provided (i.e., electronic rather than paper-based), it does not increase the amount of information required from NPDES-permitted facilities under existing regulations.

States, tribes, and territories that are authorized to implement the NPDES program are the sources of certain key information regarding the regulated facilities. For example, states have facility information from NPDES permit applications, permit information including outfalls, limits, and permit conditions, compliance determination information including that from inspections, and enforcement response information. Under this regulation, NPDES permitting authorities are required to share this information electronically with EPA.

To promote transparency and accountability, EPA intends to make this more complete set of data available to the public, providing communities and citizens with easily accessible information on facility and government performance. Such data provides a powerful incentive to improve performance by giving government, permittees, and the public ready access to compliance information. This can serve to elevate the importance of compliance information and environmental performance within regulated entities, providing opportunity for them to quickly address any noncompliance. It opens the opportunity for two-way communication between authorized NPDES programs or EPA and regulated facilities to immediately address data quality issues and to provide compliance assistance or take other action when potential problems are identified. Complete and accurate data also will allow EPA to compare performance across authorized programs.

Key provisions of this proposed rule are identified in the implementation schedule in Table IV.3 of the preamble. These include the preliminary indication of the anticipated initial recipient of the NPDES program data,

NPDES information submission from states, tribes, and territories regarding their implementation activities, program and permit changes, and NPDES information submission electronically from regulated facilities for their discharge monitoring reports, notices of intent, general permit waivers, certifications, or notices of termination, and program reports.

Given the large scope of this proposal, EPA commits to offer an additional opportunity for transparency and engagement by publishing a supplemental notice should we receive comments on the proposed rule that require significant changes. EPA plans to publish the supplemental notice within 180 days after the public comment period for this proposed rule has closed.

3. Costs and Benefits

To fully implement this regulation, there will be initial investment costs associated with needed changes to information technology and infrastructure. EPA plans to develop NPDES electronic reporting tools, or states may choose to devote their resources to develop their own such tools while meeting the regulatory requirements of 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127. EPA is committed to working with the states, tribes, and territories to develop their electronic databases and capabilities in a cost-effective manner.

The cost of implementing the proposed rule in the first four years after the effective date is approximately $50.6 million. The cost is estimated to drop to $2.9 million per year after that time period, when all regulated facilities will be converted to electronic reporting. However, two years after rule promulgation, annual savings greatly outweigh annual costs, by approximately $29 million per year.

EPA anticipates that the proposed rule will save money for states, tribes, and territories as well as EPA and NPDES permittees, while resulting in a more complete, accurate, and nationally-consistent set of data about the NPDES program. By the fifth year of implementation, the anticipated savings for the states is $28.9 million annually; for the permittees, $1.2 million annually; and for EPA, $0.7 million annually.

Costs				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$4,440,000	$0	$0	$0
1	$920,000	$200,000	$19,820,000	$17,570,000
2	$880,000	$340,000	$2,720,000	$250,000
3	$850,000	$300,000	$1,820,000	$470,000
4	$820,000	$290,000	$1,760,000	$0
5	$800,000	$280,000	$1,710,000	$0
6	$780,000	$270,000	$1,660,000	$0
7	$750,000	$270,000	$1,610,000	$0
8	$730,000	$260,000	$1,570,000	$0
9	$710,000	$250,000	$1,520,000	$0
10	$690,000	$240,000	$1,480,000	$0

Cost Savings				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$0	$0	$0	$0
1	$0	($700,000)	($12,600,000)	($300,000)
2	$0	($800,000)	($30,800,000)	($1,300,000)
3	$0	($800,000)	($30,600,000)	($1,200,000)
4	$0	($800,000)	($29,700,000)	($1,200,000)
5	$0	($700,000)	($28,900,000)	($1,200,000)
6	$0	($700,000)	($28,000,000)	($1,100,000)
7	$0	($700,000)	($27,200,000)	($1,100,000)
8	$0	($700,000)	($26,400,000)	($1,100,000)
9	$0	($700,000)	($25,600,000)	($1,000,000)
10	$0	($600,000)	($24,900,000)	($1,000,000)

The electronic submittal of data may result in improved water quality and will result in significant cost savings for the states, as well as savings for the permittees, tribes and EPA, when the rule is fully implemented. The proposal will also reduce the reporting burden currently borne by the states, improve overall facility compliance, allow better allocation and use of limited program resources, and enhance transparency and public accountability by providing the public with timely information on potential sources of water pollution.

Other anticipated benefits for the proposed rule include efficiencies and reduced costs of processing paper forms, improved quality and accuracy of the data available to regulatory agencies and the public, more timely and expanded use of the data to identify, target, and address problems, quicker availability of the data for use, and increased accessibility and transparency of the

data to the public. These benefits should allow NPDES-authorized programs in states, tribes, and territories to shift precious resources from data management activities to those more targeted to solving water quality and noncompliance issues. This in turn may contribute to increased compliance, improved water quality, and a level playing field for the regulated community.

The proposed rule will also lighten the reporting burden currently placed on the states. Upon successful implementation, the proposed rule would provide states with regulatory relief from reporting associated with the Quarterly Non-Compliance Report (QNCR), the Annual Non-Compliance Report (ANCR), the Semi-Annual Statistical Summary Report, and the biosolids information required to be submitted to EPA annually by states.

B. Does this action apply to me?

Entities potentially affected by this action would include all NPDES-permitted facilities, whether covered by an individually-issued permit or by a general permit, industrial users located in cities without approved local pretreatment programs, and governmental entities that have received NPDES program authorization or are implementing portions of the NPDES program in a cooperative agreement with EPA. These entities would include:

Category	Examples of regulated entities
NPDES-permitted facilities	Publicly-owned treatment works (POTW) facilities, treatment works treating domestic sewage (TWTDS), municipalities, counties, stormwater management districts, state-operated facilities, Federally-operated facilities, industrial facilities, construction sites, and concentrated animal feeding operations (CAFOs).
Facilities seeking coverage under NPDES general permits	Stormwater management districts, construction sites, CAFOs, publicly-owned treatment works (POTW), treatment works treating domestic sewage (TWTDS), municipalities, counties, stormwater management districts, and state-operated facilities.
Industrial users located in cities without approved local pretreatment programs.	Industrial facilities discharging to POTWs and for which the designated pretreatment Control Authority is EPA or the authorized state, tribe, or territory rather than an approved local pretreatment program.
State and territorial government	States and territories that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Tribal government	Tribes that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Federal government	Federal facilities with a NPDES permit and EPA Regional Offices acting for those states, tribes, and territories that do not have NPDES program authorization or that do not have program authorization for a particular NPDES subprogram (*e.g.,* biosolids or pretreatment).

This table is not intended to be an exhaustive list, but rather provides readers with some examples of the types of entities likely to be regulated by this action. Other types of entities not listed in this table may also be regulated.

C. What should I consider as I prepare comments for EPA?

You may find the following suggestions helpful when preparing your comments to EPA on this preamble and proposed rule:

- To ensure proper receipt by EPA, identify the appropriate docket identification number (found in the **ADDRESSES** section of this **Federal Register** notice) in the subject line on the first page of your comments or response.
- To help ensure that your submission is routed correctly, on the first page of your submission, provide the name of the proposed rule; date of the **Federal Register** notice; and the **Federal Register** citation (*e.g.,* ___ [volume number] FR ___ [page number]) related to your comments or response.
- Clearly identify those sections of the preamble or the proposed rule on which you are commenting.
- Explain why you agree or disagree, and explain your views as clearly as possible.
- Describe clearly any assumptions that you used as a basis for your comments.
- Provide any technical information and/or data that you used to support your views.
- If you provide any estimate of potential economic burdens or costs, please carefully consider the information provided in the preamble to this proposed rule, particularly in Sections VII (Non-Monetary Benefits and Economic Analysis), VIII.A (Regulatory Planning and Review), VIII.C (Regulatory Flexibility Act), and IV.D (Data Considerations), and provide detailed explanations of how you arrived at your estimate.
- Provide specific examples to illustrate your comments or concerns.
- Clearly identify preferred options and, if applicable, offer feasible alternatives that will effectively meet the same goals.

Submit your comments as directed in the Addresses section of this **Federal Register** notice before the comment period deadline identified in the **DATES** section of this notice.

II. Background

A. Definitions

Approval Authority: The Approval Authority is responsible for authorizing and overseeing approved local pretreatment programs and is defined in 40 CFR 403.3(c) as the: ''Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.''

Authorized state, tribe, or territory: Authorized states, tribes, and territories (''authorized states'' or ''authorized programs'') are governmental entities that have applied for and received authorization from EPA to issue permits, implement, and enforce the NPDES program. EPA authorizes state,

tribal, or territorial NPDES programs to administer NPDES programs under state, tribal, or territorial law after EPA determines that the state, tribal, or territorial program meets the requirements of CWA section 402(b) and conforms with NPDES program regulations at 40 CFR part 123 issued by EPA under CWA section 304(i)(2). Some states are authorized to implement the basic NPDES program but have not received authorization to implement other NPDES subprograms (e.g., pretreatment, biosolids programs). See the following EPA Web page for a listing of authorized NPDES programs: *http://cfpub.epa.gov/npdes/statestribes/astatus.cfm.*

Batch data entry: The electronic transfer of large amounts of data from one location (such as a state database) to another data system in a format compatible with the recipient data system. In more technical terminology as it applies to this proposed rule, batch data entry in the NPDES part of the Integrated Compliance System (ICIS–NPDES) is the transmission of eXtensible Markup Language (XML) data files through a Central Data Exchange (CDX). In the Permit Compliance System (PCS), defined below, batch data entry occurred via upload of fixed format data files to the mainframe.

Biosolids: The organic materials (sewage sludge) resulting as a byproduct from the treatment of domestic and industrial sewage in a municipal wastewater treatment facility. Sewage sludge is defined in more detail at 40 CFR 503.9(w). As defined in the NPDES program, the relevant biosolids (sewage sludge) regulations are contained in 40 CFR part 501 (State Sludge Management Program Regulations) and in 40 CFR part 503 (Standards for the Use or Disposal of Sewage Sludge). The key NPDES-permitted facilities covered under the biosolids requirements are generally referred to as Treatment Works Treating Domestic Sewage (TWTDS).

Category I noncompliance: Under 40 CFR 123.45 (a)(2)(ii), the following instances of noncompliance by major dischargers are considered Category I noncompliance: (1) Violations of conditions in enforcement orders (except compliance schedules and reports); (2) violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or a permit; (3) violations of permit effluent limits that exceed those specified in Appendix A to 40 CFR 123.45 ''Criteria for Noncompliance Reporting in the NPDES Program;'' and (4) failure to provide a compliance schedule report for final compliance or a monitoring report.

Combined sewer overflow (CSO): This is a discharge from a combined sewer system at a point prior to the POTW [as defined in 40 CFR 403.3(p)]. CSOs are point sources subject to NPDES permit requirements including both technology-based and water-quality-based requirements of the CWA. CSOs are sewage overflows from sewer systems otherwise conveying domestic waste, industrial waste, debris, and stormwater to the municipal wastewater treatment plant for treatment. During periods of heavy rainfall or snowmelt, these combined sewer systems (CSSs), numbering fewer than 800 in the nation, can overflow at various points in the sewage system, discharging a combination of untreated sewage, industrial waste, and stormwater into nearby water bodies.

Control Authority: The Control Authority is responsible for overseeing compliance by Industrial Users of municipal sewer systems and is defined in 40 CFR 403.3(f) as the POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of § 403.11; or the Approval Authority if the Submission has not been approved.

Core data: The subgroup of critical, and therefore required, NPDES information associated with facility, permit, compliance monitoring, and enforcement data types common to all NPDES-regulated facilities. Other ''non-core'' information specific to NPDES subprograms (such as concentrated animal feeding operations, stormwater, biosolids, pretreatment, sewer overflows, etc.) would also be required to be submitted electronically under the proposed rule.

Data element: A specific field or column where data is entered into the national NPDES data systems, ICIS–NPDES, or PCS. For example, the NPDES permit number is a data element.

Direct data entry: Entry of data by use of a keyboard into a recipient data system. For example, when a state or EPA regional office uses PCS or ICIS–NPDES as its primary NPDES program management system, employees enter data directly into that data system.

Direct user state: An authorized state which uses or will be using ICIS–NPDES to manage the NPDES program rather than using a state-designed data system. Direct users enter data into ICIS–NPDES using their computer keyboard and a web browser. All states that had formerly been direct users of PCS have had their data migrated to ICIS–NPDES.

Director: This term generally refers to the NPDES permitting authority. As defined in 40 CFR 122.2, ''the Regional Administrator or the State Director, as the context requires, or an authorized representative'' (additional circumstances are also described in that definition). As defined in 40 CFR 403.3(g), ''the term Director means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act and an approved State pretreatment program.''

Discharge Monitoring Report (DMR): As defined in 40 CFR 122.2, a Discharge Monitoring Report ''means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.'' The term ''eDMR'' refers to a DMR that is electronically submitted by a NPDES-regulated facility.

Effluent limitation: Defined in 40 CFR 122.2 and CWA section 502(11) as ''any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean.''

ICIS–NPDES: The Integrated Compliance Information System for the National Pollutant Discharge Elimination System program (ICIS–NPDES) is one of EPA's two existing NPDES national data systems, designed as an effort to modernize and eventually replace its predecessor system, the Permit Compliance System (PCS). The ICIS–NPDES system is currently operational and, as of December 2012, contains NPDES information for all 50 states, 10 EPA regions, 19 territories, and 2 tribes. All States have had their NPDES data migrated from PCS into ICIS–NPDES. EPA plans to decommission PCS by the third quarter of the federal fiscal year 2013 (April–June 2013).

Major facility: According to the definition at 40 CFR 122.2, a major facility means ''any NPDES 'facility or activity' classified as such by the Regional Administrator, or, in the case of 'approved State programs,' the Regional Administrator in conjunction with the State Director.'' For a municipal facility, a major facility has a design flow of 1 million gallons per day or more, a service population of 10,000 or greater, or a significant impact on water quality; industrial facilities are considered major facilities based on a

rating system that allocates points against various factors including flow, pollutant loadings, and water quality factors.

NetDMR: A nationally-available electronic reporting tool, initially designed by states and later adapted for national use by EPA, which can be used by NPDES-regulated facilities to submit discharge monitoring reports (DMRs) electronically to EPA through a secure Internet application over the National Environmental Information Exchange Network (NEIEN). EPA can then share this information with authorized states, tribes, and territories.

Non-direct user state: An authorized state that uses a software system other than ICIS–NPDES to manage the NPDES program. These states also submit data to ICIS–NPDES to satisfy national reporting responsibilities. These users are expected to rely heavily on electronic transfer (batch) using EPA's Central Data Exchange (CDX) and the NEIEN to submit information to EPA from an existing state data system.

Nonmajor facility: A facility in the universe of facilities regulated under the NPDES program that does not fall under the definition of ''major facilities.'' Nonmajor facilities may also be referred to as minor facilities.

NPDES: The National Pollutant Discharge Elimination System program. According to the definition at 40 CFR 122.2 and CWA section 402, this is ''the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements . . . .'' Under this system, wastewater dischargers must apply to the permitting authority (*i.e.,* EPA or authorized states, tribes, or territories) for a permit to discharge pollutants to U.S. waters; these permits contain specific conditions, reporting requirements, and possibly monitoring requirements and applicable numeric or non-numeric limits for particular pollutants.

Permit Compliance System (PCS): PCS was EPA's NPDES national data system from 1982 to December 2012. NPDES program data for all 50 states, 10 EPA Regions, 19 territories, and 2 tribes is now available in EPA's newer NPDES national data system, ICIS–NPDES. EPA plans to decommission PCS by the third quarter of the federal fiscal year 2013 (April–June 2013).

Permit component: A group of ICIS–NPDES data elements which are specific to a permit for a particular type of facility or NPDES subprogram [*e.g.,* CAFOs, pretreatment, CSOs, Sanitary Sewer Overflows (SSOs), biosolids, or municipal separate storm sewer systems (MS4s)]. For example, for a permitted facility that is a concentrated animal feeding operation (CAFO), the permit component would be a CAFO and would include several permit data elements specific to CAFOs, such as the type and number of animals at the facility.

Point source: According to the definition at 40 CFR 122.2 and CWA section 502(14), any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Pretreatment: The National Pretreatment Program requires industrial and commercial dischargers to treat or otherwise control the pollutant levels in their wastewater prior to their discharge, usually to a POTW or discharge to treatment works treating domestic sewage (TWTDS). Pretreatment, as defined by 40 CFR 403.3(q), ''means the reduction of the amount of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW.'' *Sewage Sludge:* Under CWA section 405 and EPA regulations at 40 CFR 503.9(w), sewage sludge means any solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III Marine Sanitation device pumpings (33 CFR part 59), and material derived from sewage sludge. Sewage sludge does not include ash generated during the incineration of sewage sludge or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Single event violation: A violation of an NPDES permit or regulatory requirement that is observed or determined by the regulatory authority, and is distinct from violations that are identified by the data system through comparison of information. Examples of single event violations include an unauthorized bypass or discharge, a violation detected during an inspection, a narrative requirement of the permit not met but reported on a DMR, or a pretreatment implementation violation. Note: Effluent limit violations identified from DMR submission or compliance schedule violations could be examples of system-identified violations, as opposed to single event violations.

System-required data: Key data that must be entered into PCS or ICIS–NPDES in order to submit additional information, create a record, or proceed to the next data entry screen.

Treatment works treating domestic sewage (TWTDS): TWTDSs include POTWs that discharge to surface waters and ''sludge-only'' facilities. ''Sludge-only'' facilities include POTWs that do not discharge their effluent stream to surface waters, but which do in many cases receive discharges from industrial users and other sewage sludge preparers, such as composting operations, which do not produce an effluent stream.

Wet weather point sources: Point sources that discharge as a result of precipitation events, such as rainfall or snowmelt. Wet weather point sources include stormwater discharges from industrial and municipal sites, discharges from CAFOs, bypasses, and overflows from CSSs and sanitary sewer systems (SSSs).

B. Acronyms

ACWA Association of Clean Water Administrators [formerly known as Association of Water Pollution Control Administrators (ASIWPCA)]
ANCR Annual Noncompliance Report
BMP Best Management Practice
CAFO Concentrated Animal Feeding Operation
CDX Central Data Exchange
CFR Code of Federal Regulations
CGP Construction General Permit
CMS Compliance Monitoring Strategy (October 17, 2007)
CROMERR Cross-Media Electronic Reporting Regulation
CSO Combined Sewer Overflow
CSS Combined Sewer System
CWA Clean Water Act
DMR Discharge Monitoring Report
ECHO Enforcement and Compliance History Online
ECOS Environmental Council of the States
eDMR Electronic Discharge Monitoring Report
EMS Enforcement Management System
ENLC Exchange Network Leadership Council
eNOI Electronic Notice of Intent
EPA U.S. Environmental Protection Agency
FWPCA Federal Water Pollution Control Act, or Clean Water Act
FY Fiscal Year (Federal)
ICIS Integrated Compliance Information System
ICR Information Collection Request

IU Industrial User
LEW Low Erosivity Waiver
MSGP Multi-Sector General Permit
MS4 Municipal Separate Storm Sewer System
NEC No Exposure Certification
NEIEN National Environmental Information Exchange Network
NetDMR Net-based Discharge Monitoring Report
NNCR NPDES Noncompliance Report
NOI Notice of Intent
NPDES National Pollutant Discharge Elimination System
OECA EPA's Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
PCS Permit Compliance System
PIN Personal Identification Number
POTW Publicly-Owned Treatment Works
PRA Paperwork Reduction Act
QA/QC Quality Assurance, Quality Control
QNCR Quarterly Noncompliance Report
RNC Reportable Noncompliance (according to EPA policy and guidance)
SEV Single Event Violation
SNC Significant Noncompliance (according to EPA policy and guidance)
SSL Secure Socket Layer
SSO Sanitary Sewer Overflow
SSS Sanitary Sewer System
TLS Transport Layer Security
TWTDS Treatment Works Treating Domestic Sewage
VGP Vessel General Permit
WENDB Water Enforcement National Data Base
XML eXtensible Markup Language

C. The Clean Water Act

The 1948 Federal Water Pollution Control Act (FWPCA) and subsequent amendments are now commonly referred to as the Clean Water Act (CWA). The CWA establishes a comprehensive program for protecting and restoring our nation's waters. The CWA established the national pollutant discharge elimination system (NPDES) permit program to authorize and control the discharges of pollutants to waters of the United States (CWA section 402(a)). This proposed electronic reporting rule, which is intended to reduce resource burdens associated with the paper-based system and increase the speed, quality, and scope of information received by EPA, the states, tribes, territories, and the public, echoes the goals of CWA section 101(f).

EPA is proposing this rule under CWA sections 101(f), 304(i), 308, 402, and 501. EPA notes that the Congressional Declaration of goals and policy of the CWA specifies, in CWA section 101(f), ''It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.''

Implementation of information technology that is now a common part daily life is an important step toward reaching these aspirations for implementation of the CWA. EPA is proposing this rule under the authority of CWA section 304(i) that authorizes EPA to establish minimum procedural and other elements of State programs under section 402, including reporting requirements and procedures to make information available to the public. In addition, EPA is proposing this rule under section 308 of the CWA. Section 308 of the CWA authorizes EPA to require information to carry out the objectives of the Act, including sections 301, 305, 306, 307, 311, 402, 404, 405, and 504. Section 402 of the CWA establishes the NPDES permit program for the control of the discharge of pollutants into the nation's waters. EPA is proposing this rule under CWA sections 402(b) and (c), which require each authorized state, tribe, or territory to ensure that permits meet certain substantive requirements, and provide EPA information from point sources, industrial users, and the authorized program in order to ensure proper oversight. Finally, EPA is proposing to issue this rule under the authority of section 501 of the Act, authorizing EPA to prescribe such regulations as are necessary to carry out provisions of the Act.

D. National Pollutant Discharge Elimination System

As authorized by the Clean Water Act, the NPDES permit program protects the nation's waters by controlling the discharge of pollutants into waters of the United States. Such discharges are illegal unless authorized by an NPDES permit. NPDES permits may be issued by EPA or by a state, tribe, or territory authorized by EPA to implement the NPDES program. As of October 1, 2011, EPA has authorized 46 states and the Virgin Islands to implement the basic NPDES program as well as the general permits program; as of that same date, no tribe was currently authorized to implement the NPDES program. There are several subprograms of the NPDES program that states, tribes, and territories may also receive authorization from EPA to administer, including the pretreatment and the biosolids programs. As of October 1, 2011, 36 states are authorized to implement the pretreatment program and eight states are authorized to implement the biosolids program as part of the NPDES program.

NPDES permit authorization to discharge may be provided under an individual NPDES permit, which is developed after a process initiated by the facility submission of a permit application (40 CFR 122.21), or under a general NPDES permit (*e.g.,* most oil and gas extraction facilities, most seafood processors). See 40 CFR 122.28(a)(2). Authorization to discharge under a general NPDES permit typically occurs following the submission of a ''notice of intent'' (NOI) by the facility seeking authorization to discharge under the permit (40 CFR 122.28(b)(2)) and approval of that NOI by the permitting authority. Submission of a notice of intent is not required for specified types of discharges under certain circumstances (40 CFR 122.28(b)(2)(v)). Approximately 95 percent of NPDES-permitted sources are regulated under general permits.

EPA has developed criteria to determine which sources should be considered ''major'' facilities. The distinction was made initially to assist EPA, states, tribes, and territories in setting priorities for permitting, compliance, and enforcement activities. Historically, EPA has placed greater priority on major facilities and has required NPDES-authorized states, tribes, and territories to provide more information about these dischargers. The existing regulations establish annual, semi-annual, and quarterly reporting requirements (some of which focused on major facilities) that organize violation information, thus facilitating EPA's assessment of the effectiveness of authorized programs and EPA regional program activities (*e.g.,* permitting, compliance monitoring, and enforcement). This information has guided EPA in the management and oversight of program activities.[1] For more background information regarding the NPDES program, *see* DCN 0005.

E. Evolution of the NPDES Program

In order to support development of appropriate permit limits and conditions, issuance of effective permits, compliance monitoring, and appropriate enforcement actions, EPA has developed policies, guidance, requirements, and expectations to track,

[1] See 50 FR 34649.

measure, evaluate, and report on these efforts on a nationwide basis. Over the past 25 years, these efforts, focused primarily on major facilities, to establish significant pollutant controls have resulted in important pollutant discharge reductions from traditional major sources.

Although large municipal and industrial point sources continue to be significant sources of pollution, NPDES permits of smaller sources show that these point sources also contribute significant amounts of pollutants to our nation's waters. About 29,000 nonmajor facilities have individual permits which have requirements similar to the permits for major facilities. As the understanding of water quality issues has grown, the universe of regulated nonmajor sources has also expanded. In order to efficiently manage the growing universe of regulated facilities, smaller sources are often regulated under general permits rather than individual permits. In many cases, nonmajor facilities use pollutant control measures based on best management practices in operational activities rather than on implementation of pollutant control technologies, which are measured with numeric effluent limits on pollutant discharges. Several hundred thousand nonmajor facilities are covered by NPDES general permits; therefore, the number of nonmajor dischargers covered by general permits is very large compared to the number of major or nonmajor dischargers covered by individual permits. The universe of nonmajor dischargers also includes some large volume dischargers (*e.g.,* MS4s) that had not previously been regulated with the same types of individual permits used to regulate discharges from major facilities.

The most recent state water quality assessment reports submitted under CWA section 305(b) and compiled by EPA in the National Water Quality Inventory Reports indicate the growing significance and link between nonmajor sources and impairments in water quality of U.S. waters, particularly from precipitation-induced or ''wet-weather'' point sources of pollutants.[2] These sources include discharges of stormwater associated with construction, concentrated animal feeding operations (CAFOs), and overflows from combined sewer systems (CSSs) and sanitary sewer systems (SSSs). Stormwater discharges include a variety of pollutants, such as sediment, oil and grease, chemicals, nutrients, metals, and bacteria. Discharges from CAFOs often include bacteria, nutrients, organic matter, pathogens, and trace metals. Overflows from combined and separate sanitary sewer systems pose a significant threat to public health and the environment due to high concentrations of bacteria from fecal contamination, as well as disease-causing pathogens. The pollution controls for wet-weather sources are often best management practices (BMPs) rather than traditional end-of-pipe controls. These wet-weather sources are high priorities for the enforcement and compliance programs of EPA, states, tribes, and territories and have been for over a decade.

In the past, states, tribes, and territories were not generally required to consistently report information to EPA on most wet-weather sources. Therefore, EPA and the public do not currently have complete information on these additional sources of pollution. Electronic reporting provides an efficient and cost-effective solution to the problem of gaining access to this data, and assists EPA, states, tribes, and territories in focusing their limited resources on significant water pollution sources and serious violations, whether from major or nonmajor facilities.

F. Existing NPDES Program Requirements and Expectations of the States, Territories, Tribes, and NPDES-regulated Facilities

In the context of developing this proposed rule, EPA has reviewed the existing NPDES program reporting requirements and expectations (as identified in existing statutes, regulations, policy documents, and guidance documents) as they apply to states, tribes, and territories, and NPDES-regulated facilities. For a detailed description of these reporting requirements and expectations, *see* DCN 0006 and DCN 0007.

G. National NPDES Data Systems: PCS and ICIS–NPDES

Historically, EPA has used the Permit Compliance System (PCS), a national data system developed in 1982, to support the NPDES program. As of December 2012, all States have had their NPDES data migrated from PCS into ICIS–NPDES, the updated replacement NPDES data system for PCS. EPA plans to decommission PCS by the third quarter of the federal fiscal year 2013 (April–June 2013).

The Integrated Compliance Information System (ICIS) serves as the repository for multi-media facility, compliance, and enforcement data at the federal level. ICIS–NPDES is the incorporation of NPDES program-specific requirements into ICIS. ICIS–NPDES ensures that the NPDES information regarding major facilities remains available, accessible, and in a nationally consistent format for analyses. ICIS–NPDES also provides means to track and access nonmajor NPDES information that was not historically available in PCS (particularly regarding various NPDES subprograms). For more background information regarding PCS and ICIS–NPDES, *see* DCN 0008. As of December 2012, ICIS–NPDES contains NPDES information for all 50 states, 10 EPA regions, 19 territories, and 2 tribes.

III. Purpose and Needs

A. Purpose: what would this proposed rule do?

On October 15, 2009, EPA Administrator Lisa Jackson announced an action plan focused on the revitalization of the Clean Water Act NPDES program, with an emphasis on compliance and enforcement (''U.S. EPA Administrator Jackson Takes New Steps to Improve Water Quality,'' DCN 0009). The goals of this Clean Water Act Action Plan include:

- Raising the bar for Clean Water Act enforcement performance and ensuring a focus on the most significant sources and the most serious violators threatening water quality;
- Improving performance in authorized states and EPA where EPA is the permitting authority;
- Improving and enhancing the information available on the EPA Web site regarding compliance and enforcement activities in each state, tribe, and territory, showing connections to local water quality where possible; and
- Providing public access to information in a user-friendly format that is easily understandable and useable. See DCN 0042.

Historically, EPA has relied on its EPA regional offices and authorized NPDES programs in states, tribes, and territories to submit the information in EPA's national NPDES data systems. As currently drafted, and subject to public comment, this proposed rule would require, under the authority of sections 304(i), 308, and 402 of the CWA, that the unique source of the NPDES information electronically submit the

[2] The link provides access to the 2004 Water Quality Report to Congress, which was the last hard-copy version of this report. Since 2004 these data are made directly via the ATTAINS database (link provided at site below). The ATTAINS database provides state information showing the water quality impairments and the likely causes of impairments. In particular, ''Urban-Related Runoff/Stormwater'' ranks high among the list of impairment causes. See: *http://ofmpub.epa.gov/waters10/attains_nation_cy.control*

information identified in Appendix A to 40 CFR part 127 to EPA or the authorized NPDES program. Accordingly, as the unique source of DMRs, NOIs, and program reports, for example, NPDES-regulated facilities would be required to electronically submit this information to EPA or authorized NPDES programs. As reflected in this proposed rule, EPA is considering requiring authorized states, tribes, and territories to electronically submit information regarding NPDES implementation such as permit issuance, inspections, violation determinations, and enforcement through the National Environmental Information Exchange Network. EPA, states, tribes, and territories will use electronic reporting and 21st century information technology to increase the speed, accuracy, quality, and scope of the information that EPA, states, tribes, and territories, regulated facilities, and the public receive on permits, water pollution, and regulatory agency actions implementing the NPDES permitting, compliance, and enforcement program.

This proposed rule identifies essential NPDES facility-specific information that EPA and authorized programs need to receive electronically from NPDES-permitted facilities and information that NPDES-authorized programs need to submit to EPA. This information would be submitted to EPA in a nationally-consistent manner [*i.e.,* using national data standards, in a format fully compatible with the NPDES national data system (ICIS–NPDES currently), and using consistent units of measure].

Under this approach to electronic reporting, EPA is proposing to revise the existing federal regulations addressing state, tribe, and territory NPDES program requirements, pretreatment, biosolids management, and other parts of NPDES subprograms (such as concentrated animal feeding operations, stormwater, and sewer overflows) to change the mode by which NPDES information is provided. EPA has identified the following NPDES data types for which electronic submission will be required from the NPDES-regulated facilities:

- Self-monitoring information as reported on Discharge Monitoring Reports (DMRs) for major and nonmajor facilities (including subprograms as appropriate), and similar self-monitoring pretreatment-related information submitted by industrial users located in cities without approved local pretreatment programs. Facilities are already required to report this information via paper reports. It also represents the largest current reporting burden on states as they are required to report this information to EPA for major facilities;
- General permit reports [Notice of Intent to be covered (NOI); Notice of Termination (NOT); No Exposure Certifications (NECs); Low Erosivity Waivers (LEWs)], which are required for initial permit coverage, permit coverage termination, approval for permit coverage, or permit exclusion. These reports would be submitted electronically from facilities in relation to coverage under a general NPDES permit (rather than an individually-issued NPDES permit);
- Sewer overflow event and bypass event reports for POTWs or other sewerage systems with CSOs, SSOs, or bypass events, as required by the NPDES permit, and incidents of noncompliance as required by 40 CFR 122.41(l)(6);
- Annual or more frequent pretreatment reports from facilities with approved local pretreatment programs;
- Annual reports from CAFOs;
- Annual reports from NPDES-regulated biosolids generators and handlers; and
- Annual reports (or less frequent reports as required by the permit) from MS4 permittees.

Existing federal regulations already require the submission of each of these reports; however, most of these reports are submitted on paper. As indicated in this proposed rule, EPA is considering requiring NPDES-regulated facilities to submit these reports electronically. The data types associated with these reports are described in greater detail in Section IV.E.

Under the proposed rule, EPA would continue to require certain NPDES information from the authorized states, tribes, and territories, particularly information linked to the NPDES-related implementation, compliance monitoring, and enforcement activities and responsibilities of the states, tribes, and territories. The types of NPDES information that EPA proposes to require the NPDES-authorized states, tribes, and territories to report would include:

- Facility and permit information for individually-issued NPDES permits (much of this information is already reported to EPA and resides in national NPDES databases) and for industrial users located in cities without approved local pretreatment programs;
- Information associated with general permits (generally to be entered by states, tribes, and territories once in the permit cycle, and when the permit is modified, and linked to facility-submitted NOI information);
- Information regarding compliance monitoring and inspection activities;
- Compliance determination information;
- Enforcement action information;
- Other NPDES information required to be submitted electronically from permittees but routed by the electronic reporting tools to the states, tribes, or territories rather than to EPA; and
- Other NPDES information covered by this proposed rule but submitted by the permittee to the state, tribe, or territory in paper form under an approved temporary waiver.

Each of these NPDES data types to be submitted by NPDES-authorized programs is described in Section IV.F. In addition, upon the successful implementation of this rule and the significant use of electronic reporting tools for submission of NPDES information from permittees and regulated entities, EPA would also plan to phase out the state, tribe, and territory responsibilities for several existing authorized program reporting requirements to EPA, including those associated with: (1) The Quarterly Non-Compliance Report (QNCR) regarding major facilities (40 CFR 123.45(a)); (2) the semi-annual statistical summary report regarding major facilities (40 CFR 123.45(b)); (3) the Annual Noncompliance Report (ANCR) regarding nonmajor facilities (40 CFR 123.45(c)); and (4) the annual authorized program biosolids reports (40 CFR 501.21). Proposed changes to these reporting requirements are described in more detail in Section III.B.6 and Sections IV.F.5 of the preamble.

B. Need for the Proposed Rule

In the sections that follow, EPA presents information regarding practical examples of the feasibility of electronic reporting, the benefits of improved NPDES program transparency, the utility of NPDES information gathered, and the advantages of a central data system.

1. Why require electronic reporting?

As information technology has advanced, electronic reporting of information, as well as other electronic transactions, has become relatively commonplace in government, business, and everyday life. Moving many of the NPDES program's reporting requirements to electronic submission will likely provide significant benefits, specifically by:

- Saving permittees, states, tribes, territories, and EPA time and money and freeing up resources to tackle the most serious water pollution problems;

• Improving water quality through a better basis for targeting of resources;

• Improving facility compliance by creating a new awareness of a facility's compliance status for the facility, the regulated community, the public, and across all levels of government;

• Empowering the public by improving transparency and accountability through the provision of more complete and accurate information about sources of water pollution in their communities;

• Improving EPA-state relationships by focusing on performance rather than on data quality or completeness issues;

• Improving the basis for decision-making by states and EPA due to more accurate, timely and complete information about the NPDES program; and

• Enabling EPA, states, tribes, and territories to better develop compliance monitoring approaches to target the most serious problems.

Furthermore, these benefits will accrue sooner if electronic reporting of NPDES information is required, has significant national consistency, and happens in a timely manner. Development and implementation of a consistent set of electronic reporting tools would significantly help make required electronic reporting feasible, practical, and cost-effective.

Electronic reporting implemented in some states has significantly improved its data quality and data availability while reducing its costs. Requiring electronic reporting is an efficient way to achieve complete data on the expanded NPDES regulated universe in an efficient and cost-effective manner. Better nationally-available information will help improve the NPDES program overall.

2. Feasibility of Electronic Reporting

Electronic reporting is not a new concept. Identified below are three practical examples of the use of electronic reporting by or within (1) state government (Ohio's experience with electronic DMRs); (2) federal government (the Internal Revenue Service); and (3) the regulated community (an industry perspective). Additional examples [such as the U.S. Securities and Exchange Commission's Division of Corporate Finance (regarding possible hardship exemptions for electronic reporting), medical records, the Toxic Release Inventory, recent EPA air rules, and NetDMR] are described in Section VII and DCN 0011.

a. Ohio's DMR Case Study

A case study of the efforts of the Ohio Environmental Protection Agency (Ohio EPA) to require electronic reporting of DMRs highlights how a successful implementation of a mandatory electronic reporting system can dramatically improve the way a state, tribe, or territory manages its NPDES program.[3] As of 2011, Ohio has achieved a 99 percent electronic reporting rate for DMRs. Ohio's system uses electronic reporting to allow permittees to report their discharge measurements quickly and easily online. The automated compliance tools within the state's eDMR system inform permittees if their discharges exceed their authorized permit limits or if there are data errors. As a result, errors have dropped by 90 percent (from approximately 50,000 per month to 5,000 per month), giving the Ohio EPA more accurate and complete data. This improved data quality allows Ohio EPA to better allocate its resources to respond to significant noncompliance and water quality concerns, further improving Ohio's enforcement and compliance program.

Prior to use of its eDMR, Ohio EPA needed five full-time staff members to support the DMR program. By switching to an eDMR program, however, Ohio EPA was able to shift its staffing responsibilities to run the program without any full-time staff members, effectively redirecting its resources to address the most important water pollution problems in Ohio.

b. Internal Revenue Service

The Internal Revenue Service (IRS) provides tax payers and preparers the option of filing their tax forms electronically. After a tax return is complete and signed by the appropriate person, tax preparation software approved by the IRS for electronic filing provides the necessary instructions to electronically submit the return and authorize the filing via IRS e-file. During this process, the electronic return data is converted into the format defined by IRS for electronic filing. IRS-authorized e-file providers or taxpayers may transmit directly to IRS or use a third party transmitter. Transmitters use the internet to transmit electronic return data to the IRS Modernized e-File system (MeF). MeF is a web-based system that allows electronic filing of corporate, partnership, exempt organization, and excise tax returns through the Internet. MeF uses the widely accepted extensible Markup Language (XML) format and provides benefits including more explicit identification of errors, faster acknowledgements, and an integrated payment option.[4]

In 2011, 79 percent of all individual Federal tax returns were e-filed, a noticeable increase over prior years. Both preparer and self-prepared e-file rates increased, which IRS officials attributed to different factors. IRS officials said an e-file mandate was one key factor in the growth of preparer e-filing. Several preparers also noted that they now find that e-filing helps their business—for example, by reducing the time needed to file returns (see DCN 0012).

c. Industry Perspective: Integration With Environmental Management Systems

In recent years, environmental management software solutions have become the standard for any organization seeking to craft a streamlined, effective and proactive environmental management system (see DCN 0013). These tools allow facilities to ensure their regulatory compliance, conform to widely accepted environmental management standards (*e.g.* ISO 14001)[5], and conserve resources. These environmental management system software tools provide the means for electronic storage of facility performance data, and the use of these data to analyze environmental metrics and leverage quantifiable data into cost savings, risk avoidance, or opportunities for revenue generation. Environmental management system software tools also store NPDES compliance monitoring information and allow facilities to more easily report this information to their regulatory agency. Currently, some of these environmental management system software tools allow regulated facilities to easily export DMR data into state eDMR tools or NetDMR. EPA is also exploring an ''open platform e-file'' option, which could allow third-party commercial software providers the opportunity to provide electronic reporting services to their clients (*e.g.,* NPDES-permitted facilities). See ''Proof of Concept Demonstration for Electronic Reporting of Clean Water Act Compliance

[3] EPA 305–F–10–001, see DCN 0011.

[4] See: *http://www.irs.gov/efile/article/0,,id=146364,00.html.*

[5] The ISO 14000 is an international voluntary standard that is used by organizations to continually minimize how their operations (processes etc.) negatively affect the environment and to improve their compliance with applicable laws, regulations, and other environmentally-oriented requirements.

Monitoring Data,'' June 23, 2011 (76 FR 36919).

C. Development of Electronic Reporting Tools

EPA intends to work with states, tribes, territories, and third-party software vendors to develop and have in place all of the electronic reporting tools and National Environmental Information Exchange Network protocols required to implement this regulation prior to the effective date of the final rule. EPA is not proposing that NPDES-regulated facilities must use an EPA-developed electronic reporting tool. Rather, EPA is providing the flexibility for facilities to have a range of options including an EPA electronic reporting tool, a tool developed by a state authorized to implement the NPDES program, or potentially tools developed by third-party vendors, if such tools meet the requirements of this proposed rule. EPA is proposing this flexibility because it recognizes that many states, tribes, and territories have their own electronic data systems and reporting tools for managing NPDES data. For example, EPA is aware that, as of October 2011, 24 states have a working version of an electronic DMR (eDMR), 10 states have an eDMR system planned, and eight states have some form of electronic NOI (eNOI [6]). For states that elect to use their own data systems and electronic reporting tools to collect this NPDES information, this proposed rule would require the states to transmit the federally-required data (identified in Appendix A to 40 CFR part 127) to EPA.

All of the electronic reporting tools, whether already existing or to be developed (by EPA, state, or third-party software vendors), utilized to support this regulation would need to be compliant with EPA's Cross-Media Electronic Reporting Regulation (CROMERR) [7] (*see* 40 CFR part 3) if they transmit the information to EPA. All tools would need to flow data to data systems of states, tribes, and territories and to ICIS–NPDES, provide some capacity for the entry and retrieval of state-specific data in addition to the federally-required data, and have internal administration, user management, and email notification infrastructure. These tools would use the National Environmental Information Exchange Network's Central Data Exchange (CDX) services for the different electronic ICIS–NPDES exchanges.

EPA, states, tribes, territories, and third-party software vendors could choose to build these tools through incremental approaches such that each tool implementation would benefit from the existing framework and intellectual capital established during the previous phase of tool implementation. In addition, users and regulatory authorities would experience familiar, repeatable processes and activities when interacting with tools developed using this framework. The tools to be developed for the electronic submission of the information would support regulated users who are applying for coverage under a general permit, or submitting information required by EPA regulations (*e.g.,* DMRs, biosolids and pretreatment data). Section IV.I of the preamble and 40 CFR 127.27 describe the process for determining the point of first contact for electronic data submissions (EPA or authorized program), compliance dates for electronic reporting, and the available electronic reporting tools. In particular, EPA intends to provide notice to regulated entities on its Web site of the available tools for electronically reporting data; the point of first contact for electronic data submissions; compliance dates for each state, tribe, and territory; and the data source (*e.g.,* DMR, NOI, five different program reports, and implementation and enforcement data from the state, tribe, or territory).

One of the goals of this regulatory effort is to increase electronic reporting from NPDES-regulated entities. Simplifying the process for preparing these reports would help to promote and increase electronic reporting. One option for simplifying the preparation of reports is to build electronic reporting into software which is available for use by the reporting entity. For example, several facilities currently use software to compile information used in preparing required reports, such as DMRs.

EPA could utilize an open platform option similar to the IRS model for electronic reporting, which uses third-party software vendors for tax data collection and transmission (*e.g.,* TurboTax, TaxACT, or others) [8]. Under this option, EPA would specify the required data for collection and the requirements necessary for exchanging data (*e.g.,* data delivery protocols, standards, guidelines, and procedures will likely include CROMERR requirements) for each NPDES data flow. There are benefits to this open platform model as compared with tools built and maintained solely by EPA (closed platform system), including that:

- This open platform model also builds on the ''good government'' recommendations from the White House Forum on Modernizing Government. In particular, the report from this forum strongly encouraged federal agencies to ''consider available technology solutions before defaulting to costly, long-term system development efforts'';[9]
- Open market competition would give software vendors a stake in client satisfaction, with the result that they would strive to develop and maintain software that is easy and user-friendly, provide additional support, and integrate with other data management systems. These data management systems, developed to be used by regulated entities, will likely need to be certified or approved by EPA before use;
- Software vendors would likely have a good understanding of the business needs of their clients;
- Software vendors would likely compete with one another through tiered services, which would keep costs lower for those clients who want minimum data management and reporting capabilities. Software vendors could also provide other services (*e.g.,* technical assistance to clients with other program challenges) or offer competitive prices for smaller entities;
- Competition between vendors would enhance the quality of the electronic data collection tool in terms of creating greater utility from the data, which could improve facility operations and lead to better environmental performance;
- Software vendors are better equipped at quickly adapting new technologies and other opportunities for efficiencies and cost savings; and
- Finally, the open platform concept would lead to faster adoption of new software and technologies (*e.g.,* new personal computer operating systems).

EPA solicits comment on this open platform option of allowing software vendors to offer their clients federal electronic reporting services compliant with the final rule and on potential methods for determining whether third-party software vendors meet the minimum federal electronic reporting requirements. EPA would need to

[6] EPA has developed its own eNOI system for federally-issued general permits. These state systems do not utilize EPA's eNOI system.

[7] EPA's Office of Environmental Information is examining ways to streamline the CROMERR approval process.

[8] **Note:** References to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service, or enterprise.

[9] ''White House Forum on Modernizing Government: Overview and Next Steps'' March 2010—*http://www.whitehouse.gov/omb/modernizing_government*, p. 8, DCN 0014.

certify or approve the methods used by the software to authenticate, encrypt, and send compliance monitoring and other data.

D. Transparency Improvements That Would Accrue From the Rule

EPA shares with the public NPDES information that is currently available (except for that information which is specifically exempted from disclosure by statute, or confidential enforcement and business information), but recognizes that increased transparency of NPDES program implementation and compliance is essential. This proposed rule, in combination with efforts by EPA and the authorized programs to make facility compliance information readily available and accessible, and parallel efforts by EPA, states, tribes, and territories to provide more information regarding their implementation efforts, would enable the public to be better informed on local and national problems and on efforts being made to address those problems. To keep pace with program and technology changes, this proposed rule seeks to increase the transparency and utility of reporting requirements and to facilitate the ability of EPA, states, tribes, and territories to focus on the problems of greatest concern to protect human health and water quality. Increased information may also help the public to press for improved performance from the regulated community, federal, state, tribal, and territorial governments, and for better protection of human health and the environment. EPA has received feedback from states and public data users that they find the existing terminology and nomenclature for categorizing violations to be confusing. The proposed changes to noncompliance reporting would provide clarity for categorizing violations.

Among the many benefits of the proposed NPDES Electronic Reporting Rule would be the opportunity to enhance EPA's existing publicly accessible NPDES information. EPA's Enforcement and Compliance History Online (ECHO) Web site currently provides online access to compliance monitoring and enforcement data for approximately 800,000 regulated facilities across the United States. The information provided is an integrated compilation of federal and authorized program environmental inspections, violation determinations, enforcement actions, and other environmental records collected pursuant to the Clean Water Act, Clean Air Act, and the Resource Conservation and Recovery Act. The information collected/reported by EPA, state, and local environmental agencies or facilities is submitted through EPA's national and federal databases, such as PCS and ICIS. The web interface ultimately provides the public, government officials, investors, with environmental reports and compliance information.

The proposed NPDES Electronic Reporting Rule would enhance the features of ECHO in several ways, for example:

- The proposed rule would provide a complete inventory of NPDES-permitted facilities which can be included in ECHO; All violations identified through inspections and other compliance monitoring activities by EPA, states, tribes, and territories would be made available through public search. Currently, the EPA PCS Policy Statement (as amended) states that state NPDES programs must enter inspection related violation determinations into EPA's data system for facilities with NPDES permits designated as majors and pretreatment related violations associated with POTWs that have an approved pretreatment program. States are not currently expected to enter any other inspection related violation determinations into EPA's data system;
- Compliance information would become available from smaller facilities, such as DMRs and program reports, closing important knowledge gaps;
- Information on enforcement actions and associated penalties would be more complete;
- Documents related to noncompliance (e.g., the proposed NPDES Noncompliance Report) would be more accessible, resulting in increased efficiency in tracking and resolving noncompliance status;
- Comparative analysis would be made easier by utilizing a national consistent set of data (i.e., Appendix A to part 40 CFR part 127);
- Timeliness of data would improve; and
- Integration of permit and water quality assessment information would also be improved through better linkage of facility locational data (e.g., latitude and longitude data) and information on the receiving waters (e.g., receiving waterbody name for permitted feature).

In conclusion, the requirement of electronic reporting of NPDES information is expected to result in greater availability of timely and complete information to the public because of reliance on electronic transmission and retrieval of information. Tracking data electronically is less expensive, more efficient, more accurate, and better able to support program management decisions than is paper tracking. Furthermore, electronic tracking allows more information to be shared with the public. This eliminates transaction costs for the public and for permitting authorities previously involved in obtaining or exchanging information kept only in hard-copy format.

E. EPA Uses of NPDES Data

In the development of this proposed rule, and particularly in the identification of required NPDES data, EPA has identified several key EPA uses for the NPDES information. These include:

- Permitting, compliance, and enforcement decisions affecting individual facilities or watersheds;
- Informing national program decisions and rulemakings;
- Managing and overseeing national and state, tribal, or territorial program performance, management and oversight;
- Leveling the playing field between dischargers, and between states, tribes, and territories, regarding availability of compliance information;
- Establishing program performance indicators;
- Developing trend data on facility compliance and government performance; and
- Preparing for and responding to emergencies.

Each of these EPA uses of NPDES information is described in more detail in DCN 0015. Better availability and consistency of NPDES information through electronic reporting will enhance the usefulness of this data for a variety of purposes.

F. Key Characteristics for Data

Congress and the public expect environmental program managers at every level of government—local, state, tribal, territorial, and federal—to design and implement programs that deliver environmental results. In order to target the most important pollution problems and most serious noncompliance, to better ensure environmental protection and public health, and to enable more integrated program assessment and planning at the national level, data used by EPA should have the following characteristics:

- *The data should be current.* Recent data are more likely to be representative of current conditions. Although historical data may be useful in identifying trends and patterns, data that are not representative of current conditions are not as reliable for drawing conclusions as to the current condition of the environment or the compliance status at permitted facilities, or for making plans for improvements.

• *The data should generally be comparable in format, reporting units, frequency, etc.* In order to aggregate and compare data across the states, tribes, and territories for national program planning and reporting purposes, it is important that the data from the individual states, tribes, and territories be reported in a similar format (*e.g.,* the reporting units are the same, the metric being measured must be defined identically) and with the same frequency (*e.g.,* annual reports required for certain types of NPDES-regulated facilities). For example, for a national statement to be made regarding the volume of waste discharged by publicly owned treatment works, those providing the data would need to consistently provide data to EPA, share the same definition of publicly-owned treatment works, the same definition of volume (per day, per week, per month) and express the measure in the same units (gallons, million gallons, cubic feet, liters, etc.) However, states can certainly institute more stringent reporting requirements than does EPA (if data remain nationally consistent).

• *The data should be complete.* Incomplete, inaccurate data can lead to wrong conclusions. For example, the significant noncompliance rate for major facilities is a key indicator of the health of the NPDES compliance and enforcement program. This rate is derived in large part from effluent data self-reported in DMRs to EPA, the states, tribes, and territories by major facilities. These data are then entered into or provided to PCS or ICIS–NPDES by the states, tribes, territories, or EPA. Incomplete compliance data in PCS or ICIS–NPDES prevent EPA from adequately assessing industry, state, and national noncompliance rates and identifying any potential corrective actions. Consequently, program planning and authorized program evaluation resulting from such incomplete data can be unreliable.

Similarly, incomplete data may result in inaccurate conclusions as to noncompliance rates for nonmajor permittees. EPA found through the Annual Noncompliance Report (ANCR) (*see* DCN 0016) [10] for NPDES Nonmajor Permittees that the reported noncompliance rate for serious violations is much higher for those authorized NPDES programs with detailed compliance data in EPA's national data systems than it is for authorized NPDES programs that only provide only summary data. Based on 2008 data, states, tribes, and territories with DMR information for nonmajor permittees in the national data systems report a 60 percent Category I noncompliance [11] rate, whereas states, tribes, and territories that did not routinely provide the facility-specific compliance data to EPA's national data systems reported a national Category I noncompliance rate of just less than 18 percent. The findings presented in the 2008 ANCR suggest that instances of noncompliance may be higher than reported by states, tribes, and territories that non-electronically review and report data and do not routinely provide facility-specific compliance data to EPA's national data systems. The proposed rule would ensure that DMR information from facilities would be received electronically, making that information more readily available for identification of violations by the data system while at the same time reducing the burden on states, tribes, territories, and EPA to independently identify effluent violations.

• *The data should be made available so that the basis for EPA program evaluation and subsequent planning is transparent and reproducible.* The bases for EPA's planning and conclusions about the status of program implementation need to be readily available to those affected, including the regulated community, the general public, Congress, federal, state, tribal, and territorial agencies. For example, the data that EPA needs to evaluate the performance of an authorized program should be readily available to EPA from the state, tribe, or territory (and readily available from EPA to the state, tribe, or territory) and the state, tribe, or territory should be able to easily duplicate EPA's analysis.

The above examples demonstrate the need for a shared definition and central management of the information necessary to manage the NPDES program, ready access to that information by states, tribes, territories, and EPA, and assurance that the data across the states, tribes, and territories are complete, accurate, and timely-reported. The proposed rule would provide definitions for the shared data, ensure the accessibility of that information, and provide the basis for ensuring that the data are nationally consistent, complete, accurate, and timely.

G. The National Environmental Information Exchange Network (NEIEN)

1. Purpose

Today, the NEIEN is making environmental protection more efficient and helping to improve the quality of the environmental decision-making processes. The proposed rule utilizes the NEIEN for sharing NPDES program data between regulated entities; NPDES permit programs, and EPA. This information sharing network helps facilitate the reporting and information sharing requirements in the proposed rule.

Many environmental problems cross jurisdictions. The business of managing and solving these problems has become very information-intensive. Environmental policymakers and other stakeholders need access to timely, accurate, and consistent data that present a holistic picture of the environment in order to make better decisions.

Previous approaches to environmental information exchange were often inefficient. Currently, most environmental data are stored in electronic data management systems. Electronic data sharing between agencies is not a simple and automatic process; because, many of these systems are incompatible with each other. Even similar systems can have difficulties exchanging information when the data are not identically structured.

The National Environmental Information Exchange Network (''NEIEN'') supported by EPA uses eXtensible markup language (XML), web services, and common data standards to overcome system incompatibility, allowing partners to securely and automatically exchange environmental data. The NEIEN is helping participants to reduce costs, save time, and overcome delays in making better informed decisions and responding to environmental emergencies.

For example, states in the Pacific Northwest are using the NEIEN to share ambient water quality data to improve decision-making for the protection of water quality.[12] Laboratories are able to quickly share sampling results with regulators, allowing real-time monitoring of drinking water for public health and homeland security concerns. Governments and industry are seamlessly sharing reporting data, realizing savings, and improving environmental protection. State, tribal, and territorial environmental agencies

[10] 2008 ANCR, available at *http://www.epa-echo.gov/echo/ancr/us/docs/ancr_report_2008.pdf.*

[11] Category I noncompliance is defined in Section II.A. of the preamble; examples of Category I noncompliance are identified in existing federal regulations at 40 CFR 123.45(a)(2)(ii).

[12] See: *http://www.exchangenetwork.net/data-exchange/pacific-northwest-water-quality-exchange/*

and the EPA can fulfill regulatory and reporting requirements efficiently through automated processes that reduce the need for non-electronic or duplicative data entry directly into national data systems.

2. Enhancements to the NEIEN

Where authorized programs elect to electronically receive data from reporting entities, they should work with EPA to ensure that their data systems can automate data transfers to EPA of the data required in the new 40 CFR part 127 and Appendix A to part 127 developed for this proposed rule, rather than having NPDES-regulated facilities in their state, tribe, or territory electronically report directly to EPA. Likewise, EPA intends to work with states to ensure that any data collected by EPA on behalf of an authorized NPDES program can be shared with the state, tribe, or territory via an automated process in a timely manner. These EPA-to-authorized-program and authorized-program-to-EPA data exchanges are expected to use the National Environmental Information Exchange Network. Using the NEIEN and an automated data flow between EPA and the states, tribes, and territories would allow states, tribes, and territories to benefit from electronic reporting in the event they have not yet developed their own electronic reporting tools or choose not to develop them.

The NEIEN options for electronically flowing permit data from states, tribes, and territories to EPA were made available at the end of February 2011 and the NEIEN options to transfer enforcement and compliance data to ICIS–NPDES are under development as of October 2011. States and EPA are meeting regularly as an Integrated Project Team (IPT) to jointly discuss the design of the remaining components of the ICIS–NPDES data flow and the ongoing transition from the Permit Compliance System (PCS) to the modernized ICIS–NPDES data system. Authorized programs are encouraged to participate in the IPT to keep abreast of development timelines and progress. When the ICIS–NPDES compliance and enforcement data flows are complete and all state data has been migrated from PCS to ICIS–NPDES, the PCS data system is expected to be retired by EPA (in 2013, prior to full implementation of this rule).

H. Relation to the Clean Water Act Action Plan

As mentioned earlier in Section III.A, on October 15, 2009, EPA Administrator Lisa Jackson announced the Clean Water Act Action Plan focused on the revitalization of the Clean Water Act NPDES program, with an emphasis on compliance and enforcement (see DCN 0009). EPA Administrator Jackson also then announced to the Committee on Transportation and Infrastructure of the United States House of Representatives that, as part of the CWA Action Plan, she was directing her staff to ''quickly develop a proposed rule requiring electronic reporting from regulated facilities, to replace the current paper based system.'' [13]

The CWA Action Plan recognizes that EPA lacks nationally consistent and complete information on the facilities, permits, pollutant discharges, and compliance status of most NPDES-regulated facilities.[14] This information gap affects the ability of EPA, states, tribes, and territories to identify violations, target their actions, connect violations to water quality impacts, and share information with the public. This proposed rule would use technology to address this gap.

Electronic reporting is identified as a key component of the new system envisioned by the CWA Action Plan and would greatly reduce the burden on states, tribes, territories, EPA, and regulated facilities of submitting and processing paper forms. Under the CWA Action Plan, EPA intends to find innovative, resource-efficient ways of collecting, using, and making available to the public information about where pollution sources are located, what pollution they produce, their relationship to water quality, and where violations are most severe.

Through the Clean Water Act Action Plan Discussion Forum, EPA solicited ideas from the public that encompassed a broad range of perspectives (DCN 0017). Outreach to states, tribes, territories, community groups, industry, and environmental organizations ensured an opportunity for participation in the forum.

As currently drafted, and subject to public comment, this proposed NPDES Electronic Reporting Rule would help to achieve the CWA Action Plan goals. By requiring reports to be submitted electronically by regulated facilities, EPA would be able to provide more complete, accurate, and timely information to both regulators and the public. This would improve transparency and accountability, and help EPA, states, tribes, and territories to monitor compliance with NPDES permits.

I. Relation to the State Burden Reduction Initiative

In an effort to address state concerns over escalating reporting requirements, EPA and the Environmental Council of the States (ECOS) launched the Burden Reduction Initiative in October 2006.[15] This initiative aimed to identify and reduce high-burden reporting requirements for various media (*e.g.,* air, water, waste).

EPA asked states to identify their top five reporting requirements with potential for streamlining or elimination. Thirty-nine states responded to the October 2006 data call by EPA, recommending more than 200 ways to reduce reporting frequency and level of detail, increase electronic data entry, and standardize regional differences in reporting requirements to the greatest extent possible.

Several states identified NPDES compliance reporting as a priority area for burden reduction. Specifically, those states recommended that reporting requirements for three NPDES reports required under EPA's NPDES regulations (40 CFR 123.45) be reduced or eliminated. They recommended that EPA reduce the reporting frequency for the Quarterly Noncompliance Report (QNCR) required under 40 CFR 123.45(a) and eliminate the Semi-Annual Statistical Summary, required under 40 CFR 123.45(b), and the Annual Noncompliance Report (ANCR), required under 40 CFR 123.45(c). States suggested the elimination of these reports to reduce their burden of implementing the NPDES program.

The QNCR is a quarterly report regarding major NPDES-regulated facilities in noncompliance; under 40 CFR 123.45(a), this report is required to be submitted to EPA by states, tribes, and territories authorized to implement the NPDES program. These reports are used by EPA, states, tribes, and territories to track progress and assess the effectiveness of NPDES compliance monitoring and enforcement activities.

The ANCR is an annual report submitted to EPA by states, tribes, and territories authorized to implement the NPDES program; in this report, as required under 40 CFR 123.45(c), the states, tribes, and territories provide information regarding the total number of nonmajor NPDES-regulated facilities that have been reviewed for the purpose of making compliance determinations, the number of non-complying nonmajor

[13] U.S. EPA, 2009. ''Testimony of Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency, Before the Committee on Transportation and Infrastructure, United States House of Representatives, 15 October 2009.

[14] See: *http://www.epa.gov/enforcement/water/documents/policies/actionplan101409.pdf*

[15] See *http://www.ecos.org/section/projects/?id=3683.*

permittees, the number of enforcement actions taken against these nonmajor NPDES-regulated facilities, and the number of permit modifications extending compliance deadlines for these nonmajor NPDES-regulated facilities.

The semi-annual statistical summary report is a semi-annual report regarding major NPDES-regulated facilities exhibiting a particular type of noncompliance; under 40 CFR 123.45(b), this report is required to be submitted to EPA by states authorized to implement the NPDES program.

As part of the proposed rule, EPA is seeking comment on changes to 40 CFR 123.45, entitled ''Noncompliance and program reporting by the Director.'' The purposes of these changes would be to: (1) Reduce the state reporting burden by phasing out reports that can be produced automatically by EPA from a national data system—(such as the QNCR); (2) provide a more accurate and comprehensive report of known violations using a more complete set of noncompliance data that would flow to EPA as a result of this proposed NPDES Electronic Reporting Rule; (3) improve EPA's ability to analyze, track, and manage violations and ensure that the full universe of NPDES sources is considered in tracking, analyzing, and managing compliance and enforcement programs; and (4) establish a better process to ensure EPA is focused on the appropriate pollutants and can keep pace with changes to the permitting program and new limit types.

EPA is proposing to establish a new public inventory, the NPDES Noncompliance Report (NNCR), of all reported violations. The proposed changes to the reporting requirements in 40 CFR 123.45 are discussed in greater detail in Section IV.F.5 of the preamble.

As currently drafted, and subject to public comment, the proposed rule should allow EPA to eliminate the state, tribe, and territory reporting requirements within the existing QNCR, semi-annual statistical summary report, and ANCR requirements because the proposed rule would enable EPA to generate this report directly from information in its federal data systems based on facility, state, tribe, and territory reporting. The regulatory changes would eliminate the requirements that states, tribes, and territories submit the QNCR, semi-annual statistical summary report, and ANCR by a date certain after rule implementation. EPA would then take over the obligation of generating all summary reports currently covered by 40 CFR 123.45 and generate the new NNCR, reducing the reporting burden on states, tribes, and territories.

For more detailed information on the State Burden Reduction Initiative, please visit *www.epa.gov/burdenreduction*.

J. Issues Related to Critical Infrastructure Security Information

EPA and the Department of Defense (DOD) wish to clarify how this rule will intersect with recent amendments to the Freedom of Information Act (FOIA) as enacted in The National Defense Authorization Act of 2012 (NDAA). Under NDAA, the Department of Defense (DOD) may designate ''critical infrastructure security information'' that can be withheld from release under FOIA (see 10 U.S.C. 130e). If DOD receives a FOIA request for information on NPDES-regulated federal facilities, it may designate particular data as critical infrastructure security information that is then withheld from public release in response to the FOIA request. NPDES program data designated as critical infrastructure security information in response to a FOIA request will also be withheld from public release under this rule. DOD will contact EPA and identify the specific data elements for specific NPDES-regulated entities that are to be withheld from public disclosure under a FOIA request because it has been designated as critical infrastructure security information.

EPA will not release information that has been designated as critical infrastructure security information in response to a FOIA request to the public. The critical infrastructure security information designation is expected to be used rarely for the type of information required to be electronically reported by this rule and any determination by DOD to withhold information from public release will be made at the data element level (see Appendix A to 40 CFR part 127) for each DOD facility. Additionally, the DOD process for designating particular data as critical infrastructure security information (see DCN 0067) is prospective and does not affect data already publicly available (i.e., the DOD process will not be used to withdraw data that is already available to the public). In the instance where an NPDES program data element for a particular facility is designated as critical infrastructure security information in response to a FOIA request, a separate filtered set of data without the redacted information will be shared with the public; however, all NPDES program data will continue to be provided to EPA and the authorized state, tribe, or territorial NPDES program.

IV. Discussion of Key Features of This Rule

A. Overview of Existing Regulation Citations Impacted by the Proposed Rule

As indicated in the proposed rule, and subject to public comment, EPA is considering amendments to the current NPDES regulations to require electronic reporting by NPDES-regulated facilities for many of the existing NPDES reporting requirements, to require electronic reporting of NPDES information by the states, tribes, and territories to EPA, and to eliminate some existing reporting requirements, particularly those for states, tribes, and territories. Under this approach, in addition to the creation of a new 40 CFR part 127, the affected regulations would include:

- 40 CFR 122.22. Signatories to permit applications and reports;
- 40 CFR 122.26(b)(15), (c)(1)(ii), and (g)(1)(iii). Stormwater discharges (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.28(b)(2). General Permits (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.34(g)(3). Reporting [as related to small Municipal Separate Storm Sewer Systems (MS4s)];
- 40 CFR 122.41(l)(4)(i). Monitoring reports [Discharge Monitoring Reports];
- 40 CFR 122.41(l)(6). Twenty-four hour reporting;
- 40 CFR 122.41(l)(7). Other noncompliance;
- 40 CFR 122.41(m)(3). Notice [as related to Bypass];
- 40 CFR 122.42(c). Municipal separate storm sewer systems [as related to medium or large systems];
- 40 CFR 122.42(e)(4). Annual reporting requirements for CAFOs;
- 40 CFR 122.43. Establishing permit conditions (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.44(i). Monitoring requirements;
- 40 CFR 122.48(c). Requirements for recording and reporting of monitoring results (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.63(f). Minor modifications of permits.
- 40 CFR 122.64(c) Termination of permits (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 123.22. Program description.
- 40 CFR 123.24(b)(3). Memorandum of Agreement with the Regional Administrator;

- 40 CFR 123.25(a). Requirements for permitting;
- 40 CFR 123.26. Requirements for compliance evaluation programs;
- 40 CFR 123.41(a). Sharing of information;
- 40 CFR 123.43(d). State data-transmission of information from states to EPA;
- 40 CFR 123.45. Noncompliance and program reporting by the Director;
- 40 CFR 403.10(f). State Pretreatment Program requirements;
- 40 CFR 403.12(e). Periodic reports on continued compliance [Pretreatment program reports for Categorical Industrial Users];
- 40 CFR 403.12(h). Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards [Pretreatment program reports for Significant Industrial Users not subject to EPA categorical pretreatment standards];
- 40 CFR 403.12(i). Annual POTW reports [Pretreatment program report];
- 40 CFR 501.21. Program Reporting to EPA (State Sludge Management Program);
- 40 CFR 503.18. Reporting [Biosolids annual program report for land application];
- 40 CFR 503.28. Reporting [Biosolids annual program report for surface disposal];
- 40 CFR 503.48. Reporting [Biosolids annual program report for incineration].

B. Derivation of Required NPDES Data Elements

From FY 2002 through FY 2007, EPA and the states worked to identify the data needed for permitting authorities to successfully implement and manage the NPDES program. Various iterations of critical data elements were discussed by the state and EPA members of the PCS Steering Committee, the PCS Modernization Executive Council, and the Expanded PCS Steering Committee, which added representatives from the Environmental Council of States (ECOS) and the Association of Clean Water Administrators (ACWA).[16] Those efforts led to the April 2007 issuance by EPA of a draft ICIS–NPDES Policy Statement that included the list of NPDES data elements that states, tribes, and territories would report to EPA.

After receipt of numerous comments on the draft ICIS–NPDES Policy Statement from the states, EPA began to develop a federal regulation that would require electronic reporting of specific NPDES information from the regulated permittees, states, tribes, and territories. In 2010, EPA initiated an effort to carefully review the data needs and uses (as described in Section III), identify the types of information and specific data elements that would allow EPA to meet those needs and uses, and evaluate whether the information should be sought directly from NPDES-regulated facilities or from states, tribes, and territories. This was done with full acknowledgement that for certain activities (such as permit issuance, inspections, compliance determinations, and issuance of enforcement actions), the states, tribes, and territories are the unique source of the identified NPDES information.

During summer 2010, EPA conducted a series of concurrent technical analyses of various data types and facility types which examined the feasibility of electronic reporting, the existing regulatory data and reporting requirements, key considerations, and preliminary information regarding costs and benefits (see DCN 0018, 0019, 0020, 0021, 0022).

EPA then conducted extensive examinations of the data elements list. The result of these efforts is this proposed rule, as currently drafted and subject to public comment, and the list of minimum set of federal NPDES data (Appendix A to 40 CFR part 127). EPA invites comment on the data identified in Appendix A to 40 CFR part 127.

C. NPDES Data Groups

EPA has identified several data groups of NPDES information based on the source of the information. These ''NPDES Data Groups'' are defined and listed in 40 CFR 127.2(c) and in Table 1 to Appendix A of 40 CFR part 127. As defined in 40 CFR 127.2(c), the term NPDES data group means the group of related data elements identified in Table 1 in Appendix A to 40 CFR part 127. These NPDES data groups have similar regulatory reporting requirements and have similar data sources. The proposed rule uses the NPDES Data Groups to identify the minimum set of data elements for each type of NPDES reporting (*e.g.,* DMRs, NOIs, program reports) and to help permittees and regulated entities identify the initial recipient of electronic NPDES data submissions.

D. Data Considerations

Based on EPA's national program management needs, the approach taken by EPA in the proposed rule, as currently drafted, identifies a variety of NPDES data that permittees would be required to provide electronically to states or EPA and that states, tribes, and territories would be required to submit to EPA on a regular basis. These data are supported by existing collection requirements and are essential to successfully manage, implement, and enforce the NPDES program. EPA notes that other required data submissions that are not proposed to be collected electronically (*e.g.,* NPDES permit applications) are also essential to successfully manage, implement, and enforce the NPDES program, even though they remain unchanged by this proposed rule. This section of the preamble discusses the reasons for each required electronic data submission (*e.g.,* DMRs, general permit reports, program reports) covered by this proposed rule, as currently drafted and subject to public comment.

A large number (over 60 percent) of these required NPDES data are specific to particular NPDES subprograms (*e.g.,* pretreatment, biosolids, CAFO, MS4, sewer overflow and bypass events). Additionally, it is unlikely that there is any NPDES-permitted facility that has a permit that covers all subprograms, meets all of the conditions that would require reporting of all of the conditional data elements (described later), and has also had enforcement actions that included compliance schedules, milestones, and penalties. In addition, certain types of data may not be generally expected for certain types of facilities. Therefore, any potential workload or burden estimates for reporting burden or data entry burden based on the entire list of NPDES required data would be incorrect and very misleading if applied to the entire NPDES-regulated universe.

A number of other considerations associated with these required data are described below.

1. Data Entry/Reporting Frequency

The frequency at which data would be required to be reported electronically is a key consideration in estimating workload or burden estimates of data entry. In this proposed rule, as currently drafted and subject to public comment, the required data entry frequency would vary considerably based upon the data type.

Data that has already been entered into PCS or ICIS–NPDES would not need to be re-entered by EPA, states, tribes, or territories unless that data has changed. NPDES information has been migrated from PCS to ICIS–NPDES for all states as of December 2012.

Under the approach described in the proposed rule, states, tribes, and territories would still need to update or change particular facility or permit information as permits are modified or

[16] Formerly known for 50 years as the Association of State and Interstate Water Pollution Control Agencies (ASIWPCA).

when the permits are re-issued, generally every five years. A similar timeframe would apply to facilities electronically submitting a NOI to be covered under a NPDES general permit. States, tribes, and territories would also have a similar reporting frequency for providing EPA with information regarding the general permit, such as limits, permitted features, etc.

The required data entry frequency for inspection-related information would be linked directly to the inspection. The inspection frequency itself may vary considerably depending on the type of inspection and the type of facility. For example, major NPDES-regulated facilities might be inspected every two years, whereas nonmajor NPDES-regulated facilities might be inspected once every five years. Under the approach described in the proposed rule, information related to inspections, violations, and enforcement actions, would be entered after those events occur.

Electronic submissions of NPDES data (*e.g.,* DMRs, program reports, NOIs) by NPDES-regulated entities would be linked to the required reporting frequency specified in the regulations or in the permit, and may therefore vary across permittees and type of reports (*e.g.,* may be reported semi-annually, quarterly, or monthly).

2. Conditionally-Required Data

Conditionally-required NPDES data must be reported when certain rare circumstances occur. For example, as currently drafted, this proposed rule requires POTWs to report in their Pretreatment Program Annual Report [see 40 CFR 403.12(i)] information regarding their administration of pollutant removal credits. In practice, POTWs would rarely be required to report these data as there are only four POTWs nationwide that have removal credits authority, as of October 1, 2011.

3. Programs Broader in Scope

NPDES data entry/availability requirements specified in this proposed rule would not apply to those particular portions of a state, tribal, or territorial program which are broader in scope than the minimum requirements of the approved NPDES program. States, tribes, and territories are welcome to track these additional aspects, but this proposed rule does not require that such additional information be reported to EPA. Under the proposed rule, state, tribal, and territory programs have the option to use EPA's data collection tools, which would be capable of both collecting data that are in addition to the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) and passing these data to state, tribal, and territory NPDES data systems.

4. Appropriate Linkages Between NPDES Data Groups by the Permitting Authorities

As previously noted, under the approach described in this proposed rule, as currently drafted and subject to public comment, EPA, states, tribes, and territories would submit the minimum set of federally-required NPDES data (see Appendix A to 40 CFR part 127). Having this minimum set of federally-required NPDES data would ensure that the appropriate linkages are made between the data for permitting, compliance monitoring, violations, and enforcement actions within EPA's NPDES information system. For example, an inspection would be linked to all violations identified during the inspection, which in turn would be linked to any resulting enforcement action, penalty, or enforcement compliance schedule. Such linkages would ensure that the compliance status of the facility would show whether the violations have been addressed and resolved. In another situation, it would also be possible to link the information in EPA's NPDES data system for an unpermitted facility that subsequently becomes an NPDES permittee (*e.g.,* an inspection might discover an unpermitted discharge and the resolution would be to issue a permit to this discharger).

5. Major and Nonmajor Designations

In PCS, some of the designated Water Enforcement National Data Base (WENDB) data applied to every facility regardless of whether the NPDES permittee was a major or nonmajor facility. Other WENDB data elements in PCS only applied to major NPDES-regulated facilities (see DCN 0023). For the purposes of this proposed rule, few distinctions would be made in data entry requirements between major and nonmajor NPDES facilities (*e.g.,* the proposed rule requires the electronic submission of DMRs from major and nonmajor NPDES facilities). There are only a few examples where the major and nonmajor status, or facility size, of a permittee would affect reporting based on existing regulations (*e.g.,* MS4 and biosolids program reports).

6. Facilities Without NPDES Permits

The NPDES information described in the proposed rule would generally not be required for facilities without NPDES permits, with the following exceptions:

- Unpermitted facilities that have been subject to a formal enforcement action, an administrative penalty order, or an informal enforcement action (if such informal action addressed significant noncompliance);
- Unpermitted facilities that have been inspected; and
- Industrial users located in cities without approved local pretreatment programs.

For the first two types of exceptions identified above, EPA, authorized states, tribes, and territories would be expected to electronically provide the following information: basic facility information; inspection-related information; and, if applicable, violations, and information regarding enforcement actions. For the first two exceptions, there would not be any expectation for data to be submitted to EPA regarding narrative permit conditions, permitted features, permit limit sets, permit limits, DMRs, or program reports.

Facilities included in the third exception would be operating under a control mechanism, which may or may not be a permit (see 40 CFR 403.8). These indirect discharging facilities would also electronically submit to EPA, authorized states, tribes, or territories their bi-annual compliance reports, which are similar to DMRs for direct dischargers. Authorized states, tribes, and territories would be expected to provide to EPA the following information for these indirect dischargers: basic facility information, basic permit or control mechanism information (the latter would apply to industrial users located in cities without approved local pretreatment programs) (possibly including, if applicable, information regarding permit issuance, narrative conditions, limits, limit sets, permitted features, etc.), inspection-related information, and violations and information regarding enforcement actions, if applicable.

7. Retroactive Data Entry

Due primarily to an increased focus on the various NPDES subprograms (e.g., CAFOs, pretreatment, biosolids, sewer overflow event reports, MS4 program reports), the required data set as defined by this proposed rule, as currently drafted, is more comprehensive than what was previously identified as WENDB. For inspections and enforcement actions that occur prior to the effective date of this rulemaking, the proposed rule does not require states or permittees to submit the data not covered by WENDB in the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) However, under the approach described in the proposed rule, EPA is considering requiring states, tribes, and territories to

provide information to EPA regarding the existing permits before the beginning of the required electronic reporting from permitted facilities, even if that permit was issued prior to effective date of the final rule. EPA will work closely with states, tribes, and territories to ensure that states, tribes, and territories report all WENDB data for all permits into ICIS–NPDES prior to the effective date of this rulemaking. Additionally, the data in PCS have been migrated to ICIS–NPDES, and would not need to be re-entered into ICIS–NPDES.

E. Electronic Reporting by NPDES Regulated Entities

1. What Data From Which Regulated Entities

As described in Section IV.B, EPA has spent considerable time and effort in analyzing the data needs and uses of information, the types of data that would meet those needs and uses, and the technical, legal, and economic considerations associated with obtaining that information. Based on these efforts, EPA solicits comment on the following NPDES data types for electronic submission from NPDES-regulated facilities or other regulated entities:

- Self-monitoring information as reported on Discharge Monitoring Reports (DMRs) for major and nonmajor facilities (including subprograms as appropriate), and similar self-monitoring pretreatment-related information submitted by industrial users located in cities without approved local pretreatment programs;
- General permit reports [Notice of Intent (NOI) to discharge; Notice of Termination (NOT); No Exposure Certification (NEC); and Low Erosivity Waiver (LEW)], which are required for initial permit coverage, permit coverage termination, or consideration for permit exclusion.[17] These reports will come from facilities in relation to coverage under a general NPDES permit (rather than an individually-issued NPDES permit);
- Annual reports from concentrated animal feeding operations (CAFOs);
- Sewer overflow or bypass event reports for POTWs with combined sewer overflow (CSO), sanitary sewer overflow (SSO), or bypass events;
- Annual or more frequent pretreatment reports from facilities with approved local pretreatment programs;
- Annual reports from NPDES-regulated biosolids generators and handlers; and
- Program reports (annual or less frequent reports as may be indicated by the permit) from municipal separate storm sewer system (MS4) permittees.

Existing federal regulations already require each of these reports to be submitted to the permitting authority. Currently, most of these compliance reports are submitted on paper. EPA is soliciting comment on switching the submission of these reports from paper reporting to electronic reporting. Each of the data types associated with these reports is described in more detail in Section IV.

EPA notes that some NPDES permits require additional reports from NPDES-regulated entities than the reports identified in the proposed NPDES Electronic Reporting Rule (40 CFR part 127) (*e.g.,* engineering construction completion reports, large-scale construction blue prints). Reports that are not specifically listed in the NPDES Electronic Reporting Rule (40 CFR part 127) are not required to be electronically submitted under EPA regulations, and NPDES-regulated entities should continue to report these documents as required by the NPDES-authorized program.

EPA is soliciting comment on the minimum set of NPDES program data that NPDES-regulated facilities or other regulated entities would electronically submit to their authorized programs and the process for the authorized programs receiving these electronic data to forward these data electronically to EPA. The minimum set of NPDES program data is provided in Appendix A to 40 CFR part 127. This proposed rule does not expand the reportable data from NPDES-regulated facilities or other regulated entities beyond what is required by existing regulations.

EPA is soliciting comment on the minimum set of data to be reported electronically to ensure that there is consistent and complete reporting nationwide, and to expedite the collection and processing of the data, thereby making it more timely, accurate, and complete. EPA notes that authorized states, tribes, and territories may also require permittees to submit additional data electronically (data in addition to the minimum set of data provided in Appendix A to 40 CFR part 127). EPA's electronic reporting tools would be flexible to allow the collection and transfer of these additional data to authorized NPDES programs. This is consistent with EPA's requirements for approving NPDES program authorizations, in which state forms need to collect at least the same basic information as the forms used by EPA (*e.g.,* 40 CFR 123.22).

Taken together, electronically reporting the information described above would save the states, tribes, and territories considerable resources, make reporting easier for permittees, make it easier for the states and EPA to exchange data with each other and to provide it to the public, and enable better environmental decision-making.

a. Discharge Monitoring Report (DMR) Data

i. Background

EPA's regulations require reporting of samples and measurements taken for the purpose of compliance monitoring at intervals specified in the NPDES permit [40 CFR 122.41(j) and (l)(4)]. When self-monitoring results are reported to the permitting authority, they are compared with current permit limits and any existing enforcement orders to determine facility compliance. The sample collection and analytical results required by the NPDES permit must be reported to the permitting authority through the submission of Discharge Monitoring Reports (DMRs) [40 CFR 122.41(l)(4)(i)]. It is extremely important that the data reported on the DMR is timely, accurate, complete, and legible to ensure that the facility's compliance status is correctly reflected; electronic reporting will likely improve each of these qualities.

As of October 1, 2011, there are approximately 63,000 facilities submitting DMRs to their permitting authorities; the majority of these are individually-permitted facilities that directly discharge to surface waters. The universe of NPDES-regulated facilities has grown since the passage of the Clean Water Act and some facilities in these new sectors (*e.g.,* some regulated stormwater discharges and vessels) are required to submit DMRs.

The DMR submission process that is most frequently used requires the permittee to mail a hard-copy form of a pre-printed form (OMB Control No. 2040–0004) to the authorized NPDES permitting authority. After receiving the hard copy version of the DMR, the authorized NPDES permitting authority enters this data into an electronic database (ICIS-NPDES or state database system). When a state, tribe, or territory applies for and obtains the authority to implement the NPDES permitting and enforcement program, the state, tribe, or territory is required to have a system for evaluating all DMRs [40 CFR 123.26(e)].

[17] It is important to note that EPA general permit regulations (40 CFR 122.28) do not require all general permit covered facilities to submit NOIs for all general permits issued by EPA and authorized state NPDES programs. Some general permits provide for automatic coverage.

ii. Existing Reporting Requirements and Expectations

The permittee is responsible for understanding and meeting all permit requirements and submitting timely, accurate, complete, and legible self-monitoring data in accordance with the CWA and its implementing regulations. The sample collection and analytical results required by the NPDES permit must also be reported to the permitting authority through the submission of DMRs at the frequency specified in the permit [see 40 CFR 122.41(j) and (l)(4)]. DMRs must be signed and submitted to the permitting authority by the date specified in the permit [40 CFR 122.41(k) and (l)(4)]. All facilities must submit DMRs at least annually [40 CFR 122.44(i)(2)], at the frequency specified in the permit.

EPA's PCS Policy Statement (as amended) created the expectation that the permitting authority enter facility information for all permitted facilities and DMR information from major facilities into ICIS-NPDES. About half of NPDES-authorized states also transmit DMR data for nonmajor facilities to ICIS-NPDES. EPA also notes that some NPDES permits require the electronic reporting of baseline monitoring data on DMR forms [*e.g.,* EPA's Multi-Sector General Permit (MSGP)], as baseline monitoring and effluent monitoring both relate to wastewater discharges and the same data elements as DMRs. Authorized states, tribes, and territories currently report DMR data to EPA (ICIS-NPDES) by one of the following means:

- Collecting paper-based DMR forms, manually entering the information into the state, tribe, or territory database, and entering the expected federal data into ICIS-NPDES either on the web or through Batch eXtensible Markup Language (XML) files.
- Developing and using a customized state, tribe, or territory electronic DMR (eDMR) tool that allows regulated entities to enter and electronically submit DMR data into a web-based application. The DMR data is then sent to the state, tribe, or territory database and the state, tribe, or territory is responsible for entering the expected federal data into ICIS-NPDES either on the web or through Batch XML files.
- Sending data directly from the regulated entity to ICIS-NPDES through a customized installation of NetDMR, which is the federal eDMR tool.
- Allowing regulated entities to enter data into the National Installation of NetDMR.

Because there is a significant burden on states, tribes, or territories associated with manually entering DMR data into a data system, some states, tribes, or territories found that they were not able to meet their regulatory requirement [see 40 CFR 123.26(e)] to evaluate all DMR data for violations (see 2008 and 2009 Clean Water Act Annual Noncompliance Reports, DCN 0016 and 0025) or meet EPA's ICIS-NPDES data entry policy expectations (see DCN 0026). As documented in the Agency's 2008 Annual Noncompliance Reports, eight states reported reviewing less than 50 percent of their nonmajor facilities for noncompliance (see DCN 0016). The lack of an automated, searchable NPDES data tracking system for each authorized state, tribe, or territory contributes to this gap in compliance oversight and environmental protection.

To address such problems, 34 states (as of October 1, 2011) have or are planning to use electronic reporting tools where the permittee transfers DMR data over the internet into state or Federal databases. These tools include NetDMR, EPA's current eDMR tool, which was released in June 2009. NetDMR allows NPDES-regulated facilities to enter and electronically submit DMR data through EPA's CDX to ICIS-NPDES as an alternative to the paper-based DMR submission process. NetDMR and other comparable state, tribe, or territory tools essentially reproduce the pre-printed DMR in electronic format. Some of these tools allow for a properly formatted file [*e.g.,* comma-separated value file or Extensible Markup Language (XML) file] to be shared between EPA, states, tribes, and territories, which is an important step towards more efficient data sharing. Most of these state, tribe, or territory DMR tools submit data to the state, tribe, or territory data system, which in turn sends the data to either ICIS-NPDES. These electronic reporting tools provide a successful model for transforming the paper-driven process with e-reporting.

The adoption rate, or percent of permittees that use electronic reporting, in the states where electronic reporting of DMRs is an option as of October 1, 2011, is generally less than half. EPA believes this is because electronic reporting is not required, and/or release of electronic reporting tools is relatively recent (see DCN 0027). However, as described in more detail in Section III.B.1, Ohio is an example of a state that has been able to achieve close to 100 percent of electronic reporting of DMRs by implementing a phased approach for requiring permittees to use the eDMR system and by providing comprehensive training. EPA believes the Ohio experience validates the position that national electronic reporting of DMRs is feasible.

iii. What Data Would be Required to be Submitted Electronically and Why

EPA is soliciting comment on having NPDES-regulated facilities electronically submit DMRs in accordance with the proposed 40 CFR 122.41(l)(4), which would reference the need for these submissions to be compliant with 40 CFR part 3, 122.22, and part 127. Some permitting authorities may require baseline monitoring discharge data to also be reported on DMR forms. The data elements specific to DMRs are listed in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 122.41(l)(4)(i) to include electronic reporting requirements.

iv. Additional Considerations

EPA intends to expand the current NetDMR system and encourage the expansion of state, tribe, and territory eDMR systems to include DMRs for the existing and anticipated NPDES-regulated community. To support the requirements under the proposed rule, EPA will expand NetDMR by the effective date of this rule to include all facilities that report DMRs and to add functionality, streamline overlapping system functionality, and provide a more robust platform for permitting authorities to manage and submit DMR data, including the addition of state-specific data that is not listed in the minimum set of federal data (Appendix A to 40 CFR part 127).

EPA is also exploring the development of an ''open platform'' option that would allow NPDES-regulated facilities to use third-party software for electronically submitting NPDES program data (*e.g.,* DMRs) to the state, tribe, territory, or EPA in compliance with 40 CFR part 3, 122.22, and part 127 (see June 23, 2011; 76 FR 36919). As previously discussed in Section III.B.1 of this preamble, this open platform option would be similar to the IRS model for electronic reporting, which uses third-party software vendors (*e.g.,* TurboTax, TaxACT, or others) for tax data collection and transmission.[18]

[18] **Note:** Any references to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service or enterprise.

b. General Permit Reports: Notice of Intent (NOI) to discharge; Notice of Termination (NOT); No Exposure Certification (NEC); Low Erosivity Waiver (LEW)

i. Background

EPA and authorized states, tribes, and territories issue general permits to cover multiple similar facilities under a single permit. Where a large number of similar facilities require permits, a general permit allows the permitting authority to allocate resources in a more efficient manner and provide more timely permit coverage than would occur if individual permits had to be issued to each similar facility. States, tribes, and territories must seek EPA approval to administer general permits.[19] EPA's regulations governing the General Permit Program are located at 40 CFR 122.28. EPA and authorized programs have issued over 700 general permits nationwide.

General permits typically share common elements:[20]

- Sources that involve the same or substantially similar types of operations;
- Sources that discharge the same types of wastes or engage in the same types of sludge use or disposal;
- Sources that require the same effluent limitations or operating conditions, or standards for sewage sludge use or disposal; or
- Sources that require the same monitoring where tiered conditions may be used for minor differences within a class (*e.g.,* size or seasonal activity).

The regulations at 40 CFR 122.28(a)(1) provide for general permits to cover dischargers within an area corresponding to specific geographic or political boundaries such as the following:

- Designated planning area;
- Sewer district; and
- City, county, or state boundary.

The process for developing and issuing NPDES general permits is similar to the process for individual permits; however, there are some differences in the sequence of events. For general permits, the permitting authority first identifies the need for a general permit and collects data that demonstrate that a group or category of dischargers has similarities that warrant a general permit. In deciding whether to develop a general permit, permitting authorities consider whether:

- A large number of facilities will be covered;
- The facilities have similar production processes or activities;
- The facilities generate similar pollutants; and
- Whether uniform water quality-based effluent limits (WQBELs) (where necessary) will appropriately implement water quality standards.

The remaining steps of the general permit process are the same as for individual permits. The permitting authority develops a draft permit that includes effluent limitations (if applicable), monitoring conditions, special conditions, and standard conditions. The permitting authority then issues a public notice and addresses public comments, coordinates with EPA as appropriate in the review process, completes a CWA section 401 certification process, develops the administrative record, and issues the final permit. The final permit will also establish the requirements for the specific information that must be submitted by a facility that wishes to be covered under the general permit.

After the final general permit has been issued, there are several general permit reports that facilities must submit to their permitting authority, including:

- Notice of Intent (NOI) to discharge: This is the initial submission seeking coverage under a general permit [40 CFR 122.28(b)(2)(i) and (ii)];
- Notice of Termination (NOT): A request by the permittee to terminate their coverage under an existing permit (40 CFR 124.5);
- No Exposure Certification (NEC): A certification from a facility indicating that coverage under an existing stormwater general permit is not necessary due to certain facility-specific conditions [40 CFR 122.26(g)(1) and (4)]; and
- Low Erosivity Waiver (LEW): A certification from a facility indicating that coverage under an existing construction stormwater general permit is not necessary due to certain facility-specific or climate conditions [40 CFR 122.26(b)(15)].

It is important to note that EPA general permit regulations (40 CFR 122.28) do not require all general permit covered facilities to submit NOIs for all general permits issued by EPA and authorized state NPDES programs. Some general permits provide for automatic coverage.

This means that neither EPA nor the authorized state, tribe, or territory programs will have information regarding exactly which facilities are regulated under these general permits. General permits cover a wide range of facility types that range from the very large (*e.g.,* offshore oil and gas facilities, seafood processors) to very small discharges. Discharges from facilities covered under general permits include a variety of pollutants, such as total suspended solids, biochemical oxygen demand, oil and grease, bacteria, nutrients, hydrocarbons, metals, and toxics. The following table presents an estimate of several types of general permit covered facilities:

TABLE IV.1—ESTIMATE OF FACILITIES COVERED BY GENERAL PERMITS

General permit type	Current number of facilities[21]	Estimated total number of facilities over 5 years
Construction Stormwater	222,000	[22] 1,010,000
Industrial Stormwater	100,000	171,000
CAFO	11,600	14,000
Small Municipal Separate Stormwater Sewer Systems	6,300	8,000
Vessel General Permit[23]	69,000	100,000
Pesticide Applicators[24]	365,000	645,000
Other Industrial General Permits (*e.g.,* oil and gas extraction, seafood processors)	31,800	40,000
Combined Sewer Systems (CSSs)	38	38
Sanitary Sewer Systems (SSSs)	1,900	1,900
Total	816,138	1,989,938

[19] See *http://cfpub.epa.gov/npdes/statestats.cfm.*

[20] See 40 CFR 122.28(a)(2).

Finally, EPA notes that POTWs with approved pretreatment programs can use general control mechanisms, such as general permits, to regulate the activities of groups of significant industrial users (SIUs). Provided that the POTW has the necessary legal authority, it may issue a general control mechanism for a group of SIUs that meet certain minimum criteria for being considered substantially similar [40 CFR 403.8(f)(1)(A)(1)]. Pretreatment reporting is discussed in Section IV.E.1.e.

ii. Existing Reporting Requirements

In general, there is significantly less data in ICIS–NPDES on facilities covered by general permits than facilities regulated under individual permits due to reduced state reporting requirements for non-major facilities. Most facilities covered by general permits are classified as non-majors. States, tribes, territories, and EPA regions are required to enter data concerning the general permit and some limited data regarding general permit covered facilities. Limited data on general permit covered facilities impedes an accurate assessment of this part of the NPDES program. .

In particular, there are significantly less DMR data and linkages to receiving waters for these facilities as compared to facilities controlled by individual permits. EPA estimates that approximately 90 percent of general permit covered facilities regulated by a non-stormwater general permit are required to submit DMRs. However, most of the general permit covered facilities are nonmajors and their DMR data is not yet incorporated into ICIS–NPDES. This lack of data significantly inhibits public transparency on discharge data and compliance with permit effluent limits, as roughly 95 percent of all NPDES-regulated entities are covered by general permits.

iii. What data would be required to be submitted electronically and why?

EPA is soliciting comment on having facilities electronically submit NOIs and NOTs for permit coverage or requesting the termination of permit coverage in accordance with 40 CFR 122.28(b)(2)(i) and (ii), 122.41(l), 122.26(b)(15) and (g)(4), and 124.5, which are proposed to be updated to reference the need for these submissions to comply with 40 CFR part 3, 122.22, and part 127. Similarly, as required, NECs and LEWs are to be completed and submitted electronically by the facility in accordance with 40 CFR 122.26(b)(15) and (g)(4), which references the need for these submissions to comply with 40 CFR part 3, 122.22, and part 127. The data elements specific to these general permit reports are listed in Appendix A to 40 CFR part 127.

In addition to notifying the permitting authority of a facility's desire to obtain, waive, or terminate permit coverage, the general permit reports submitted by facilities also provide EPA, the state, tribe, or territory with data about the facility and its operations. These data include: information identifying the facility; a description of the facility's processes, wastewater volumes, and pollutant characteristics; discharge point locations, including the name of the receiving water body; projected start and end dates of permit coverage; effects of discharge on threatened or endangered species; certification statements; and other site-specific data. Although each general permit can impose slightly different reporting requirements, the process is consistent and may include some of the following types of data:

- Facility information (*e.g.,* ownership, name, address, location, non-government contacts);
- Permit information (*e.g.,* NPDES ID, permit number, permit type, various permit dates, permitted flow information, information about permit status, industry category and codes, permit limits, and permittee address information);
- Certain information for cooling water intake structures and thermal variances where applicable (*e.g.,* intake type, number of intakes, design intake flow);
- Report information associated with NOTs, NECs, and LEWs;
- Biosolids information, where applicable (*e.g.,* sewage sludge production and disposal information);
- CAFO information, where applicable (*e.g.,* animal types and numbers, confinement types and capacity, storage types and capacities);
- Stormwater discharge information, where applicable (*e.g.,* receiving water body name, project size, residual designation information, MS4 data, project termination data);
- CSO information, where applicable (*e.g.,* incorporated controls, population served, information on collection system and satellite systems);
- Pretreatment information, where applicable (*e.g.,* program indicators and dates, receiving POTW, streamlining dates, control authority); and
- POTW information, where applicable (*e.g.,* population served, and satellite collection system information).

EPA is soliciting comment on a minimum set of data (see Appendix A to 40 CFR part 127) be submitted electronically to ensure consistent and complete reporting nationwide and to expedite the collection and processing of the data, thereby making it more timely, accurate, complete, and available to the public. EPA estimates that the electronic submission of these general permit reports will save the states, tribes, and territories considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers typically review previous noncompliance events during permit renewal), ensure full exchange of NPDES general permit data between states, tribes, territories, and EPA to the public, and improve environmental decision-making. The standard minimum data elements are provided in Appendix A to 40 CFR part 127. This proposed rule does not expand the reporting requirements for permittees beyond what is required by existing regulations.

In most cases, a business or facility will only be required to submit such forms once during each permit cycle. Most of these general permit reports are currently being received by the states, tribes, territories, or EPA in hard-copy form (*i.e.,* printed on paper) for distribution within the permitting authority for approval processing and management. In addition to the four general permit reports (*i.e.,* NOIs, NOTs, LEWs, and NECs), facilities operating under some general permits are also required to electronically submit other NPDES data (e.g., DMRs).

iv. Additional Considerations

During the implementation period, EPA will address variations in the four general permit reports (e.g., NOIs, NOTs, LEWs, NECs) across the different authorized NPDES programs. EPA's goal is to implement a general permit reporting system that can capture general permits data nationally. For example, EPA currently operates an electronic reporting system for NOIs and a Vessels One Time Report supporting four EPA-issued general permits: Multi-Sector General Permit (MSGP) [25];

[21] As of October 2011.

[22] Although EPA anticipates the need to manage data flows for approximately 1 million CGP permittees over the next 5 years, due to rapid turnover there will only be approximately 202,000 permittees at any given time.

[23] Not covered in this proposed rule; the reasons are described in Section IV.E.6.c.

[24] Not covered in this proposed rule; the reasons are described in Section IV.E.6.d.

[25] See *http://cfpub.epa.gov/npdes/stormwater/msgp.cfm.*

Construction General Permit (CGP) [26]; Vessels General Permit (VGP) [27]; and the Pesticides General Permit (PGP). The MSGP and CGP regulate facilities where EPA is the permitting authority (*e.g.,* in non-authorized states, tribes, and territories) and the VGP is a nationwide permit administered by EPA. On October 31, 2011, EPA issued a final NPDES Pesticide General Permit (PGP) for point source discharges from the application of pesticides to waters of the United States.

All state, tribe, and territory MSGPs and CGPs should be collecting similar data, but some states, tribes, and territories might be collecting additional data elements for their own needs. For these general permits, EPA believes a reporting tool based on the federal MSGP and CGP, which includes a number of definable data fields can accommodate the full range of state, tribe, or territory variability. In essence, the reporting tool could merge the EPA data fields with other definable fields to produce a ''customized'' general permit reporting tool specifically for use by permittees within that state, tribe, or territory. EPA anticipates a certain amount of data commonality that will help limit the number of truly unique fields on reporting forms.

Several factors could reduce the number of unique reporting tools that would be needed. First, substantial portions of all general permits are quite similar–such as the data identifying the facility and its owners and operators. In addition, many of the general permit types would be tracked by multiple states, tribes, or territories and may be similar due to common permittee operations, discharges, or monitoring. Several states, tribes, or territories have either developed general permits for specific industries, or have developed a more generic general permit that includes an industry as a subset under a broader category. Where common general permit data are identified across states, tribes, and territories, a limited number of industry-specific templates, each of which includes a limited number of definable fields, might be able to accommodate the full range of variability among non-EPA issued general permits. EPA solicits comment on how to best address the variability of general permits issued by EPA, states, tribes, and territories. There are a number of scenarios as states, tribes, and territories move toward the electronic submission of general permit reports.

- Permits Covered by State, Tribal, and Territory General Permit Electronic Reporting Tools—As of October 1, 2011, approximately 15 states use an electronic reporting tool for NOIs for at least some of their permit types (see DCN 0027). EPA expects these states to continue using their existing NOI electronic reporting tools. EPA will review these tools to determine if they comply with 40 CFR part 3, 122.22, and part 127 (see 40 CFR 127.27). States, tribes, and territories will also be required to share with EPA the minimum set of federal data (Appendix A to CFR part 127). EPA will provide the states, tribes, and territories with information on how to provide the data to EPA's CDX node on the Exchange Network, which will provide the data to ICIS–NPDES.
- States, Tribes, and Territories Opting to Use EPA's General Permit Report System- Some states, tribes, and territories do not have an electronic reporting system for general permit reports and would prefer not to develop one. States, tribes, and territories have the option to adopt EPA's electronic reporting tool for general permit reports. EPA's electronic reporting tool would allow users to enter their general permit report data into a fillable PDF electronic form and then electronically sign and submit the form to the authorized NPDES program. The appropriate authorized NPDES program will approve or deny the form, and approved forms would be sent to ICIS–NPDES by the tool through CDX. EPA's electronic reporting tool for general permit reports will also offer users the capability of sending the approved general permit data to a particular state, tribe, and territory NPDES data system.

When a state, tribe, or territory notifies EPA that they intend to use EPA's tools to allow their permittees to electronically submit general permit reports, the EPA system administrator will set up a general permit report workspace within the federal tool for use by EPA regions and authorized state, tribe, or territory programs. After that workspace has been set up, the tool will solicit essential general permit data and monitoring requirements from ICIS–NPDES via CDX to populate electronic forms. EPA regions and authorized state, tribe, or territory programs will also have the capability of creating new general permits in the new federal tool. These forms would be accessible to facilities through the workspace. An authorized NPDES program administrator would be responsible for approving general permit reports from users, establishing the limit monitoring requirements for an approved NOI, and submitting the data to ICIS–NPDES.

The authorized NPDES program user would be responsible for confirming that ICIS–NPDES has processed the data and would either communicate errors back to the facility user or generate a confirmation letter for the facility user along with a permit identifier that has been assigned by ICIS–NPDES. The new federal tool will provide an easy means for the authorized NPDES program to manage these general permit data without requiring direct access to ICIS–NPDES.

As noted in the implementation section (see Section IV.K), facilities seeking coverage, waiver, or termination from a general permit would be required to submit the information required by this rule electronically. If the general permit does not require electronic reporting, then these facilities would be required to submit paper copy general permit reports to their permitting authority for approval and (unless the permitting authority is EPA) also report electronically to EPA under Sections 304(i) and 308 of the Clean Water Act. If that general permit requires electronic reporting, it must be compliant with 40 CFR part 3 (CROMERR) and 40 CFR part 127 (NPDES Electronic Reporting Rule), including submission to the appropriate initial recipient, as identified by EPA, and as described in Section IV.I.

c. CAFO Program Reports

i. Background

Concentrated animal feeding operations (CAFOs) are animal feeding operations where animals are kept and raised in confinement, as defined at 40 CFR 122.23(b)(2), and that meet certain regulatory criteria or are designated by the permitting authority or Regional Administrator. In the absence of facility-specific data, EPA's Office of Water estimates there are approximately 14,400 large or medium CAFOs nationwide. The Office of Water estimates that of this universe, approximately 8,300 CAFOs have NPDES permits. Of the remaining large and medium CAFOs, it is unknown how many of them discharge and need permit coverage (see DCN 0029). Failure to properly manage manure, litter, and process wastewater at CAFOs can negatively impact the environment and public health. Discharges of manure and wastewater from CAFOs have the potential to contribute pollutants such as nitrogen, phosphorus, organic matter, sediments, pathogens, heavy metals, hormones, and ammonia to surface waters.

[26] See *http://cfpub.epa.gov/npdes/stormwater/cgp.cfm.*

[27] *http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm.*

ii. Existing Reporting Requirements

Under the existing NPDES regulations, pursuant to 40 CFR 122.23(d)(1), every CAFO that discharges must apply for either an individual NPDES permit or seek coverage under a general permit, if available. NPDES-permitted CAFOs are required to submit an annual report to the State Director or Regional Administrator pursuant to 40 CFR 122.42(e)(4). The annual report must include: (1) The number and type of animals, whether in open confinement or housed under roof; (2) estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons or gallons); (3) estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons or gallons); (4) total number of acres for land application covered by the CAFO's nutrient management plan; (5) total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months; (6) summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; (7) a statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and (8) specified supporting agricultural data and calculations including the actual crop(s) planted and actual yield(s) for each field, and the actual nitrogen and phosphorus content of the manure, litter, and process wastewater.

iii. What Data Would Be Required To Be Submitted Electronically and Why?

EPA is soliciting comment on requiring CAFO permitted facilities electronically submit CAFO annual reports in accordance with 40 CFR 122.42(e)(4), which references the need for these submissions to be compliant with 40 CFR part 3, 122.22, and part 127. The data elements specific to these annual reports are listed in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 122.42(e)(4) to include electronic reporting requirements.

The electronic submission of annual reports would help permitting authorities collect and process CAFO information more efficiently, and aid in the evaluation of the compliance status of NPDES-permitted CAFOs. Electronic annual reports would provide the data elements already required under 40 CFR 122.42(e)(4) in a more efficient and accessible form, allowing EPA, the states, tribes, territories, and the public to obtain updated information such as how many permitted CAFOs there are in the U.S., how many animals of each animal type are being raised at permitted CAFOs, how many permitted CAFOs have had discharges within the previous year, the type and amounts of manure generated by permitted CAFOs in the previous year, and the requirements and controls on these CAFOs.

Electronic reporting of CAFO annual reports will also improve compliance monitoring. EPA, states, tribes, and territories rely on the information contained in annual program reports to augment inspections and effectively monitor compliance. The electronic submittal of annual reports will supply basic information on permitted CAFOs as well as more detailed discharge information.

Finally, EPA is soliciting comment on eliminating the reporting of ''time'' of discharge from the annual report [see 40 CFR 122.42(e)(4)(vi)]. EPA estimates that the reporting of the ''date'' of a discharge is sufficient for permitting and compliance determinations. EPA solicits comment on this proposed change.

iv. Additional Considerations

EPA recognizes that electronic reporting could be impracticable for some CAFO facilities, particularly those that do not have broadband access to the internet. In general, electronic reporting tools require faster Internet connection speeds to work most effectively. Taking into account the limitations of broadband availability and technological capabilities, EPA is considering providing a temporary exception to the electronic reporting requirements for certain CAFO facilities or other facilities lacking broadband capability or high-speed Internet access and solicits comment on such an exception. See 40 CFR 127.15. In that section, EPA solicits comment on whether to allow such facilities to receive a temporary waiver from electronic reporting, and temporarily be required to submit their NPDES compliance information on paper-based forms.

d. Sewer Overflow and Bypass Reports

i. Background

This section of the preamble discusses CSOs and SSOs (together referred in this proposal as ''sewer overflow events''), and wastewater treatment works bypasses. CSO discharges generally occur at known outfall locations and are covered by an NPDES permit. SSOs generally do not occur at designated locations, but can occur from various locations in the system (*e.g.,* manholes). A bypass at a POTW is an intentional diversion of wastewater from any portion of the treatment facility. See 40 CFR 122.41(m)(l).

ii. Existing Program Reporting Requirements

Reporting requirements for sewer overflows and bypasses in NPDES permits are to be at least as stringent as specified in the ''standard conditions'' applicable to all NPDES permits [40 CFR 122.41(l), and (m)(3)] or the CSO Control Policy [59 FR 18688, April 19, 1994)] The following summarizes the current reporting requirements for sewer overflows and bypasses.

Combined Sewer Overflows

Under Section 402(q)(1) of the Clean Water Act, NPDES permits for combined sewer system discharges shall conform to EPA's 1994 CSO Control Policy.[28] The CSO Control Policy calls for a phased approach to permitting. In Phase I permits, all permittees with combined sewer systems were initially required to immediately implement Best Available Technology/Best Control Technology, which at a minimum includes the ''nine minimum controls'' as determined on a Best Professional Judgment (BPJ) basis by the permitting authority and develop a long-term CSO control plan that will ultimately result in compliance with the requirements of the CWA, including water quality standards. Phase II permits contain requirements for implementing the permittees' long-term CSO control plans (LTCPs).

The nine minimum controls are measures to reduce the prevalence and impacts of CSOs and include two information-related measures. Permittees are required to provide ''public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts,'' and to conduct ''monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.'' Development and implementation of the LTCPs entails the following, which include monitoring and reported activities:

- Characterizing, monitoring, and modeling of the combined sewer system (see CSO Control Policy Section II.C.1);
- Prohibiting new or significantly increased overflows to sensitive areas, which requires monitoring and

[28] See EPA's Web site at: *http://cfpub.epa.gov/npdes/cso/cpolicy.cfm.*

assessment of the CSO events (see CSO Control Policy Section II.C.3.a);

• Conducting an evaluation of CSO controls based on frequency, duration, volume, location, treatment, and compliance with water-quality standards (see CSO Control Policy Section II.C.4);

• Conducting a cost and performance analysis of the LTCP based on characterization, monitoring, and modeling data (see CSO Control Policy Section II.C.5);

• Maximizing treatment at the existing POTW treatment plant based on characterization, monitoring, and modeling data (see CSO Control Policy Section II.C.7); and

• Conducting a post-construction compliance monitoring program, according to a plan which details the monitoring protocols to be followed, such as the necessary effluent, ambient, and other water-quality monitoring, which must be approved by the NPDES authority (see CSO Control Policy Section II.C.9).

The characterization, monitoring, modeling, and reporting measures help the permittee and the NPDES permitting authority determine the appropriate controls to be implemented and the effectiveness of the controls selected in the LTCP in meeting CWA requirements and achieving applicable water quality standards. The NPDES permitting authority uses CSO monitoring and assessment data from the permittee in order to develop appropriate permit conditions and demonstrate compliance with the CSO Control Policy. NPDES permits must identify the CSO outfalls and permitted discharges. All discharges from these outfalls, whether dry or wet-weather discharges, are subject to reporting requirements under NPDES permits. CSO discharges from CSO permitted outfalls (dry or wet-weather) that constitute noncompliance are required to be reported under 40 CFR 122.41(l)(6) and (7). CSO discharges from CSO permitted outfalls (wet-weather) that do not result in noncompliance can be reported on DMRs [40 CFR 122.41(l)(4)(i)] at the frequency identified by the permit, and are subject to public notification requirements, one of the nine minimum measures under the CSO Control Policy. However, one of the nine minimum measures is to prohibit CSO discharges during dry weather. Therefore, EPA regulations require that these and other noncompliance events must be reported under 40 CFR 122.41(l)(6) and (7).

Sanitary Sewer Overflows

Separate sanitary sewer systems, unlike combined sewer systems, are designed to carry only domestic sewage. SSOs are generally unplanned and can occur anywhere in a collection system, although generally they are due to excessive infiltration and inflow during and following wet weather events. SSOs, including those that do not reach waters of the United States, may be indicative of improper operation and maintenance of the sewer system and thus may violate NPDES permit conditions requiring proper operation and maintenance [40 CFR 122.41(e)]. These noncompliance events are required to be reported to the NPDES permitting authority in compliance with EPA's standard permit conditions [40 CFR 122.41(l)(6) and (7)]. POTWs must provide an oral report within 24 hours for any overflow event that ''may endanger health or the environment'' and follow-up the oral report with a ''written submission'' within 5 days of the permittee's discovery of the overflow event [see 40 CFR 122.41(l)(6)]. All other overflows are required to be reported by the permittee with the next regularly scheduled monitoring report [40 CFR 122.41(l)(7)].

Bypass Events

EPA regulations [40 CFR 122.41(m)] prohibit ''bypassing'' any portion of a treatment facility. If the permittee knows that a bypass will occur, it is required to submit notice to the permitting authority, if possible at least ten days in advance of anticipated bypass events [see 40 CFR 122.41(m)(3)(i)]. If a bypass is unanticipated, permittees must provide an oral report within 24 hours and follow-up the oral report with a ''written submission'' within 5 days of the permittee's discovery of the bypass event [see 40 CFR 122.41(m)(3)(ii) which references 40 CFR 122.41(l)(6)]. Where a POTW has a combined sewer system, and the permit includes an approved anticipated bypass, the permit should specify monitoring and reporting related to the bypass. This proposed rule does not change the reporting requirements for bypass events related to non-POTW facilities (industrial facilities).

iii. What data would be required to be submitted electronically and why?

EPA is soliciting comment on requiring POTWs to report sewer overflow, sanitary sewer overflow, and bypass reports in compliance with permit conditions implementing 40 CFR 122.41(l)(4),(6), and (7), (m)(3), and CSO Control Policy would be required to be completed electronically. These data submissions would be subject to 40 CFR part 3, 122.22, and part 127. The data for these reports would be based on current reporting requirements and listed in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 122.41(l)(6) and (7), and (m)(3)(i) to include electronic reporting requirements for sewer overflows and bypass events.

With respect to CSOs, this proposed language would only require electronic reporting for noncompliant combined sewer overflows. EPA is not proposing to require the electronic submission of LTCPs as these reports are unique to each POTW. EPA solicits comment on this approach. In addition, under section 402(q), permits issued to POTWs with combined sewer systems must require monitoring and reporting of wet-weather CSO events in accordance with the CSO Control Policy. As previously noted, wet weather CSO discharges that do not result in noncompliance can be reported on DMRs [40 CFR 122.41(l)(4)(i)] at the frequency identified by the permit. EPA is soliciting comment on amending 40 CFR 122.41(l)(4) to require the same data that would be required to be reported under proposed section 122.41(l)(6) and Appendix A to 40 CFR part 127 be reported electronically by such POTWs in their DMRs.

With respect to unanticipated bypasses, EPA is soliciting comment that the reporting requirements in 40 CFR 122.41(m)(3)(ii) would also be changed from paper-based reporting to electronic reporting as this section cross-references section 122.41(l)(6), which EPA is proposing to amend as above. This proposed rule would not change the reporting requirements for bypass events related to non-POTW facilities (industrial facilities).

The collection, management, analysis, and reporting of data from the sewer overflow and bypass reports, which have been identified for conversion from paper-based to electronic reporting under the proposed rule, would aid EPA oversight of state NPDES programs as well as provide the public with better access to this data. CSO, SSO, and bypass events are of special concern with respect to public health because they can expose the public to bacteria, viruses, intestinal parasites, and other microorganisms that can cause serious illness such as cholera, dysentery, hepatitis, cryptosporidiosis, and giardiasis. Precipitation and snowmelt entering combined and separate sanitary sewer systems may result in sewer overflow events, which in turn may be responsible for beach closings, swimming and fishing advisories, and habitat degradation. Sewer overflows contribute to 15 percent of impaired

rivers and streams, 6 percent of impaired lakes, and 33 percent of impaired bays and estuaries.[29] The Office of Water's (OW) 2004 Report to Congress on ''Impacts and Control of CSOs and SSOs'' estimated the annual CSO and SSO discharge volumes of untreated wastewater at 850 billion and three to ten billion gallons per year, respectively.[30]

As a result of this proposed rule, EPA, states, tribes, and territories would be able to better estimate the location, frequency, magnitude, and duration of sewer overflows, the environmental and public health impacts, and the potential causes. This sewer overflow data would provide the public with meaningful information on the number and frequency of sewer overflows in their communities. This data could also be used to prioritize decisions on how best to upgrade aging infrastructure and could be integrated with health warnings by local municipalities to protect public health.

EPA also solicits comment on whether these sewer overflow reports should be limited to sewer overflows at a threshold volume or include *de minimis* releases (minor volumes associated with routine operation and maintenance). Finally, EPA also solicits comment on whether the list of minimum federal data for sewer overflows and bypasses (Appendix A to 40 CFR part 127) provide sufficient distinction between the different types of sewer overflows and bypasses.

e. Pretreatment Program Reports

i. Background

POTWs receive wastewater from households (domestic waste), as well as from a wide variety of commercial and industrial facilities, referred to as industrial users (IUs). The types of IUs range widely, from small restaurants to hospitals to large and complex organic chemical manufacturers. EPA has further identified some IUs as categorical industrial users (CIUs), *i.e.,* IUs subject to EPA's pretreatment standards developed for particular industrial categories, and significant industrial users (SIUs), *i.e.,* IUs that are either CIUs or discharge process wastewater above the thresholds set in 40 CFR 403.5. EPA has developed a comprehensive pretreatment program implemented through EPA Regions, state, tribes, territories, and POTWs to control IU discharges of pollutants that might pass through or interfere with POTW treatment processes or contaminate sewage sludge, thereby posing a threat to human health or the environment. POTWs with approved pretreatment programs are required to develop, implement, and enforce pretreatment program elements through provisions written into their NPDES permits or waste discharge requirements. POTWs with approved pretreatment programs are also required to annually report biosolids compliance monitoring data to EPA or an authorized state program. NPDES regulations also require POTWs to disclose information to the Director of the permitting authority about IU discharges into their collection system and to identify when these discharges substantially change [see 40 CFR 122.42(b) and 122.44(j)(1)].

The pretreatment program primarily focuses on controlling pollutants from IUs that: (1) Have the potential to cause the POTW to violate its NPDES permit discharge limits; (2) may pose a safety concern to the POTW or its workers; or (3) affect the POTW's sewage sludge disposal method. [See 40 CFR 403.3(i).] The pretreatment program also has several other equally important regulatory requirements and initiatives. First, the pretreatment program ensures implementation and compliance with the technology-based categorical pretreatment standards (see 40 CFR 403.6). Second, the pretreatment program contains regulatory provisions for preventing sewer blockages and collection system overflows due to fats, oils, and grease.[31] Finally, municipal pretreatment programs are the source of significant pollution prevention and innovation initiatives. For example, such efforts include best management practices and controls for dental mercury and unused pharmaceuticals.

Through the pretreatment program regulations at 40 CFR part 403 and requirements within the NPDES regulations at 40 CFR part 122, EPA and approved state pretreatment programs directly oversee and regulate over 1,500 approved pretreatment programs. These approved pretreatment programs, in turn, oversee approximately 20,000 SIUs [see 40 CFR 403.8(f)]. The total number of SIUs is approximately three times the number of NPDES major dischargers.

The pretreatment program is considered a component of the NPDES program; however, in a larger sense, its regulatory framework is as comprehensive as the NPDES permit program itself. As with the NPDES permit program, EPA can authorize states to implement and enforce the NPDES pretreatment program. EPA has authorized pretreatment programs in 36 states as of October 1, 2011. The pretreatment program has additional complexity as authorized states, tribes, and territories (approval authorities) can further authorize pretreatment program authority to local governments. This complexity is reflected in the different types of compliance monitoring reporting, the associated report preparers and reviewers, and report timing.

ii. Existing Program Reporting Requirements

EPA identified 23 different pretreatment program reports as candidates for electronic reporting; these reports are currently managed in hard-copy format between industrial users, control authorities, and approval authorities. See Table IV.2. In general, these reports fall into the following categories:

- *Approval Authority Reports:* Program reports from approval authorities to EPA;
- *Control Authority Reports:* Program reports from control authorities to approval authorities (states or EPA Regions); and
- *Industrial User Reports:* Program reports from industrial users to control authorities (local POTWs, authorized states, tribes, territories, or EPA Regions in cities without approved programs).

TABLE IV.2—LIST OF PRETREATMENT PROGRAM REPORTS

Regulation	Report	Reporting entity	Receiving entity	Frequency
40 CFR 403.6	Categorical Determination Request.	CIU/POTW	Approval Authority	Once per request.
40 CFR 403.7	Removal Credit Authorization and Compliance Monitoring.	Control Authority	Approval Authority	Once per request.

[29] U.S. EPA, 2009. ''FY 2010 Office of Enforcement and Compliance Assurance (OECA) National Program Manager (NPM) Guidance, April 23, 2009, DCN 0044.

[30] U.S. EPA, 2004. '' Report to Congress: Impacts and Control of CSOs and SSO,'' EPA 833–R–04–001, August, DCN 0045.

[31] U.S. EPA, 2007, ''Controlling Fats, Oils, and Grease Discharges from Food Service Establishments,'' EPA–833–F–07–007, July, DCN 0046.

TABLE IV.2—LIST OF PRETREATMENT PROGRAM REPORTS—Continued

Regulation	Report	Reporting entity	Receiving entity	Frequency
40 CFR 403.09	POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.	Control Authority	Approval Authority	Once per request.
40 CFR 403.10	Application and Reporting Requirements for States to Seek Approval from EPA to Run Their State Pretreatment Program.	Approval Authority	EPA	Once per request.
40 CFR 403.11	Removal Credit Authorization	Control Authority	Approval Authority	Case by Case.
40 CFR 403.12 (b).	Baseline Monitoring Report	CIU	Control Authority	Once per EPA categorical standard rulemaking.
40 CFR 403.12 (d).	Initial report on Compliance with Categorical Pretreatment Standard.	CIU	Control Authority	Once per EPA categorical standard rulemaking.
40 CFR 403.12 (e).	Periodic Reports on Continued Compliance for CIUs.	CIU	Control Authority	Biannually.
40 CFR 403.12 (f).	Notice of Potential Problems, Including Slug Loading.	IU	Control Authority	Case by Case.
403.12(g)(2)	24 hour notification of violations, 30 day re-sampling.	SIU	Control Authority	Case by Case.
40 CFR 403.12 (h).	Periodic Reports on Continued Compliance for Non-CIUs.	SIU	Control Authority	Biannually.
40 CFR 403.12 (i)	Annual POTW Reports	Control Authority	Approval Authority	Annually.
40 CFR 403.12 (j)	Notification of Changed Discharge	IU	Control Authority	Case by Case.
40 CFR 403.12 (k).	Compliance Schedule for POTWs	Control Authority	Approval Authority	Once per event.
40 CFR 403.12 (p).	Hazardous Waste Notification and BMP Certification.	IU	Control Authority	Case by Case.
40 CFR 122.42(b)	POTW Disclosure Requirements on IU Discharges for NPDES Permitting.	POTW	NPDES Program Director	Case by Case.
40 CFR 122.44(j)(1).	SIUs, identify in terms of volumes and character of pollutants.	POTW	NPDES Program Director	Case by Case.
40 CFR 403.12 (q).	Annual Certification by Non-Significant Categorical Industrial Users.	CIU	Control Authority	Annually.
40 CFR 403.13	Variances from categorical pretreatment standards for fundamentally different factors.	IU, POTW, or Other Interested Person.	Approval Authority and EPA.	Case by Case.
40 CFR 403.15	Net/Gross calculations	IU	Control Authority	Case by Case.
40 CFR 403.16	Upset	CIUs	Control Authority	Case by Case.
40 CFR 403.17	Bypass	IUs	Control Authority	Case by Case.
40 CFR 403.18	Modifications of POTW pretreatment programs.	Control Authority	Approval Authority	Case by Case.

Note: EPA's pretreatment regulations (40 CFR part 403) also require other reports (*e.g.,* reports required by administrative orders). These reporting requirements are case-by-case events.

These reports are submitted in hard-copy format to local pretreatment programs, authorized states, tribes, territories, or EPA Regions. Key data from these reports are not generally standardized, publicly available, or shared because these data are mostly in hard-copy format and reported in different forms.

Currently, authorized states, tribes, territories, or EPA Regions enter or otherwise transfer basic POTW data (*e.g.,* POTW name, address, latitude and longitude, POTW NPDES ID, POTW effluent limits, name of receiving waterbody) into ICIS–NPDES (see DCN 0031). Pretreatment program audits and compliance inspection summary data, collected by the authorized states, tribes, territories, or EPA, is entered into ICIS–NPDES; similar summary data on POTW performance actions is submitted annually by the POTW [in accordance with NPDES permit conditions and also 40 CFR 403.12(i)], but is not necessarily entered into state or federal data systems. EPA limited the number of WENDB pretreatment data elements as a means of reducing the reporting burden on states, tribes, and territories. Consequently, ICIS–NPDES pretreatment data only provide very general information about pretreatment programs and do not contain programmatic or compliance information on individual significant industrial users.

In the absence of approved local pretreatment programs, EPA, state, tribe, or territory functions as the control authority with the direct responsibility of overseeing these industrial users. EPA estimates that there are approximately 1,400 industrial users located in cities without approved local pretreatment programs. Failure to track and enforce compliance of IUs for which states, tribes, territories, or EPA are the control authority was cited as a weakness by EPA's Office of Inspector General (see DCN 0032). Some states and EPA Regions acting as control authorities have entered some information regarding industrial users located in cities without approved local pretreatment programs, but such data is very limited in the national NPDES data systems.

There are also inconsistencies in data entry between the state, tribe, territory, and Regional pretreatment programs. EPA recently reviewed pretreatment data in PCS and ICIS–NPDES and

interviewed EPA Regional pretreatment data entry staff. In doing this, EPA identified considerable inconsistencies in data entry, including use of database codes, types of data entered, and whether the data is entered at all. This lack of timely, accurate, and complete data limits EPA's oversight of the pretreatment program at the national level. Finally, there is limited public access to pretreatment data in ICIS–NPDES.

iii. What data would be required to be submitted electronically and why?

EPA solicits comment on having certain pretreatment program reports submitted electronically in accordance with 40 CFR 403.12(e), (h), and (i), which references the need for these submissions to be compliant with 40 CFR part 3, part 127, and 403.12(l). The data elements for these reports are listed in Appendix A to 40 CFR part 127. EPA notes that these reporting requirements do not apply to facilities *solely* regulated under state, tribe, and territory pretreatment statutes and regulations (*i.e.,* facilities that are exempt from EPA regulations but are regulated under more stringent state, tribe, and territory statutes or regulations).

EPA reviewed all pretreatment reports in Table IV.2 as potential candidates for electronic reporting. EPA evaluated the feasibility and necessity of converting paper-based pretreatment program reports to electronic reports against the following factors: (1) The ability to standardize a pretreatment report; (2) the frequency of the pretreatment report; (3) the need to collect and manage data from the pretreatment report on a national basis for measuring programmatic and compliance activities; and (4) what summary data from various paper-based reports could be combined into another existing reporting requirement. EPA proposes that reports that are not identified for electronic reporting in this proposed rulemaking would remain as paper-based reporting requirements unless future regulations are implemented. Additionally, the pretreatment program reports that are not identified for electronic reporting in this proposed rulemaking may still be good candidates for being managed as electronic documents (*e.g.,* searchable PDFs) and for posting on EPA, state, tribe, territory, or local government Web sites. Making these documents available to the public will increase the transparency of the pretreatment program. For the reports not identified in this proposed rule for electronic submission, EPA solicits comment on which other pretreatment reports (if any) EPA should require for electronic submission as electronic documents (*e.g.,* searchable PDFs).[32]

Annual POTW Report

Using the criteria described above, EPA identified the Annual POTW Report [40 CFR 403.12 (i)], as a pretreatment report that could be converted from a paper-based report to an electronic submission compliant with 40 CFR part 3, part 127, and 403.12(l). In developing this proposal, EPA noted that summary data (*e.g.,* the number of slug loadings) from the following reports are already included in the existing Annual POTW Report [40 CFR 403.12(i)] requirements:

- 40 CFR 403.7 Removal credits;
- 40 CFR 403.12(f) Notice of potential problems including slug loadings;
- 40 CFR 403.12(j) Notice of change in Industrial User discharge;
- 40 CFR 403.12(p) Hazardous waste notification and BMP certification;
- 40 CFR 403.12(q) Annual certification by Non-significant CIUs;
- 40 CFR 122.42(b) POTW disclosure requirements to NPDES Director;
- 40 CFR 122.44(j)(1) POTW identification of industrial users;
- 40 CFR 403.16 Upset notification; and
- 40 CFR 403.17 Bypass notification.

The data elements that comprise the Annual POTW Report are provided in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 403.12(i) to include electronic reporting requirements.

Industrial User Reports

Using the criteria cited previously, EPA also identified that the following industrial user reports could be collected electronically for SIUs and CIUs in cities without approved pretreatment programs(EPA notes that SIUs and CIUs in cities *with* an approved pretreatment programs will continue to send their reports to their control authority; such reports may or may not be electronic submissions).

- 40 CFR 403.12(e) Periodic reports on continued compliance for CIUs; and
- 40 CFR 403.12(h) Periodic reports on continued compliance for Non-CIUs.

This will facilitate tracking and enforcing compliance of SIUs and CIUs for which states, tribes, territories, and EPA are the control authorities. Standardizing and electronically collecting these reports will help address deficiencies in EPA's National Pretreatment Program that were identified by EPA's Office of Inspector General (see DCN 0032). The data elements that comprise these industrial users reports in cities without approved pretreatment programs are provided in Appendix A to 40 CFR part 127 and in the rulemaking record (see DCN 0022). EPA is proposing to revise 40 CFR 403.12(e) and (h) to include electronic reporting requirements. EPA is not proposing to require electronic reporting from IUs that are not SIUs or CIUs as these facilities discharge smaller volumes of process wastewater and the number of IUs far exceeds the number of SIUs and CIUs. EPA solicits comment on whether it should require electronic reporting from IUs that are not SIUs or CIUs located in cities where EPA, the state, tribe, or territory is the control authority.

EPA solicits comment on making changes to 40 CFR 403.10 to require approved state, tribe, or territory pretreatment programs to incorporate the electronic reporting changes and submit their programs to EPA for review and approval. This state, tribe, or territory submission must require that the approval authority regularly notify each control authority that it must electronically submit its annual report in compliance with 40 CFR part 3, part 127, and 403.12(l) (including the requirement for the control authority to identify the initial recipient for electronic submissions). EPA considers these state tribe, territory, and local pretreatment program submissions to be a non-substantial modification, which means that the approval authority has 45 days to either approve or disapprove the modification. Where the approval authority does not notify the POTW within 45 days of its decision to approve or disapprove the modification or to treat the modification as substantial, the POTW may implement the modification as if it were approved by the Approval Authority. The proposed rule would make changes to 40 CFR 403.10(f)(2) to add the following language: Regularly notify all Control Authorities of electronic submission requirements of 40 CFR part 3, 122.22, and part 127.

iv. Additional Considerations

Due to the extensive number of entities either implementing or regulated under the National Pretreatment Program—approximately 1,600 approved pretreatment programs nationwide oversee approximately 20,000 SIUs—EPA is not proposing to convert paper-based reports between all

[32] The Missouri DNR Web site is an example of such a PDF repository of static searchable documents. See *http://www.dnr.mo.gov/env/wpp/permits/wpcpermits-issued.htm.*

IUs and POTWs to electronic submissions at this time. EPA is first focusing its efforts on collecting annual reports electronically from control authorities, acknowledging that these reports include summary data from IU reports, and collecting compliance reports electronically from IUs in cities without pretreatment programs. EPA solicits comment on whether EPA should re-examine this decision for the final rulemaking. Local pretreatment programs on their own initiative may convert these other paper-based reports to electronic submissions.

f. Biosolids Program Reports

i. Background

Wastewater treatment necessarily produces the end products effluent, sewage sludge, methane and other gases for energy, and water for reuse. Sewage and wastewater generated in homes, businesses, industries, and other venues that are conveyed to wastewater treatment plants are treated to allow effluent discharges or beneficial uses. The National Research Council has identified that compliance with EPA standards can promote the effective treatment and safe return of sewage sludge to the environment (see DCN 0034). Sewage sludge treatment usually involves a variety of processes and factors (*e.g.,* aerobic or anaerobic microbial degradation, time and temperature, high pH, lime stabilization and dewatering). Without proper controls, biosolids (sewage sludge) can present health hazards and cause water quality impairments.

Based upon the 2008 Clean Watershed Needs Survey (CWNS) Report to Congress, there are now 14,780 POTWs, which would represent an updated universe of sewage sludge (biosolids) generators. Note that the same 2008 CWNS Report (updated with more accurate data from the states) to Congress indicates that the 14,780 POTWs annually serve 73.7 percent of the U.S. population (226,302,213) and treat over 32 billion gallons of wastewater. Biosolids incinerators and septage removed from the numerous onsite/decentralized treatment systems are also covered by the 40 CFR part 503 requirements.

In almost equal amounts, these biosolids are either beneficially re-used or disposed (*e.g.,* municipal landfill, incineration). This volume of biosolids production will continue to increase with population growth and more stringent treatment requirements (*e.g.,* nutrient removal). The most recent national survey estimated that over seven million tons (dry weight) of biosolids were nationally generated by POTWs in 2004.[33] Also, there are currently 218 sewage sludge incineration (SSI) units in the United States and Puerto Rico.[34]

Section 405 of the CWA sets the statutory framework for regulating sewage sludge (biosolids). EPA has established a protective regulatory framework to manage the use and disposal of biosolids at 40 CFR part 503. Part 503 is a ''self implementing'' rule, which means that entities producing biosolids are regulated whether or not these requirements are included in a permit. Depending on use or disposal practice, EPA's sewage sludge regulations require monitoring and control of up to 10 metals and pathogen indicators.

Limited biosolids data can be found in national databases such as ICIS–NPDES or the Toxics Release Inventory (TRI). More detailed information on monitoring and biosolids management is provided in annual reports submitted by Class I sewage sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more. Class I sewage sludge management facilities are facilities that have an approved pretreatment program or are in one of the five states that have assumed direct pretreatment responsibilities under 40 CFR 403.10(e). EPA and authorized states, tribes, and territories can also identify other sewage sludge management facilities as Class I facilities because of the potential for their sewage sludge use or disposal practices to affect public health and the environment adversely.[35]

The vast majority of biosolids annual reports are submitted in hard-copy format to EPA's regional offices. These reports document the measures taken to protect human health and watersheds from the mismanagement of biosolids. Key data from these reports are not generally standardized, publicly available, or shared because these data are mostly in hard-copy format and are reported in different forms. The following quote provides a good example of the effort required to complete a one-time assessment of the biosolids program, which mostly relies upon non-standardized hard-copy reports: ''Consistent data on biosolids management is difficult to obtain and compile . . . With no centralized data collection and storage system yet in place, disparate pieces of data from various states and EPA regions must be painstakingly collected and interpreted to produce a useful national picture.'' [36] As of October 1, 2011, eight states are authorized to carry out the biosolids program under the NPDES program for EPA relative to at least part of the biosolids management practices under Part 503. Not all authorizations are complete (*e.g.,* Michigan has authorization for land application only). Some states incorporate EPA's biosolids regulations in other state programs outside of their NPDES program (*e.g.,* solid waste management programs).

ii. Existing Program Reporting Requirements

EPA's ICIS–NPDES data system has data fields for collecting and reporting some biosolids data. Some of these data fields were identified as required data elements for entry into EPA's data system (i.e., WENDB). [37] It is the responsibility of the biosolids regulatory authority to enter these WENDB data elements into ICIS–NPDES. A review of these two databases shows that currently there are comparatively few biosolids data in either ICIS–NPDES.

As indicated previously, EPA's sewage sludge regulations (40 CFR part 503) require certain POTWs to submit to the authorized state or EPA region an annual biosolids report. POTWs that must submit an annual report include POTWs with a design flow rate equal to or greater than one million gallons per day, POTWs that serve 10,000 people or more, and Class I sewage sludge management facilities. In general, Class I sewage sludge management facilities must report annually to the permitting authority biosolids monitoring data, quantity of biosolids managed, ultimate end use or disposal of the biosolids, end use or disposal location(s), and vector and pathogen reduction measures. The most recent national review of state management of biosolids data found a variety of data collection, management, and reporting activities.[38] Ten states are able to efficiently produce data on biosolids management projects in their state. Nine states require extensive help

[33] North East Biosolids and Residual Association, 2007. A National Biosolids Regulation, Quantity, End Use & Disposal Survey, July 20, DCN 0034.

[34] U.S. EPA, 2010. Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units. Fact Sheet, DCN 0047.

[35] See: 40 CFR 503.9 (c).

[36] See DCN 0004.

[37] U.S. EPA, 1994. ''WENDB Data Elements for Sludge. Memorandum from Carol Galloway, Chief, Compliance Information Evaluation Branch, and Richard Kuhlman, Acting Branch Chief, Policy Development Branch, January 25, DCN 0048.

[38] See DCN 0034.

to collect and analyze their state data on biosolids management projects.[39]

There are no data collection requirements on sludge removal from septic systems, which is also regulated by EPA (Part 503). Additionally, there are no existing reporting requirements for smaller POTWs without approved local pretreatment programs (*e.g.,* design flow rate less than one million gallons per day and serving less than 10,000 people) and treatment works treating domestic sewage (TWTDS) that are not identified by EPA or the authorized state, tribe, or territory as Class I sewage sludge management facilities.

iii. What data would be required to be submitted electronically and why?

EPA solicits comment on having POTWs electronically submit their biosolids annual reports in compliance with existing biosolids reporting requirements at 40 CFR 503.18, 503.28, and 503.48. The standard data elements for these annual biosolids reports are provided in Appendix A to 40 CFR part 127. EPA solicits comment on standardizing biosolids reporting in the following areas:

- Type and amount of biosolids generated and managed;
- Sampling and analytical methods;
- Location of biosolids disposal and management practices;
- Land application data;
- Surface disposal data; and
- Incineration data.

EPA is proposing to revise 40 CFR 503.18, 503.28, and 503.48 to include electronic reporting requirements.

The electronic collection, management, analysis, and reporting of data from these annual biosolids reports would aid EPA oversight of state, tribe, and territory biosolids programs as well as providing the public with better access to biosolids data. The improved accessibility to biosolids data, in accordance with the proposed rule, would provide the public with useful information on how well POTWs and other biosolids generators are managing their biosolids. These data could also be used to prioritize decisions on EPA, state, tribe, and territory inspections in order to best protect public health and the environment.

g. Municipal Separate Storm Sewer System (MS4) Program Reports

i. Background

EPA and authorized programs issue NPDES permits to municipal separate storm sewer systems (MS4s) which require MS4s to reduce pollutants in stormwater discharges and which prohibit illicit discharges pursuant to CWA section 402(p)(3)(B)(iii). The Phase I Stormwater Rule, issued in 1990, requires MS4s serving populations of 100,000 or more to obtain NPDES permit coverage for their stormwater discharges (55 FR 47990). The Phase II Rule, issued in 1999, requires small MS4s in urbanized areas, as well as small MS4s outside the urbanized areas that are designated by the permitting authority, to obtain NPDES permit coverage for their stormwater discharges. Individual permits tend to cover Phase I MS4s and general permits cover most Phase II MS4s.

Stormwater discharges, including discharges from municipal separate storm sewers, industrial facilities and construction sites, can have a significant impact on water quality (DCN 0070, 0071, and November 16, 1990; 55 FR 47991). Such discharges are responsible for beach closings, swimming and fishing advisories, and habitat degradation. Several studies reveal that stormwater discharges from urban areas can include a variety of pollutants, such as turbidity, pathogens, organic nutrients, hydrocarbons, metals, oil and grease, and debris. Stormwater picks up a variety of pollutants such as sediment, debris, pesticides, petroleum products, chemicals, solvents, asphalts and acids on its way over streets, buildings, landscaping, construction sites, and industrial areas, and in extreme cases it can alter the pH of the receiving stream or river. These pollutants can harm the environment and public health.

As of October 1, 2011, EPA estimates that there are approximately 6,600 MS4 permits nationwide. Approximately 280 Phase I MS4 permits cover approximately 1,000 permittees in total (many MS4 permits include two or more co-permittees). According to ICIS–NPDES (including data for 34 states, plus territories and tribes), 1,673 permits are designated as having MS4 requirements (*i.e.,* with an MS4 permit component). Due to system limitations in PCS, permits that include MS4 requirements are unable to be identified and evaluated easily for compliance and enforcement rates.

Many MS4 permits contain requirements to implement stormwater management programs to prohibit illicit (non-stormwater) discharges in order to reduce pollutants discharged to the ''maximum extent practicable'' (MEP). EPA regulations require that permit language for MS4s include the development and implementation of stormwater management plans (SWMPs), which incorporate the use of best management practices (BMPs) to meet these pollutant reduction and illicit discharge elimination requirements. See 40 CFR 122. 26(d)(2)and 122.34. Phase I MS4 permit applications must include estimated reductions in pollutant loadings expected from implementation of the SWMP [see 40 CFR 122.26(d)(2)(v)]. To be covered by a general permit, Phase II MS4 applications and notices of intent must include ''measurable goals'' for each of the BMPs to be implemented through the MS4's SWMP [see 40 CFR 122.34(d)(ii)]. Measurable goals are objectives and milestones that quantify the progress of program implementation and the performance of the MS4 BMPs, which EPA can use to track the progress and effectiveness of SWMPs in reducing pollutants to the MEP.

EPA has recommended that measurable goals include, where appropriate, the following three components: (1) The activity, or BMP, to be completed; (2) a schedule or date of completion; and (3) a quantifiable target to measure progress toward achieving the activity or BMP.[40] Measurable goals that include these three components and are easily quantifiable would allow EPA, states, tribes, territories, and MS4 operators to assess the level of progress in reducing pollutants to the MEP.

ii. Existing Program Reporting Requirements

EPA regulations at 40 CFR 122.42(c) require operators of large or medium MS4s and municipal separate storm sewer systems that have been designated by the Director of the regulatory authority under § 122.26(a)(1)(v) to submit an annual program report. However, because state-issued MS4 permits vary significantly nationwide in areas such as the breadth and specificity of annual report requirements and because SWMPs are developed and implemented by different MS4s, there is tremendous variability in the content and quality of annual program reports. Additionally, these program reports are a mix of narrative and numeric information. EPA regulations at 40 CFR 122.34(g)(3) require less information to be reported for small MS4s than for large and medium MS4s, and, except for the initial permit term for small MS4s, the regulation specifies small MS4 reporting to be every two years rather than the annual reporting frequency required for large or medium MS4 permittees.

[39] *Id.*

[40] Web-based Measurable Goals Guidance for Phase II MS4s, available at *http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm.*

iii. What would be required under the proposed rule and why?

EPA solicits comment on having MS4 permittees electronically submit their reports in a standardized format using divisible data elements (*e.g.,* not PDF files) in compliance with 40 CFR part 3, part 127, and 122.22. EPA is soliciting comment on changing 40 CFR 122.34(g)(3) and 122.42(c) to require regulated entities to electronically submit their MS4 reports in compliance with 40 CFR part 3, 122.22, and part 127. Specific data elements proposed to be required for the MS4 reports are provided in Appendix A to 40 CFR part 127.

EPA is also not proposing to change the frequency of MS4 program reporting. Some MS4 permits may also include numeric benchmarks or numeric parameters that are not themselves effluent limits, but help to determine whether narrative effluent limits are met or whether BMPs are working effectively. Enhancements to NetDMR to include unscheduled reporting would allow for electronic collection of DMR effluent reporting from MS4s; currently, ICIS–NPDES provides for unscheduled DMR data to be manually entered in the database. Finally, EPA is proposing to allow states, tribes, and territories to add their own unique set of data elements, including document attachments (*e.g.,* PDF) as needed.

The MS4 program report should document the MS4 actions during the previous year, evaluate program results, and describe planned changes towards continuous improvement. Although generally program reports are written for the permitting authority, they can also be written for members of the community as a way of divulging progress made towards meeting water quality goals. Electronically collecting these program reports would allow compliance monitoring data to be more easily shared with EPA, states, tribes, territories, and the public. These changes would provide the public with the opportunity to observe and examine the progress made by various MS4 programs towards controlling stormwater discharges. In particular, collecting MS4 program report data electronically would enable EPA, states, tribes, territories, and the public to more readily evaluate the effectiveness of MS4 stormwater control programs. Additionally, electronic collection of data would help permitting authorities to identify and share information on the most effective BMPs for controlling stormwater discharges and avoiding associated violations. Improved data availability through electronic reporting should improve the control of stormwater discharges by more quickly exchanging knowledge amongst permitting authorities and MS4s.

iv. Additional Considerations

In concert with state, tribe, and territory NPDES permit programs, EPA will likely need to adapt ICIS–NPDES to reflect current MS4 permitting practices. Specifically, some EPA Regions and states issue an individual MS4 permit to regulate multiple MS4s in a geographic area. For example, an MS4 permit issued to the San Francisco Bay Area covers multiple municipalities. Consequently, compliance for individual municipalities cannot adequately be tracked in ICIS–NPDES due to geospatial limitations. EPA would likely need to modify ICIS–NPDES to reflect a data structure more akin to a general permit, which allows for one permit to cover multiple facilities. This is particularly important when one MS4 permit includes multiple urban areas contributing to multiple different urban waters.

2. Where an NPDES-Regulated Facility Should Send Its Data

As previously noted, EPA is also soliciting comment on changing its regulations governing the standard conditions applicable to all NPDES permits by adding a new standard permit condition [see 40 CFR 122.41(1)(9)] that would require NPDES-regulated facilities to ensure that, for each type of electronic NPDES submission, the information is sent to the appropriate initial recipient, as identified by EPA, and as defined in 40 CFR 127.2(b). Authorized NPDES programs would include this requirement in all permits and control mechanisms. See Section IV.K for the implementation plans for the proposed rule. The new standard permit condition at 40 CFR 122.41(1)(9) would ensure that NPDES-regulated facilities know where to send their NPDES compliance data electronically.

The proposed rule also would require EPA to publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES regulated entities by state, tribe, and territory, and by NPDES data group. Some states, tribes, and territories are not authorized to implement all aspects of the NPDES program (*e.g.,* pretreatment, biosolids) so not all states, tribes, and territories are capable of being the initial recipient of these electronic submissions (in addition to electronic reporting readiness on part of the state, tribe, or territory). EPA would update this listing on its Web site and in the **Federal Register** if a state, tribe, or territory gains authorization to administer a NPDES program and is also approved by EPA to be the initial recipient of NPDES electronic data submissions for that NPDES data group. See 40 CFR 127.27.

3. Electronic Data Collection Tools

The proposed rule would allow authorized NPDES programs to use their own electronic reporting tools provided that the tools meet all of the minimum federal reporting requirements in 40 CFR part 3, 122.22, and part 127. States, tribes, and territories would be required to share the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) that are collected through these electronic state reporting tools with EPA. This sharing of information could be easily accomplished through the NEIEN and EPA's Central Data Exchange. States, tribes, and territories would be able to elect to use EPA's electronic reporting tools or EPA-approved third-party software provider tools. NPDES regulated entities would be required to use an EPA-approved tool to electronically submit their data. When authorized NPDES programs or their electronic reporting tools are not compliant with EPA's electronic reporting requirements (40 CFR part 3, 122.22, and part 127) then NPDES regulated entities in that state, tribe, or territory would be required to electronically send their NPDES data to EPA. Regardless of whether a state's, tribe's, territory's, or EPA's, or a third-party electronic reporting tool is used, NPDES program data would be included in ICIS–NPDES and made available to the public through EPA's Web site.

4. Signature and Certification Standards for Electronic Reporting

EPA seeks to ensure that electronic reporting has at least the same level of legal defensibility and dependability as information that EPA would obtain through hard-copy paper submission. The Cross-Media Electronic Reporting Regulation (CROMERR), promulgated October 13, 2005, provides the legal framework for electronic reporting requirements established under all EPA environmental regulations (40 CFR part 3). CROMERR establishes signatory, certification, and security standards for information systems that receive reports and other documents electronically (including email, but excluding disks, CDs, and other magnetic and optical media). CROMERR establishes the electronic reporting criteria that must be met in order to ensure that a particular electronic reporting tool can provide

electronic information to EPA that meets EPA's needs.

CROMERR applies to (a) regulated entities that electronically submit reports and other documents directly to EPA under Title 40 of the Code of Federal Regulations, and (b) states, tribes, and local governments that administer or seek to administer EPA-authorized programs under Title 40 and provide electronic information to EPA. Regulated entities should ensure that they use the electronic reporting tools designated by EPA, states, tribes, and territories to receive the specified information and meet the other CROMERR criteria set out in 40 CFR 3.10. NPDES-authorized states, tribes, and territories (and local governments) that wish to continue or begin using electronic reporting of NPDES information to EPA must revise or modify those authorized programs and their electronic reporting tools, if applicable, as appropriate to incorporate CROMERR criteria, and apply for and receive CROMERR approval by EPA under 40 CFR part 3.

At this time, several states have already developed or are developing electronic reporting tools for use by NPDES-regulated facilities. EPA has also developed electronic reporting tools, notably NetDMR. These electronic reporting tools, and other tools to be developed in the future, whether by EPA, states, tribes, territories, or the competitive marketplace, need to be CROMERR-compliant to ensure that they meet EPA's data needs and requirements.

EPA developed a CROMERR system checklist [41] that EPA, states, tribes, and territories and other electronic tool developers can use to identify the key features to be included in an electronic reporting system for it to be CROMERR-compliant. The checklist contains, among other things, requirements for a registration process which identity-proofs the registrant, to ensure that the individual using the electronic tool and signing the electronic documents has been determined with sufficient legal certainty, and to establish a subscriber agreement or electronic signature agreement. The CROMERR checklist also contains requirements for the signature process, the submission process, and the creation of a copy of record. Additional details may be found in the CROMERR checklist, or in the regulatory text or preamble of CROMERR itself (40 CFR 3.10; 70 FR 59848). Recently, EPA has initiated a workgroup with states to streamline the CROMERR approval process. EPA also notes that the transaction cost for authentication has dropped from tens of dollars per user to less than pennies per user (*e.g.,* DCN 0035).

NetDMR is an example of a CROMERR-compliant electronic reporting tool, described previously in Section IV.E.1.a in the context of DMRs. Among other features ensuring CROMERR compliance by this tool, NetDMR utilizes a subscriber agreement with a designated signatory authority for the NPDES permittee, a password, required responses to security questions, and Secure Socket Layer (SSL) communications.[42]

One person should be clearly designated as the signatory authority for the electronic reporting of particular NPDES information. The federal regulations at 40 CFR 122.22 describe the appropriate management level for anyone designated as a signatory authority for permit applications and reports. If the signatory authority plans to have someone else sign and submit the electronic DMRs, for example, then this individual must be a duly authorized representative of that signatory authority in accordance with 40 CFR 122.22(b). Under CROMERR, electronic systems that accept electronic signatures must be able to effectively prove that those electronic signatures are valid and were created with an electronic signature device that was not compromised. The use of a personal identification number (PIN) or password in combination with a requirement for the user to answer one or more security questions (*e.g.,* a ''challenge'' question from a set of questions for which the user provided answers previously [*e.g.,* during registration]) helps to ensure that the person submitting the information is who they claim to be and that the data is being sent on behalf of the appropriate NPDES permittee. The use of SSL communications, or the use of Transport Layer Security (TLS), is another key way of ensuring the integrity of the information. TLS and SSL make significant use of certificate authorities and provide the means to check that the certificate comes from a trusted party, is currently valid, and has a relationship with the site from which it is being sent.

5. Temporary Waivers or Exemptions From Electronic Reporting for NPDES-Regulated Facilities

A key decision in this proposed rule is determining whether electronic reporting requirements would be relatively easy to meet for most of the NPDES-regulated universe of facilities. For example, 50 percent of rural residents have broadband (see DCN 0030). Although not a necessity, broadband access makes it easier to submit NPDES reports that would be required under this proposed rule. Therefore, broadband access or other measures of the availability of sufficient upload speed may serve as reasonable indicators regarding possible computer access difficulties, particularly in the more remote rural areas.

In the development of this proposed regulatory requirement for electronic reporting by NPDES-regulated facilities, EPA has considered a number of alternatives (described in the paragraph below) for possible temporary waivers or exemptions based on certain criteria. Such a waiver or exemption from electronic reporting of NPDES information would be temporary in that it would remain valid only until the condition(s) meriting the exemption changed or for one year, whichever occurs first, during which time the permittee would still have the requirement to submit the required NPDES information non-electronically to EPA, the authorized state, tribe, or territory. EPA is proposing that these temporary waivers may be granted by EPA, states, tribes, and territories that have received authorization to implement the NPDES program. EPA solicits comment on the granting and duration of these temporary waivers.

For example, EPA has considered, and is seeking comment on, whether to automatically grant temporary waivers from NPDES electronic reporting requirements to each NPDES-permitted facility that is physically located (*i.e.,* not just a post office box) within one of the counties or zip codes for which less than 10 percent of the households have broadband access, based on the aforementioned February 2010 FCC report or subsequent similar official reports.

As another alternative, EPA has considered whether it should grant temporary exemptions for each NPDES-permitted facility which meets criteria demonstrating that such electronic reporting of NPDES information would pose an unreasonable burden or expense to the NPDES-permitted facility; this is the same concept that the Securities and Exchange Commission (SEC) [17 CFR

[41] CROMERR System Checklist, *available at http://www.epa.gov/cromerr/tools.html.*

[42] Originally developed by Netscape, SSL is an internet security protocol used by online banking sites, internet browsers and web servers to transmit sensitive information. SSL later became part of an overall security protocol known as Transport Layer Security (TLS).

232.202(a)] has applied to its (rare) granting of continued hardship exemptions for electronic filing. The process of applying to the SEC for a continued hardship exemption is described in 17 CFR 232.202. This process requires the submission of a written request made at least ten business days before the required due date of the submission. As identified in 17 CFR 232.202(b), this written request shall include, but not be limited to:

- The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;
- The burden and expense associated with using alternative means to make the electronic submission or posting, as applicable; and/or
- The reasons for not submitting the document, group of documents or Interactive Data File electronically, or not posting the Interactive Data File, as well as the justification for the requested time period.

The application for the continued hardship exemption is not deemed granted until the SEC notifies the applicant.

Although the SEC has successfully required electronic reporting from various size companies for the majority of its reports since 1993, it is still possible that a certain subset of NPDES-permitted facilities might claim that they either do not have computers on-site, do not have computer-savvy individuals available, or are a considerable distance away from a location where they could get computer access. EPA is considering the possible use of temporary waivers from electronic reporting of NPDES information for such facilities, although technological advances and computer access are such that there may be few valid instances of such situations. EPA may consider establishing a similar procedure for such temporary waivers if the criteria for such temporary waivers are broadened, in response to comments, beyond that in the proposed rule.

In addition to these possible temporary continued hardship exemptions for NPDES-regulated facilities from electronic reporting, EPA also recognizes that there may be a need for incident-specific one-time waivers or other adjustments for situations that are beyond the control of the reporting facility (*e.g.,* tornados, floods, EPA or state data system failures). In 17 CFR 232.201, the possibility of a temporary hardship exemption from electronic reporting to the SEC is described. In the SEC regulations, under this temporary hardship exemption, the electronic filer may instead file a written copy of the report. The SEC also will encourage the use of a one-time change to the filing due date rather than rely upon a temporary hardship exemption where the situation is beyond the control of the filer. EPA proposes to utilize one-time changes to due dates rather than waivers from electronic reporting in these types of emergency situations.

At this time, EPA solicits comment on the need for such temporary waivers or exemptions as well as which criteria should apply for the granting of such temporary exemptions. This proposed rule includes provisions for temporary waivers extending up to a maximum of one year, but comments are sought on all of these options or any other viable options which might be suggested during the official comment process. For comparison, EPA's recently proposed rule (August 13, 2010) regarding Toxic Substance Control Act (TSCA) Inventory Update Reporting Modifications did not include a provision for waivers or exemptions from electronic reporting; however, the preamble for that proposed rule did request comment on whether there are any circumstances in which a company may not have Internet access to report the required data electronically. EPA also solicits comment on whether EPA should also grant waivers to NPDES regulated entities with religious objections to using modern innovations such as electricity and computers.

6. EPA Consideration of Other Electronic NPDES Reporting by Permittees, but Not Included in This Proposed Rule

As described in more detail in Section IV.B, during summer 2010, EPA conducted concurrent technical analyses, which examined various aspects of possible electronic reporting of NPDES information for NPDES-permitted facilities. Based on these analyses, EPA decided what should and should not be included as requirements in this proposed rule.

Among the NPDES reporting requirements that EPA considered but did not include in this proposed rule are the following:

- Electronic submission of applications for individually-issued NPDES permits;
- Electronic submission of annual compliance certifications;
- Electronic submission of certain program reports for vessels;
- Electronic submission of program reports for pesticide applicators;
- Electronic submission of all follow-up reports required under 40 CFR 122.41(l)(6) and (7).

Each of these is discussed briefly below.

a. Electronic Permit Application Information and Possible Electronic Permit Generation

EPA examined the feasibility of requiring permit application information to be submitted electronically and of electronically creating the NPDES permit. This analysis focused on the individually-issued NPDES permits rather than on NPDES general permits; therefore, approximately 46,000 facilities would comprise the universe of facilities that might be covered by such a requirement to electronically submit permit application information.

EPA has developed particular permit application forms to be completed by facilities seeking individual EPA-issued NPDES permits. However, there is considerable state, tribe, and territory variability in permit application forms, data sought, ''boilerplate'' language, and templates used in the creation of the permit. There are extensive attachments to the permit application forms, including maps, flow charts, monitoring information, etc. Furthermore, the permit application information is not the only information used in constructing a permit. The complex permit writing process utilizes a variety of additional information, such as water quality information and background pollutant concentration data, beyond that provided in the permit application itself; such information would have to be integrated in or easily accessible by an electronic permit writing tool.

Given the complexity of the permitting process, the significant degree of state, tribe, and territory variability, and the extensive attachments that accompany permit application forms, it would be difficult to economically construct and maintain an electronic tool for permit application form submittals that would be nationally-consistent and could create an individual NPDES permit. The Office of Water previously attempted to develop such a national electronic-permitting (*i.e.,* e-permitting) tool. That effort was adversely impacted by high costs to develop and maintain the tool and by the significant state, tribe, and territory variability that must be addressed.

Based on EPA's analysis for this proposed rule, EPA has decided not to include in this proposed rule (1) requirements for electronic submission of nationally-consistent permit application information from facilities, and (2) implementation relying upon the availability of a nationally-

consistent electronic tool to generate individual NPDES permits by the states, tribes, territories, or EPA Regions. Therefore, for facilities covered by individually-issued NPDES permits, EPA would require authorized states, tribes, and territories to provide EPA with the key facility and permit information. Comment is sought on the feasibility of developing a nationally-consistent electronic tool that can be used by multiple states, tribes, and territories to obtain permit application information electronically from the permittees and to generate the individual NPDES permit. Comment is also sought on whether EPA should require electronic submission of the EPA-developed permit application forms from facilities seeking coverage under EPA-issued individual NPDES permits. In addition, EPA seeks comment on the feasibility of third-party software vendor development of such tools.

b. Consideration of Annual Compliance Certifications

Not every facility covered by a NPDES permit has an existing requirement to submit self-monitoring information in the form of a DMR or similar report. Furthermore, not every facility covered by a NPDES permit has an existing requirement to submit a program report regarding its compliance status (*e.g.,* industrial stormwater, active construction sites) (see DCN 0021). Annual compliance certifications could help address facilities that do not have a requirement to submit self-monitoring information, or a program report regarding its compliance status. This would constitute new regulatory requirements for reporting and recordkeeping, and would require new Information Collection Requests (ICRs) identifying the estimated burden hours to submit, process, and analyze these certifications; therefore, EPA has not included this new requirement in the proposed rule. However, comment is sought on the usefulness of this concept of electronic submission of annual compliance certifications by permitted facilities that do not have DMR submission requirements and program report submission requirements.

c. Vessels Program Reports

EPA's NPDES vessels program regulates incidental discharges from the normal operation of vessels. The centerpiece of the NPDES vessel program is the EPA Vessel General Permit (VGP). The VGP is a general permit that is issued and implemented by EPA. The 2008 VGP regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation (see 29 December 2008; 73 FR 79473). All vessel-related requirements are in the VGP. EPA estimates that approximately 61,000 domestically-flagged commercial vessels and approximately 8,000 foreign-flagged vessels may be affected by this permit.

The 2008 VGP identifies information that must be sent to EPA. These requirements include:

- The Notice of Intent (NOI) form (see Appendix E of the VGP);
- Annual report of noncompliance (see section 4.4.1 of the VGP);
- Additional reporting (noncompliance which may endanger health or the environment) (see section 4.4.3 of the VGP); and
- A one-time permit report (see section 4.4.4 of the VGP).

EPA collects the NOI information for vessels electronically, and has built a system to collect the one-time vessel permit report electronically. The 2008 VGP does not require the use of the eNOI system, nor does it require any DMRs or one-time reports to be submitted electronically. Although the vessel eNOI information EPA currently receives is not available through ICIS–NPDES or PCS, EPA plans to adapt ICIS–NPDES and ECHO to make such information available to the public.

EPA's 2008 VGP currently contains monitoring, reporting, inspection, operation and maintenance requirements pertaining to vessels. EPA is not proposing to use this proposed rule to make any changes to NPDES regulations that would be specific to the vessels program. EPA anticipates that any electronic reporting for vessels would be required through a new version of the VGP. EPA solicits public comment on this approach.

d. Pesticide Applicators Program Reports

On October 31, 2011, EPA issued a final NPDES Pesticide General Permit (PGP) for point source discharges from the application of pesticides to waters of the United States. While the permit requirements must be met as of October 31, 2011, operators will be covered automatically under the PGP without submitting a Notice of Intent (NOI) for any discharges before January 12, 2012. To continue coverage after January 12, 2012, those Operators who are required to submit NOIs will need to do so at least 10 days (or 30 days for discharges to National Marine Fisheries Service (NMFS) Listed Resources of Concern) prior to January 12, 2012. For the first 120 days that the permit is in effect, EPA will focus on providing compliance assistance and education of the permit requirements, rather than on enforcement actions.

The Agency's final PGP covers Operators that apply pesticides that result in discharges from the following use patterns: (1) Mosquito and other flying insect pest control; (2) weed and algae control; (3) animal pest control; and (4) forest canopy pest control. The permit requires permittees to minimize pesticide discharges through the use of pest management measures and monitor for and report any adverse incidents. Some permittees are also required to submit NOIs prior to beginning to discharge and implement integrated pest management (IPM)-like practices. Recordkeeping and reporting requirements will provide valuable information to EPA and the public regarding where, when, and how much pesticides are being discharged to waters of the U.S. Pesticide application use patterns not covered by EPA's Pesticide General Permit may need to obtain coverage under an individual permit or alternative general permit if they result in point source discharges to waters of the U.S.

This general permit will provide coverage for discharges in the areas where EPA is the NPDES permitting authority, which include four states (Idaho, Massachusetts, New Hampshire, New Mexico), Washington, DC, most U.S. territories and Indian country lands, and many federal facilities (for details, click here (PDF) (5 pp, 239K)). In the remaining 46 states (and the Virgin Islands), the states are authorized to develop and issue the NPDES pesticide permits.

At this time, prior to the effective date of the requirement for these discharges from pesticide applications to be covered under a NPDES permit, EPA does not envision the NPDES Electronic Reporting Rule making any changes to NPDES regulations that would be specific to such discharges. Given the various implementation approaches, compliance and reporting requirements that may be contained in EPA's final PGP as well as in the NPDES-authorized state-, tribe-, or territory-issued permits, any changes that EPA might make with respect to electronic reporting for discharges from pesticide applications could be made through the notice and comment process of the pesticide general permit. EPA solicits public comment on this approach.

e. Electronic Reporting of All 5-Day Non-Compliance Reports Identified in 40 CFR 122.41(l)(6) and (7)

NPDES regulations require permittees to report any noncompliance which may

endanger health or the environment. See 40 CFR 122.41(l)(6). These regulations require both an oral report and written report within 24 hours and 5 days, respectively, from the time the permittee becomes aware of the circumstances. Existing NPDES regulations also require permittees to report all instances of noncompliance not otherwise reported elsewhere at the time monitoring reports are submitted. See 40 CFR 122.41(l)(7).

This proposed regulation amends the existing regulation at 40 CFR 122.41(l)(6) for combined sewer overflows, sanitary sewer overflows, and bypass incidents to require these follow-up reports to be submitted electronically within 5 days from the time the permittee becomes aware of the circumstances. This proposed regulation also would require electronic reporting of CSOs, SSOs, and POTW bypasses that are in noncompliance per 40 CFR 122.41(l)(7).

EPA solicits comment on whether it should expand electronic noncompliance reporting to other forms of noncompliance that are not already addressed in the above referenced proposed changes incorporated into today's proposed regulation.

F. Data Submissions From Authorized State, Tribe, or Territory NPDES Programs

Historically, EPA has relied upon the permitting authority for submission of the NPDES information in EPA's national NPDES data systems. With this proposed rule, as currently drafted and subject to public comment, EPA would require permittees to submit a large portion of that NPDES data electronically, which would significantly reduce the amount of information that would otherwise be required from the authorized state, tribe, or territory NPDES programs.

Nevertheless, under the approach described in this proposed rule, EPA would still require NPDES information from authorized state, tribe, or territory NPDES programs, particularly information linked to the implementation activities and responsibilities of the authorized state, tribe, or territory NPDES programs. The types of NPDES information EPA would require to be reported by the states, tribes, and territories with authorization to implement the NPDES program would include:

- Facility information for individually-issued NPDES permits;
- Permit information for individually-issued NPDES permits and master general permits [including information specific to subprograms such as CAFOs, CSOs, SSOs, pretreatment, biosolids, stormwater, cooling water intakes, and thermal variances;
- Compliance monitoring and inspection activities;
- Compliance determination information;
- Enforcement action information;
- Other NPDES information required to be submitted electronically from permittees or other regulated entities, but routed by the electronic reporting tools to the states, tribes, or territories initially rather than to EPA; and
- Other NPDES information listed in Appendix A to 40 CFR part 127 that permittees submit non-electronically to their authorized state, tribe, or territory.

Each of these NPDES data types are described further in the sections that follow.

A. Why Require This Information From Authorized States, Tribes, and Territories

The states, tribes, and territories which have received authorization to implement the NPDES program are the entities that have the primary responsibility to issue permits, perform inspections, make compliance determinations, and take enforcement actions. Most of the data that this proposed rule, as currently drafted and subject to public comments, would require the authorized NPDES programs to submit to EPA would be generated during the course of those activities. As such, the authorized NPDES programs are the unique and appropriate sources to provide these types of NPDES data to EPA and to be responsible for the quality and accuracy of that data.

Another key part of this proposed rule is ensuring that, if submissions of NPDES information are sent by the NPDES-regulated facilities to the states, tribes, or territories initially rather than to EPA, the states, tribes, and territories would provide that information electronically to EPA. In turn, EPA would provide the states, tribes, and territories with NPDES information it receives from the NPDES-regulated facilities. In either case, the key would be to ''complete the circuit'' electronically through the NEIEN, so that all of the required information submitted by the NPDES-regulated facilities would be available, timely, accurate, complete, in a nationally consistent manner for use by EPA, states, tribes, and territories, and for presentation to the public.

B. What Data Would Be Required and Why From Authorized States, Tribes, and Territories?

For the proposed rule, as currently drafted and subject to public comment, the types of information that would be required to be submitted to EPA electronically by the states, tribes, and territories authorized to implement the NPDES program are described briefly below. Rather than establish different timeliness criteria for different types of data, EPA proposes that the required NPDES data be provided by the states, tribes, and territories to EPA within 30 days of the date of permit issuance, date of inspection, date of violation determination, date of enforcement action, or date of receipt of the information electronically (or non-electronically under a temporary waiver) from the permittee, as applicable. EPA invites comment on the 30-day timeliness criterion.

C. Facility Data From Authorized States, Tribes, and Territories

In EPA's NPDES national data systems, it is necessary to create a facility record before other information may be entered or otherwise made available. Therefore, this core set of basic facility data, as identified in an attachment to the 1985 PCS Policy Statement (as amended), are essential to EPA national data systems in order to create a facility record to which other NPDES information may be linked, such as permit information, compliance status, inspection information, violation determinations, enforcement action information, etc.

Through this proposed rule, as currently drafted and subject to public comment, the types of basic facility information that the states, tribes, and territories would be required to provide EPA for the facilities covered by NPDES individually-issued permits would include information regarding the facility itself (such as the site name of the facility and the type of ownership), information regarding the facility's location (such as address, city, state, zip code, and information meeting EPA's data standards associated with latitude and longitude), and information regarding a contact for that facility (such as name, title, address, etc.). The complete list of such basic facility information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

Much of this basic facility information already exists in EPA's national NPDES data systems, particularly for major permittees, and some of the information not found in the national data system,

particularly regarding nonmajor permittees, may be found in state, tribe, or territory NPDES data systems. This proposed rule would require states, tribes, and territories to provide EPA with such basic facility information for all facilities covered by individually-issued NPDES permits and to update that information as appropriate, in accordance with stated quality assurance and quality control procedures (see 40 CFR part 127). Unless otherwise specified in a permit, or unless the permit is modified significantly, EPA anticipates that such facility data would generally be updated only once per permit cycle, which generally means every five years, if that often, because this type of basic facility data rarely changes.

Under the approach described in the proposed rule, if, for whatever reason, facilities covered by NPDES general permits do not provide the NOI data electronically by the compliance deadline, then the authorized NPDES programs would be responsible for also ensuring that basic facility information for facilities operating under general permits is provided electronically to EPA.

D. Permit Data From Authorized States, Tribes, and Territories

Through this proposed rule, as currently drafted and subject to public comment, the type of permit information that the states, tribes, and territories would be required to provide EPA for the facilities covered by NPDES individually-issued or general permits would consist of:

- Basic permit information;
- Information regarding designated outfalls or permitted features;
- Information regarding the applicable limit sets;
- Information regarding the applicable effluent limitations;
- Information regarding narrative conditions and permit schedules; and
- Information relevant to specific NPDES subprograms, such as CAFOs, CSOs, SSOs, pretreatment, biosolids, stormwater, cooling water intakes, and thermal variances.

Basic information regarding the permit refers primarily to some of the key identifier information for that permit. Such information includes the permit number or other identifier, the permit type, the program components covered by the permit, the permit status and key dates related to application and issuance, information regarding whether the facility is a major permittee, industrial classification codes indicating the type of facility, the permit issuing organization, applicable effluent guidelines, and the permittee's name and address. See Appendix A to 40 CFR part 127 for a complete list of required data.

Under this proposed rule, information would also be required regarding the permitted features or outfalls identified in the permit. Such information includes the design flow and actual flow from such outfalls, an identifier for such outfalls, the type of permitted feature, the receiving waterbody, and the physical location (latitude and longitude) of such permitted features. See Appendix A to 40 CFR part 127 for a complete list of required data. This information is essential in compliance tracking because permit limits and limit sets are identified for specific outfalls or permitted features.

Under this proposed rule, as currently drafted and subject to public comment, to enable electronic reporting and evaluation of DMRs, information would also be required regarding the specific set of numerical or narrative limits, and the limits themselves, identified for each permitted feature identified in the permit. The proposed rule would require the permitting authority to provide NPDES permit limits (*e.g.,* numerical limits) and NPDES permit limits set types (*e.g.,* seasonal or interim limits) for major and nonmajor permittees (including general NPDES-regulated facilities) to EPA into the national data system. Permit limits information would include the monitoring location, the start and end dates for such limits, the limit type, information regarding all permit modifications to such limits, information regarding enforcement actions which may have imposed enforcement action limits, the regulated pollutant parameter, the months that the limit applies, a text description of the limit (*e.g.,* 30-day average), an arithmetic qualifier (*e.g.,*"<"), the actual numeric limit, the quantity or concentration units specified for that limit, and information regarding if a particular limit has been stayed. See Appendix A to 40 CFR part 127 for a complete list of required data.

Information regarding permit limits sets would include a text description of the limit set (*e.g.,* summer limits), the type of limits (*e.g.,* scheduled), the number of months that the limit set applies, the initial monitoring date, the due date for monitoring reports, the number of months for each monitoring period, the frequency of monitoring report submission, whether that set of limits is active, and a start date associated with that limits set. See Appendix A to 40 CFR part 127 for a complete list of required data.

Under this proposed rule, information would also be required from the narrative conditions or permit-contained schedules, including such information as the type of narrative condition, an identifier code or description of the permit schedule event, the scheduled and actual dates for the achievement or occurrence of that event, and the received date for the report which documented that achievement or occurrence. As an example, such narrative conditions or permit schedules frequently impose a permit requirement that a particular type of report be sent to the permitting agency on a specific repeating schedule (*e.g.,* annually). See Appendix A to 40 CFR part 127 for a complete list of required data.

In addition, this proposed rule, as currently drafted and subject to public comment, would also require permit-related data from the NPDES permit application. This permit application data includes information on particular NPDES subprograms such as biosolids, SSOs, pretreatment, CSOs, stormwater, CAFOs, cooling water intakes, and thermal variances. The complete list of data that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127. Additionally, some facilities seeking coverage under a general permit will submit similar data to their permitting authority. Authorized states, tribes, and territories would be required to share these facility-supplied data with EPA.

a. Inspection Data From Authorized States, Tribes, and Territories

Historically in the NPDES program and in accordance with existing policy, the authorized programs implementing the NPDES program have been expected for several decades to provide the basic inspection information to EPA for major permittees and for nonmajor permittees. For example, in the PCS Policy Statement (as amended), EPA indicated that the states, tribes, and territories are expected to provide a core set of such basic inspection data to EPA through PCS.

As discussed previously in this preamble, in addition to information submitted by the NPDES-regulated facilities, some NPDES data, including inspection information, is also needed from the states, tribes, and territories. EPA, states, tribes, and territories perform these inspection activities, and therefore they are the unique source of the inspection information provided to EPA.

These inspections could identify the compliance status of the facilities, potential remedies needed, and changes

from the permit application information. Through receipt of such facility-specific information regarding inspections, EPA is interested in determining how well the NPDES-authorized state, tribe, or territory is implementing the inspection responsibilities associated with NPDES program authorization, better evaluating potential targeting of inspections, better characterizing and addressing the compliance status of the facilities, and identifying common problems that occur at the NPDES-regulated facilities.

Through this proposed rule, as currently drafted and subject to public comment, the type of basic inspection information that the states, tribes, and territories would be required to provide EPA would include the end date of such a compliance monitoring activity, the facility inspected, the type of compliance monitoring, the reason for such compliance monitoring, the lead office for such compliance monitoring, and the law sections evaluated and potentially violated at the facility (*e.g.,* pretreatment). The complete list of such basic inspection information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

In addition to the basic information that would be required for any NPDES inspection, required compliance monitoring information also would include information specific to the NPDES subprograms. For example, there are specific items that would apply if a CAFO facility had been inspected, or for pretreatment, CSOs, SSOs, etc. The complete list of such subprogram-specific inspection information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

This proposed rule would require authorized states, tribes, and territories to provide EPA with inspection information for all NPDES-regulated facilities, in accordance with stated quality assurance and quality control procedures. EPA anticipates that such inspection data would be provided at a reporting frequency approximating the inspection frequency specified in the EPA Compliance Monitoring Strategy (October 2007 or as subsequently revised), or as delineated in alternative inspection strategies contained in EPA-state, EPA-tribe, or EPA-territory agreements.

b. Compliance Determination Information From Authorized States, Tribes, and Territories

In the existing federal regulations [40 CFR 123.26(e)(2) and (4)], states, tribes, and territories that have received authorization to implement the NPDES program ''shall have procedures and ability for'':

- Initial screening (*i.e.,* pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish priorities for further substantive technical evaluation; and
- Maintaining a management information system which supports the compliance evaluation activities of this part.

Under the existing data reporting structure, if the DMRs for the NPDES major permittees and the relevant numeric effluent limitations from the NPDES permit requirements are in EPA's national data systems, the data systems can automatically identify violations of numeric effluent limitations. These violation determinations, which can be made for individual pollutants and at the facility level, also identify what would constitute Category I and Category II noncompliance based upon the regulations at 40 CFR 123.45 and EPA's national guidance and policy [see EPA's Enforcement Management System (EMS), DCN 0037]. These determinations can then be used in the creation of the required quarterly and annual noncompliance reports to track the compliance status of NPDES-regulated facilities (see 40 CFR 123.45). In addition, if the appropriate due dates and milestone dates have been entered by the states, tribes, or territories, EPA's national NPDES data systems have also been designed to identify whether reports are late and whether milestones have been missed in permit schedules or in compliance schedules. These additional violation determinations could determine whether a facility is in noncompliance for reporting violations or for schedule violations.

Violation determinations may also be made based upon other information available to the states, tribes, territories, or EPA, such as inspection information, review of program report information, public complaints, information collection requests, incident reports, etc. For these identifications of noncompliance, EPA has developed guidance (the ''PCS Single Event Data Entry Guide'', May 2006, and the ''ICIS–NPDES Single Event Violation Guide'', October 2008) on how to track such violations [referred to as single event violations (SEVs)] in the NPDES national data systems.

SEVs include one-time events as well as violations with longer durations. SEVs may be used by the states, tribes, territories, and EPA to report the compliance status of a facility for permit or regulatory violations that are not automatically flagged by the database. In the case of unpermitted facilities, SEVs may be entered in response to violations of CWA NPDES regulations.

Since 1988, SEVs identified by EPA, states, tribes, and territories are expected to be entered into EPA's national NPDES databases by the authorized NPDES program for major NPDES-regulated facilities and facilities covered by EPA's General Pretreatment Standards (40 CFR part 403). A joint memorandum from the EPA Office of Compliance and Office of Civil Enforcement issued in October 2008 clarified the expectation that EPA regional offices to enter into PCS or ICIS–NPDES all SEVs discovered by EPA regional offices for other nonmajor permits/facilities, starting in FY 2009.

These compliance determinations are one of the many responsibilities and activities of the states, tribes, and territories with NPDES program authorization. The availability of such compliance determination information from states, tribes, territories, and EPA is critical to determining the compliance status of NPDES-permitted facilities. This information is needed on a facility-specific basis to better identify potential problems; ensure that appropriate action is taken to address noncompliance; better quantify national or state noncompliance rates; and to provide a more complete and transparent picture to permitting authorities, the public, Congress, and other stakeholders of the overall implementation and effectiveness of the NPDES program.

EPA has facility-specific information regarding the compliance status of NPDES-regulated facilities for only a very small percentage (less than 1 percent of the total NPDES universe; *i.e.,* essentially the major permittees). Therefore, through this proposed rule, EPA would require this compliance determination information to be provided to EPA by the states, tribes, and territories with NPDES program authorization for all major and nonmajor NPDES-regulated facilities, whether covered by an individually-issued permit or by a general permit. EPA notes that the list of minimum Federal data (Appendix A to 40 CFR part 127) only includes construction stormwater inspection data from the authorized state, tribe, or territory when the authorized program identifies violations and completes a formal enforcement action (*i.e.,* authorized state programs are not required to report construction stormwater inspection data to EPA for inspections that do not identify violations). EPA made this distinction based on the large number of

facilities in this segment of the NPDES universe (approximately new 200,000 facilities each year). EPA solicits comment on this approach.

The list of information that would be required under this proposed rule, as currently drafted and subject to public comment, includes such basic items as the start and end dates for the violations, the type of violation, which agency identified the violation, when noncompliance was identified, and when it was resolved. In addition, some compliance-related data are tracked at the basic permit level, including whether noncompliance tracking is occurring automatically in EPA's NPDES national data system, and the noncompliance status and fiscal quarters of noncompliance. A complete listing of these data is provided in Appendix A to 40 CFR part 127. The proposed rule also updates 40 CFR 123.26 to reflect the new electronic reporting requirements.

c. Enforcement Action Information From Authorized States, Tribes, and Territories

One of the key activities for states, tribes, and territories implementing the NPDES program is taking enforcement actions as appropriate to address and remedy noncompliance by the NPDES-regulated facilities. Historically in the NPDES program and in accordance with policy, the states, tribes, and territories have been expected to provide basic information regarding enforcement actions (whether formal or informal) to EPA for major permittees. In the PCS Policy Statement (as amended) and the ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement, EPA indicated that the states, tribes, and territories were expected to provide a core set of such basic enforcement action data for major permittees to EPA through PCS and ICIS–NPDES.

In addition to information submitted by the NPDES-regulated facilities, some NPDES data, including enforcement action information, are also needed from the states, tribes, and territories, as they are the unique source of the enforcement action information.

In the context of the State Review Framework (a tool to evaluate state enforcement program performance) and development of the ANCR, several states have voiced concerns that EPA did not fully recognize and credit the extent to which states rely on compliance achieved through the issuance of informal enforcement actions, including a variety of enforcement actions which do not impose a compliance schedule. These states expressed concern that without such information regarding informal enforcement actions, EPA and the public did not have a complete picture of the state efforts to obtain compliance by the NPDES-regulated facilities. EPA has made efforts to ensure that information from the states regarding such informal enforcement actions is considered and made available. Similarly, this proposed rule would require states, tribes, and territories to provide EPA with facility-specific information regarding formal and informal enforcement actions for all NPDES-regulated permittees.

As indicated in this proposed rule, the type of basic information that the states, tribes, and territories would be required to provide EPA regarding enforcement actions would include the type of enforcement action, information specific to final orders (administrative or judicial), penalty information, information regarding permit schedules or compliance schedules, and information regarding milestones or sub-activities identified in permit schedules or compliance schedules. The complete list of enforcement action information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

d. Authorized States, Tribes, and Territories NPDES Data Transmissions to EPA

In addition to the NPDES information related to implementation and enforcement activities by the regulatory authorities, the proposed rule, as currently drafted and subject to public comment, would also require that the regulatory authorities ensure that the information submitted to the regulatory authorities by the NPDES-regulated facilities would then be provided to EPA in a timely, accurate, complete, and nationally-consistent manner. The requirements regarding timeliness, accuracy, completeness, and national consistency for these data submissions to EPA are defined in 40 CFR 127.23. This concept of ''completing the circuit,'' for the NPDES information, is critical to ensuring that the regulatory authority and EPA have access to the permittee's information. This requirement to share such NPDES information from the regulatory authority to EPA (and vice versa) would be created under the proposed rule even if the electronic reporting tool provides permittee information only to the regulatory authority or if the permittee supplies hard-copy information under the terms of a temporary waiver.

E. Additional Considerations

Although 46 states and the Virgin Islands have authorization to implement the NPDES program as of October 2011, not all of these authorized programs implement the entire NPDES program. For example, 10 of these states and the Virgin Islands have not received authorization to implement the pretreatment program. As another example, only eight states have received authorization to implement the NPDES biosolids program. EPA expects states, tribes, and territories to provide EPA with the required NPDES information to the extent that those authorities have received NPDES program authorization. States, tribes, and territories that do not have authority to implement particular parts of the NPDES program would not be expected to provide information on those parts of the program.

Similarly, certain states, tribes, and territories may not have a particular type of facility within their boundaries. For example, several states do not have any combined sewer systems (CSSs) within their states; therefore, EPA would not expect to receive any CSS information from those particular states.

Other states, tribes, or territories may have too few of a particular type of facility to warrant the expense of developing electronic reporting systems by the regulatory authority to capture data from those facilities. As an alternative, electronic reporting tools would be made available by EPA and by third-party software vendors. These tools must fully meet EPA's electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. EPA seeks comment on whether, in such instances where only a few of a particular type of facility exist within a particular regulatory authority, EPA should allow the regulatory authority to decide whether their permittees should report to EPA electronically using a national tool, or report in a hard-copy format to the regulatory authority, in which case the regulatory authority would then assume the responsibility for processing the data into electronic form and providing that information to EPA.

It is conceivable that some regulatory authorities may not have implemented certain portions of the NPDES program that are included in these authorizations; nonetheless, EPA would expect to receive the required NPDES information regarding each of those subprograms included in their NPDES authorized program.

Regardless of the regulatory authority's current level of electronic reporting from permittees or data system development, the regulatory authorities

are still required to meet their responsibilities to implement and enforce the NPDES program, to issue permits, to conduct inspections, to make compliance determinations, and to issue enforcement actions. Therefore, EPA and the public should still expect that the required NPDES information regarding such activities would be provided to EPA by the regulatory authorities in a timely, accurate, complete, and nationally-consistent manner (*i.e.,* in conformance with national data standards, in consistent units of measure, and in a format compatible with the NPDES national data system).

G. Changes to QNCR, Semi-Annual Statistical Summary Report, and ANCR (40 CFR 123.45)

1. Background

On August 26, 1985, EPA promulgated final revisions to regulations for the National Pollutant Discharge Elimination System (NPDES) permit program to require Quarterly Noncompliance Reports (QNCR) to be prepared and submitted by the states, tribes, and territories that are authorized to implement the NPDES program and by EPA regions for states, tribes, and territories not yet authorized. Those revised regulations are found in 40 CFR 123.45 and include two types of noncompliance which must be reported on the QNCR for major facilities, Category I and Category II. The regulations at 40 CFR 123.45 also require semi-annual noncompliance reports for major facilities and summary-level annual noncompliance reports for nonmajor facilities.

As reflected in this proposed rule, as currently drafted and subject to public comment, the Agency is proposing to modify these requirements in 40 CFR 123.45 of the NPDES regulations to more accurately reflect the technological environment of the 21st century that includes the new e-reporting requirements being proposed today and the evolution of the NPDES regulatory program over the last 25 years. Today's proposed rule would remove requirements for obsolete paper reports that can instead be generated from data in EPA's data systems through electronic reporting. By removing obsolete reports, the proposed rule would lessen state, tribe, and territory burden, while also updating the regulations to allow all authorized programs and EPA to more effectively track activities within the broader NPDES universe. The changes will make NPDES information easier to understand, and will provide the public with a complete inventory of violations that are self-reported by permittees or identified by regulatory agencies. The changes will also support EPA's 2009 Clean Water Act Action Plan goals of improving public transparency, identifying the most serious violations, and informing reviews of EPA, state, tribe, and territory enforcement programs.

Data collection for the NPDES program should be updated to reflect currently available technologies and the current NPDES universe and thus facilitate improved public transparency. The NPDES universe has grown and diversified substantially since the 1980s and now includes approximately one million diverse point sources of which only approximately 6,700 are majors. Focusing the QNCR only on majors excludes more than 99 percent of the regulated NPDES universe from more rigorous facility-level public accountability. Many regulated point sources—such as stormwater discharges, concentrated animal feeding operations, mines, and raw sewage overflows—are considered to be significant contributors to water quality impairment and human health risks today (DCN 0045, 0070, 0071, 0072, 0073, and 0074). However, because many of these sources do not meet the NPDES definition of major facilities, they have been excluded from the QNCR. This has set up a situation where there is very robust tracking, management, and public accountability for a very small subset (major facilities) of the NPDES regulated universe, but very little public information on locations, types of violations, and enforcement by authorized states, tribes, and territories regarding these other nonmajor facilities. As a result, EPA currently has difficulty accurately assessing the effectiveness of NPDES-authorized states, tribes, and territories, as well as its own activities, in these other important NPDES sectors and is not able to provide more complete NPDES noncompliance and enforcement information to Congress and the public.

EPA has also received feedback from states and public data users that the existing terminology and nomenclature for cataloguing violations is too confusing. This proposed rule seeks to simplify and improve the transparency and utility of violation information including facilitation of EPA's, states', tribes', and territories' abilities to focus on the problems of greatest concern.

2. Purpose of Existing Regulations

The existing annual, semi-annual, and quarterly reporting requirements are aimed at organizing violation information to facilitate EPA's assessment of the effectiveness of EPA, state, tribe, and territorial compliance activities and thereby best determine how to manage or oversee program activities.[43] EPA uses this information to provide noncompliance information to Congress and the public.

The primary purpose of the QNCR is to provide facility-specific information used to identify patterns of noncompliance by the largest contributors of pollutants (*i.e.,* the major facilities as defined and emphasized in the 1970s and 1980s) and to assess state and EPA regional enforcement activities. The QNCR is used solely for reporting purposes and does not dictate what constitutes a violation of permit conditions or whether EPA, states, tribes, or territories will take an enforcement action.

The Annual Noncompliance Report (ANCR) uses similar definitions as the QNCR, but was designed as a summary (not facility-specific) view of violations and enforcement response by the regulatory authority for nonmajor facilities. At the time the existing regulations were written, technology limitations required that monthly DMRs be entered into the data system manually one at a time by state and EPA regulators. The data entry burden for entering all DMR reports for major and nonmajor facilities with individual permits (over 45,000 facilities) was too high, so EPA required DMR data entry by the authorized states, tribes, and territories into the national data systems (PCS and ICIS) only for the major facilities. EPA and authorized NPDES states developed the major facility definition through guidance to screen and identify those facilities with the largest environmental footprints and thus deemed at the time to be most important to track for violations at the facility level.[44] The thorough data requirements for major facilities also dove-tailed with the Enforcement Management System (EMS); guidance developed by EPA which describes appropriate enforcement responses for violations at NPDES facilities.[45]

The ANCR summary report provides summary information about the number and types of violations and enforcement responses at nonmajor facilities during a one-year reporting period in a particular state, tribe, or territory. Over the last several years, the ANCR has shown that in many states, the rate of

[43] See 50 FR 34649.

[44] New NPDES Non-Municipal Permit Rating Worksheet, June 27, 1990, DCN 0049.

[45] The Enforcement Management System (1989), DCN 0037.

violations at nonmajor NPDES facilities where detailed DMR information is provided to EPA's data systems is more than twice as high as those where the states have provided only summary information.

With the transition to electronically-reported DMRs directly from facilities into the national data system or to existing state, tribe, or territory data systems, the need to maintain separate reporting formats and requirements for major facilities and nonmajor facilities are no longer relevant to the program. Furthermore, the proposed NPDES Electronic Reporting Rule allows EPA to remove the burden of producing these reports from the states; instead, EPA would be able to automatically produce the reports and make them available for use by states, tribes, territories, and the public.

The QNCR (for major facilities) and the ANCR (for nonmajor facilities) use identical numeric calculations to place violations into two categories. Violations that exceed certain thresholds of time, magnitude, or frequency of occurrence are specified in the regulations at 40 CFR 123.45 as being significant. ''Category I'' noncompliance involves applying certain specific ''technical review criteria'' or ''TRC'' [46] to certain violations of effluent limits for pollutants listed in Appendix. Category I noncompliance also includes specific criteria for violations of enforcement orders, compliance schedules, and required reports. ''Category II'' noncompliance includes effluent limit violations that do not rise to Category I, as well as unauthorized bypasses, unpermitted discharges, pass through of pollutants that cause or have the potential to cause a water quality or health problem, failure of a POTW to implement its approved pretreatment program, violations of interim compliance schedule milestones, incomplete required reports, violations of narrative requirements (*e.g.,* failure to develop Spill Prevention and Countermeasure Plans and implement Best Management Practices), and other violations or group of permit violations of substantial concern to the State, Tribe, or Territory Director or EPA Regional Administrator.

One additional consideration that EPA, states, tribes, and territories discussed at length under the Clean Water Act Action Plan was whether the existing Technical Review Criteria (TRC) identified in Appendix A to 40 CFR 123.45 for categorizing the severity of violations should be maintained. EPA has not proposed changing these violation determinations. Many of the EPA and state participants in the Clean Water Act Action Plan thought that the existing thresholds were useful and should be retained. However, there are some gaps that are addressed in this proposed rule.

3. Relationship Between Enforcement and Proposed Regulatory Changes to 40 CFR 123.45

The existing regulations do not determine the type of enforcement response required to be taken by the state, tribe, territory, or EPA. Title 40, Code of Federal Regulations, section 123.45 is a reporting regulation—focused on aligning key information that can assist with both enforcement priority-setting and transparency. Enforcement policy remains under the discretion of EPA and the permitting authority and outside the scope of this proposed rule. Over the past 25 years, EPA has developed policy and guidance documents that utilize information via the regulations to prioritize violations and determine appropriate responses. EPA wants to clarify that the proposed changes do not alter its enforcement expectations for the states, tribes, territories, or EPA regions. Any revisions to enforcement response guidelines would be accomplished via updates to existing guidance or policy, such as the EMS. The changes outlined in this proposed rule will make the NPDES data more inclusive and easier to use, and inform any future enforcement policy changes that are envisioned under the Clean Water Act Action Plan.

4. Overview of Proposed Regulatory Changes

Given the evolving NPDES program, advancing technology, and the updated reporting mechanisms and requirements included in this proposed rule, EPA is seeking comment on changes to 40 CFR 123.45, entitled, ''Noncompliance and program reporting by the Director.'' The purposes of these changes are to: (1) Provide a more accurate and comprehensive report of known violations using a more complete set of noncompliance information that would be flowing as a result of the NPDES Electronic Reporting Rule; (2) improve EPA's ability to analyze, track, and manage violations; (3) ensure the full universe of NPDES sources is considered in tracking, analyzing, and managing compliance and enforcement programs; (4) establish a better process to ensure EPA is focused on the most serious pollution problems and can keep pace with changes to the permitting program and new limit types; and (5) reduce state, tribe, and territory reporting burden by removing or phasing out requirements for existing hard-copy reports or other reports than can be produced by EPA from NPDES national data systems. Based on a date three years after the effective date of the final rule, the existing regulatory text in 40 CFR 123.45 would be replaced by the proposed new text for that section.

5. Proposal To Establish a NPDES Noncompliance Report

To accomplish these changes, EPA is proposing to reorganize noncompliance information and establish a new public inventory of all reported violations based on existing reporting requirements and other new requirements that would be phased in under this proposed rule. The content of the inventory would be very similar to what is currently provided by EPA on the Internet in the ECHO Web site, but will include reported violations from the broader universe of NPDES-regulated sources. The proposed rule establishes an EPA-generated NPDES Noncompliance Report (NNCR) that would include a complete, simplified listing of all recorded violations at major and nonmajor facilities. The report would incorporate the existing content of the QNCR and the ANCR (*e.g.,* reviewed facilities, violations, serious violations, enforcement taken), and would add other data that are required elsewhere under the NPDES Electronic Reporting Rule (for example, information regarding inspections, informal enforcement actions, and penalties assessed). The NNCR is essentially a quarterly, facility-based view of compliance monitoring, violations, and enforcement activity which would replace the QNCR and the ANCR.

The proposed rule is not designed to limit EPA's flexibility in providing data more frequently than quarterly. So, for example, if inspections or violations were identified one month after the official quarter ended, EPA would maintain the ability to provide that information prior to conclusion of the next official quarter. The NNCR provides a snapshot of the violation status within a quarter, which can be combined with other regulatory data, such as the frequency of inspection and follow-up enforcement action, to provide a full picture of compliance at a NPDES-regulated facility. The purpose of the NNCR is to provide regulators and the public with information about

[46] Forty percent over an effluent limit for conventional pollutants and 20 percent over the limit for toxic pollutants, as identified in Appendix A to 40 CFR 123.45, for two months in a six month period.

violations, including both numeric exceedances of effluent limits (*e.g.,* as reported on DMRs) and other violations [such as violations of narrative permit requirements or single event violations (both one-time and long-term) including sewer overflows, failure to implement best management practices, failure to implement a pretreatment program, failure to report, or failure to apply for a permit]. Non-numeric (*e.g.,* non-DMR) violations are used by EPA to maintain and report the compliance status of a facility for violations that are not automatically flagged by the national database. Methods of detection of non-numeric violations include inspections; information collection requests; state, tribal, or territorial referrals; annual reports, noncompliance reports, and other program reports required under the permit enforcement order, or regulation; facility self-audits; and public complaints. Single event violations include one-time events and long-term violations (as described in Section IV.F.2.d).

The listing of a facility on the NNCR for transparency purposes is not intended to dictate the appropriate enforcement response or in any way establish criteria for selecting enforcement actions. However, overall trends and rates (for example, the percent of facilities with violations) may be a useful tool for assessing violation trends on a regional or nationwide basis. Because EPA will produce the NNCR using data that are required to be reported to EPA electronically in a format compatible with ICIS–NPDES, there is no additional burden on states, tribes, or territories. In fact, in addition to eliminating the requirement for authorized programs to submit QNCR reports, EPA proposes to phase out the requirement that authorized programs submit semi-annual statistical and annual noncompliance reports (ANCRs).

6. Categorizing Violations

EPA's system for categorizing violations on public Web sites is based upon the existing regulations within 40 CFR 123.45. As indicated in the proposed rule, EPA is considering updating 40 CFR 123.45 to modify the definitions of Category I and Category II noncompliance to implement one of the Clean Water Act Action Plan objectives to improve how serious violations are categorized. As currently structured, the existing regulations do not sufficiently categorize violations based on severity and potential for water quality impacts.

The existing regulation assumes that ''Category I'' violations are considered more serious, while ''Category II'' violations are not as severe. EPA values classifying violations and that there is room for improvement in the existing regulation. Many of the most severe violations occurring in the today's NPDES program do not currently qualify as ''Category I.'' EPA has recognized this within the EMS by considering certain Category II violations to be ''significant noncompliance'' or SNC (and must be reported on the QNCR). This has created several inconsistencies between publicly-released data and the underlying regulations. This proposed rule seeks to remedy this problem. EPA is proposing to include those more serious violations into Category I, while all other violations become Category II. EPA is proposing an option that will retain most historically-used definitions that would move a facility from Category II into Category I. EPA is also proposing to leverage the data that would be required electronically under this proposed rule so that the severity of violations is evaluated for all facilities—not just the major facilities.

In addition to the establishment of a NNCR, there are two components to the proposed approach to classifying violations. The first component covers violation classification; applicability to regulatory entity types; and revisions to annual, semi-annual, and quarterly reporting. The second component sets up a procedure for EPA to regularly assess what pollutant types, limit types, and measurement types/frequency are considered in classifying the severity of violations. These components are described below.

a. Component 1—Revise and Simplify the Existing System of Violation Classification

EPA proposes to make adjustments to the existing regulation, while keeping the underlying concepts in place. First, the distinction between major and nonmajor regulated entities would be eliminated as it relates to 40 CFR 123.45. Second, Category I noncompliance, as defined under the existing regulation, would be slightly expanded to include a subset of violations currently classified as Category II. These include Category II noncompliance that pose a specific threat to water quality, including those that adversely impact water quality, human health, or designated uses of surface waters. EPA would retain the existing TRC for Group I and Group II Pollutants in 40 CFR 123.45, Appendix A. These thresholds would be applied to both major and nonmajor facilities, as they are within the existing regulation, but would ensure that other types of NPDES-regulated facilities that do not regularly report DMRs become eligible to be placed in Category I due to water quality impacts. The proposed regulatory text reflects how this change would be accomplished. All NPDES-regulated sources would be tiered into Category I if their effluent violations were significantly over the limit for a period of time, or if the violations are included in the existing definition of Category I (*e.g.,* violations of a compliance schedule, etc.). Other violations (such as sewer overflows, failure to implement best management practices, failure to implement a pretreatment program, failure to report, or failure to apply for a permit) that are not ascertained through numeric limits in permits and DMRs, but are directly related to water quality impairment or are likely to cause water quality impairment (such as fish kills, oil sheens, beach closings, restrictions of beneficial uses, etc.), would also be classified as Category I. The detection of these non-numeric violations is by a variety of means, including, for example, inspections, or review of reports. The regulations also provide for listing of violations as Category I, if, in the discretion of the Director or Regional Administrator, that grouping of violations pose a water quality threat (*e.g.,* geographic clusters or sectors of permittees with similar violations that are causing water quality issues).

The proposed revisions to 40 CFR 123.45 would simplify and improve the organization, completeness, and transparency of NPDES noncompliance information. EPA, states, tribes, and territories could utilize this improved information to inform future revisions to EPA's national enforcement guidance and policies to identify, prioritize, and address the most serious CWA NPDES violations.

b. Component 2—Developing a Process To Keep Pollutant Lists and Monitoring/Permit Limit Types Up To Date

As reflected in this proposed rule, EPA is considering adding a section to the existing regulation that requires EPA to establish a policy-making process with state, tribe, territory, and public involvement to add or delete pollutants that are subject to Category I classification for permit effluent limit violations, and to determine how criteria other than monthly average permit limit violations of a certain magnitude and frequency can be elevated to Category I classification.

Pollutant Types That Can Be Elevated to Category I Violation Classification

Under this proposed rule, as currently drafted and subject to public comment, EPA retains the existing lists of Group

I and Group II Pollutants in Appendix A to 40 CFR 123.45 that are evaluated as part of the Category I and Category II definition for effluent limit violations. Periodic review and update of these lists is consistent with the original intent of the regulation (as specified on page 34651 of EPA's preamble for the final rule for 40 CFR part 123, NPDES Noncompliance and Program Reporting—FR, Vol. 50, No. 165, Monday, August 26, 1985). The 1985 preamble describes the conventional and nonconventional/toxic pollutants and provided an expectation that new parameters may be added from time to time, and that EPA would provide a more detailed list of pollutants to authorized programs in guidance for preparing the QNCR. EPA has never added any new parameters to the list of pollutants currently in 40 CFR 123.45—in part due to the complexity of re-opening the regulation to make such changes. EPA did, however, include a much more exhaustive list of Group I (conventional) and Group II (generally toxic) pollutant parameters found in Appendix III of its 1986 national guidance for preparation of quarterly and semi-annual noncompliance reports.[47] This has resulted in a situation where a frequent cause of water impairment, pathogen pollution, (directly linked to NPDES pollutants such as fecal coliform and *E. coli*) is not listed in the regulations (see DCN 0038).

Monitoring Frequency/Thresholds and Connection to Category I Violation Classification

EPA proposes that the policy/guidance process for adding pollutant types that are eligible for Category I classification for permit effluent limit violations can also be used as the process for identifying potential changes to the reporting thresholds (*i.e.,* magnitude and frequency) that are used. For example, the current regulation focuses on monthly average effluent limit violations of a specified magnitude (20 percent or 40 percent above the applicable limit) and frequency (two or four months in a six-month period) because EPA believed that violations of monthly average permit effluent limits were indicative of more serious long-term noncompliance problems. EPA revised its management tool (*i.e.,* EPA's NPDES Significant Noncompliance Policy) in 1995 to also identify egregious NPDES violations of non-monthly permit effluent limits that meet EPA's criteria.[48] EPA and authorized programs are also now using other types of limits (*e.g.,* annual limits or seasonal limits) in some situations. Technical evaluation is needed to determine whether the existing magnitude and frequency reporting thresholds are viable for use for other types of limits.

In summary, the policy and guidance process discussed here would provide a forum for updating/changing: (1) Pollutants subject to Category I classification for permit effluent limit violations; (2) measurement frequency examined for Category I classification for permit effluent limit violations; and (3) reporting thresholds used for existing or new pollutants or measurement frequency that are associated with Category I classification for permit effluent limit violations. These decisions would be established in EPA national guidance and policy (like the EMS), which may be updated as needed.

c. Additional Changes

The proposed rule incorporates several small changes, including the synchronization of reports on a Federal fiscal year basis.

H. Changes to Biosolids Annual Reports by the States

The existing federal regulations at 40 CFR 501.21 require each authorized State, Tribe, or Territory Program Director to annually submit summary-level information to the Regional Administrator regarding state sewage sludge management programs. This required information includes: (1) a summary of the incidents of noncompliance which occurred in the previous year and any details; and (2) information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports.

This proposed rule seeks comment on whether EPA should amend provision 40 CFR 501.21, which would allow EPA to eliminate the requirement for authorized programs to report biosolids information to EPA. The rationale for such an amendment is that, if EPA's NPDES Electronic Reporting Rule requires sufficient information directly and electronically from these permittees and ensures that authorized programs and EPA share such information, then EPA could generate such a report based upon that information and alleviate biosolids reporting burden for this existing regulatory requirement from authorized programs.

Ultimately, under this proposed rule, as currently drafted and subject to public comment, authorized programs would eventually no longer be required under this existing regulation to report on the status of their sewage sludge management programs, provide updates of their inventory to EPA of sewage sludge generators and sludge disposal facilities, or provide information on incidents of noncompliance, except for those identified during state biosolids inspections, because this requirement to supply information would fall on the facilities directly. Additionally, the electronic submission of this biosolids information from the permittees in accordance with the proposed rule will improve the timeliness, cost, and efficiency in the reporting of facility noncompliance and inventory data related to the biosolids subprogram.

Therefore, based on these considerations, this proposed rule eventually would remove state biosolids reporting requirements pursuant to 40 CFR 501.21, three years after the effective date of the final rule. EPA would be able to generate the reports based upon the available data provided directly from permittees, and supplemented by authorized program information regarding their biosolids program implementation activities, through the NPDES Electronic Reporting Rule.

I. Enforceability

For this proposed rule, as currently drafted and subject to public comment, the regulated entities are primarily the NPDES-regulated facilities [*e.g.,* NPDES permittees, biosolids generators subject to 40 CFR part 503, significant industrial users (SIU), categorical industrial users (CIUs), approved pretreatment programs] and NPDES-authorized states, tribes, and territories. The tools available to EPA to ensure compliance with this rule would differ depending on whether compliance was sought from a NPDES permittee or from a NPDES-authorized state, tribe, or territory, but the overall objective—compliance with the rule—would remain the same.

If NPDES-regulated facilities fail to comply with this federal regulation for electronic reporting of NPDES information, they may be subject to the same types of enforcement responses that are available for failure to submit written (paper-based) or oral reports. This proposed rule clearly identifies each report that must be electronically submitted to EPA or the authorized NPDES program.

In response to such noncompliance, EPA and the authorized programs

[47] See Chapter VII, Part 2, Appendix III in The Enforcement Management System (1989), DCN 0037.

[48] See DCN 0050.

would have available their full set of compliance and enforcement tools and actions to address the failure of a NPDES permittee to electronically submit required NPDES information, just as they do to address any other noncompliance by NPDES-regulated facilities. In addition, the public would also have the ability to initiate citizen suits under Section 505 of the CWA to ensure that noncompliance is remedied when there are violations of existing regulations, permit conditions, or requirements in enforcement actions.

EPA also needs to ensure that our regulatory partners responsible for NPDES implementation are meeting Federal requirements as set forth in this regulation. EPA would have the full range of options available to ensure state, tribal, and territorial compliance with this rule, as it would to ensure state, tribal, and territorial compliance with any other aspect of the NPDES program. In particular, the proposed rule outlines the procedure for ensuring the completeness and timeliness of data submissions from states, tribes, or territories that have received authorization from EPA to implement the NPDES program. This procedure includes public notification of the initial recipient of NPDES compliance data for each state, tribe, and territory and the requirement that authorized NPDES programs must maintain the capacity to share all the required NPDES information with EPA through automated data transfers. Finally, this procedure outlines the corrective actions necessary to ensure the seamless electronic collection from NPDES-regulated facilities and the sharing of NPDES compliance data with the public.

J. Effective Date and Compliance Dates

EPA is considering establishing the effective date for this regulation as 60 days after the promulgation date for most parts of the final rule, except for some specified components of the rule. See Section IV.K for a description of the series of compliance dates that follow the initial effective date for this regulation (*i.e.,* 60 days after the promulgation date for the final rule). Additionally, the effective date for the revisions to 40 CFR 123.45 (elimination of the QNCR, ANCR, and semi-annual statistical report; creation of the NNCR) would be three years after the effective date of the final rule. The reason for this separate effective date is that producing the quarterly and annual NNCR require at least one full year of electronic reporting for the complete set of NPDES-regulated entities. As described in Section IV.I, the entire set of NPDES electronic submissions is proposed to begin two years after the effective date of the final rule.

In accordance with 40 CFR 123.63, NPDES-authorized states, tribes, and territories as proposed to have one year after the effective date of the final rule to revise their NPDES program to comply with this rule through any necessary regulatory or policy changes and two years after the effective date of the final rule if statutory changes are needed to conform their programs to the requirements of the rule. Additionally, EPA is proposing to utilize a CWA request, conducted in accordance with the Paperwork Reduction Act, to start collecting NPDES program data by one year after the effective date of the final rule (Phase 1 data) and two years after the effective date of the final rule (Phase 2 data). States, tribes, and territories should review the ''State Readiness Criteria'' to determine the actions they need to take to ensure that facilities in their state, tribe, or territory would not need to report to EPA in addition to their authorized NPDES program. The rule implementation plan and compliance dates for NPDES-regulated facilities are described in Section IV.I.

Given the significant potential data entry cost savings that the states, tribes, and territories could accrue by moving sooner toward electronic reporting of NPDES information by the permittees, there should be significant incentive for these governmental entities to move in that direction. EPA notes that there will be some initial start up costs to switch to electronic reporting. Some states, tribes, and territories may examine whether they could easily adopt the new rulemaking by reference or even make a blanket change to all of their NPDES permits to more timely facilitate a change to electronic reporting by NPDES-regulated facilities. States, tribes, and territories could also consider utilizing EPA's database and electronic reporting tools as a cost savings measure.

Under certain circumstances, and as described in Section IV.E.5, temporary waivers from electronic reporting may be granted to NPDES-regulated facilities, NPDES permit applicants, and industrial users located in cities without approved local pretreatment programs. These temporary waivers may be granted by the states, tribes, and territories that have received authorization to implement the NPDES program (including the applicable subprograms). In situations where EPA is the permitting authority, EPA may choose to grant such temporary waivers, using procedures similar to those described in this section. Temporary waivers are to extend no more than one year at which time the facility must reapply for a waiver.

K. Rule Implementation Plan

EPA notes that the proposed implementation plan would expedite the electronic submission of NPDES program data as compared to implementing electronic reporting through the permit renewal cycle. As a potential backstop, EPA is considering using its authority under CWA sections 101, 304(i), 308, 402(b), and 501 to require the electronic collection and transfer of NPDES program data to EPA as part of this rule, where authorized states, tribes, and territories are not ready to implement electronic reporting. Under this proposal, EPA would utilize its existing authority under the CWA and current technology to allow everyone to more quickly realize the benefits of electronic reporting.

The benefits of this proposal include accelerated resource savings that states, tribes, and territories would realize through reduced data entry burden and reduced effort in responding to public requests for data, consistent requirements for electronic reporting across all states, tribes, and territories, increased data quality, and more timely access to NPDES program data in an electronic format for EPA, states, tribes, and territories, regulated entities, and the public. Under the proposal, a complete set of information for the regulated universe covered by this proposed rule would be required two years after the effective date of the final rule. The Agency's proposal to rely on its authority under the CWA to collect these data directly from NPDES-regulated facilities is supported by the availability of technologies for electronic reporting, the needs of EPA states, tribes, and territories for complete NPDES program data, and the stated goal to make this data available to the public.

By comparison, without this accelerated schedule, it would likely take at least until 2022 to make this information available electronically, including approximately seven years for states, tribes, and territories to update their statutes and NPDES permits to require electronic reporting (*i.e.,* two years for the states, tribes, and territories to revise their programs if statute changes are needed, plus a five-year permit reissuance cycle or longer).[49] EPA considered using the permit renewal cycle as a means to phase in electronic reporting but that approach would delay significant benefits such as

[49] See 40 CFR 123.62(e).

state savings and expedited access to complete NPDES program data in an electronic format for EPA, states, tribes, and territories, regulated entities, and the public. Furthermore, given current technology, it would be unreasonable to take nearly a decade to convert from hard-copy reporting to electronic reporting.

Given the different types of NPDES program data, EPA is proposing to phase in the electronic collection and transfer of NPDES program data on the following schedule. For NPDES-regulated entities that will use EPA's electronic reporting tools, EPA will work closely with states, tribes, territories, and NPDES-regulated entities to provide sufficient training and registration support prior to the start of each implementation phase. In addition, EPA would also provide technical assistance and support to help states, tribes, and territories make this transition to electronic reporting. EPA will also use this schedule to switch from the ANCR and QNCR noncompliance reports to the NPDES Noncompliance Report (NNCR). See also Section IV.E.5 for a discussion of the waivers for some regulated entities in rural areas without access to broadband internet access.

Phase 1 (One Year After Effective Date of Final Rule): EPA would electronically receive the basic facility and permit information from the authorized states, tribes, and territories and information from facilities covered by Federal general permits [*e.g.,* notices of intent to discharge (NOIs), notices of terminations (NOTs), no exposure certifications (NECs), and low erosivity waivers (LEWs)]. EPA would also begin to electronically receive information from states, tribes, and territories regarding inspections, violation determinations, and enforcement actions. EPA, states, tribes, and territories would electronically receive DMR information from NPDES permittees. Prior to the start of Phase 1, states, tribes, and territories that can make changes to their NPDES program without enacting a statute would need to implement 40 CFR part 3 (CROMERR), 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule within one year of the effective date of the rulemaking [see 40 CFR 123.62(e)]. After changes to the NPDES program are made, these states, tribes, and territories (and EPA where EPA is the permit writer) will begin re-issuing existing permits [through permit renewals or minor permit modification (40 CFR 122.63)] or begin issuing new permits that include EPA's electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. EPA notes that some states, tribes, and territories may be able to make minor permit modifications to multiple permits through one action. EPA may also conduct such minor modifications for the NPDES permits it issues. EPA is the permit writer for all tribes and territories (except for the Virgin Islands) and four states that do not have authorized NPDES programs. States, tribes, and territories will also need to complete their updates to any needed NPDES data systems to accommodate the new information exchanges with EPA. Finally, during Phase 1, states, tribes, and territories that must make changes to their NPDES program, if applicable, by enacting a statute would be required to implement 40 CFR part 3 (CROMERR), 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule within two years of the effective date of the final rule [see 40 CFR 123.62(e)].

Phase 2 (Two Years After Effective Date of Final Rule): In this proposal, in addition to Phase 1 data, EPA, states, tribes, and territories would receive information from state, tribal, and territorial general permit covered facilities and program reports from all facilities (*i.e.,* all NPDES program data identified in Appendix A to 40 CFR part 127). Program reports are currently required by existing EPA regulations and include annual and episodic compliance reports from regulated entities to their permitting authority. These program reports include: Pretreatment Program Annual Reports, Industrial Users in Cities Without Approved Pretreatment Programs Periodic Compliance Monitoring Reports, Biosolids Program Annual Reports, CAFO Annual Reports, Municipal Separate Storm Sewer Systems (MS4) Annual Reports, and Sewer Overflow of Bypass Event Reports [Combined Sewer Overflows (CSOs), Sanitary Sewer Overflows (SSO), and Bypass Event Reports] (see Section IV).

During Phase 2, states, tribes, and territories that would be required to make changes to their NPDES program through enacting a statute would complete their changes to their NPDES program to implement 40 CFR part 3 (CROMERR), 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule [see 40 CFR 123.62(e)]. After these states, tribes, and territories update their NPDES program, all new permits issued or existing permits re-issued after this date for the entire nation shall contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. Regulated entities, which would then have the Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) in their permit, would start (or continue) electronic reporting to the initial recipient (as defined in 40 CFR 127.27) as of the effective date of their permit. Under both phases, EPA would continue to work with states, tribes, and territories to ensure the electronic flow of state NPDES program data from their systems to EPA's national NPDES data system (*e.g.,* ICIS–NPDES).

Finally, at the end of Phase 2 (two years after effective date of final rule) EPA will replace the QNCR, ANCR, semi-annual statistical reports with the NNCR. See Sections IV.

1. Phase 1 Implementation

During Phase 1, EPA would require regulated entities to electronically send ''Phase 1 data'' (i.e., DMRs, information from general permit covered facilities for Federally-issued general permits, to EPA, unless the state, tribe, or territory has met the ''State Readiness Criteria'' (see below). This proposed electronic reporting requirement is in addition to any pre-existing paper-based reporting requirements. EPA would commit to holding monthly teleconferences and webinars with authorized programs during this transition period to assist with data migration and reconciliation.

However, EPA would exclude regulated entities from this CWA request if their authorized state, tribe, or territory meets all of the following ''State Readiness Criteria'':

(1) The authorized state, tribe, or territory has 90 percent acceptance rate by data group (*i.e.,* NPDES-regulated entities submit timely, accurate, complete, and nationally consistent NPDES data using approved state, tribe, territory or third-party electronic reporting tools; and

(2) The EPA, state, tribe, territory, or third-party electronic reporting tools used by the NPDES regulated entity meet all of the minimum Federal reporting requirements for 40 CFR part 3 (CROMERR) and 40 CFR part 127 (NPDES Electronic Reporting Rule); and

(3) EPA lists the state, tribe, or territory as the initial recipients for electronic NPDES information from NPDES-regulated entities in that state on EPA's Web site. Each authorized program will then designate the specific tools for these electronic submissions from their permittees. These designations are proposed to be made separately for each NPDES data group (see 40 CFR 127.2(c) and 127.27).

EPA encourages all authorized states, tribes, and territories to meet the ''State Readiness Criteria,'' and will provide support to these authorized programs. This approach will minimize the cases where regulated entities would need to report to their authorized state, tribe, or territory (as required by their NPDES permit) and also to EPA (as required by EPA's CWA request). EPA will also exclude regulated entities from this CWA request if the regulated entity's permit includes all the necessary language to ensure that any electronic reporting done by the permittee meets all of the minimum Federal electronic reporting requirements (40 CFR part 3, 122.22, and part 127). If one or more of the above State Readiness Criteria are not met or if the applicable permit does not include all of the minimum Federal electronic reporting requirements (40 CFR part 3, 122.22, and part 127), then the regulated entity should report to *both* the state, tribal, or territorial permitting authority (if hard-copy paper reporting is required in the permit) and EPA (electronic reporting compliant with 40 CFR part 3, 122.22, part 127) during this transition period.

EPA proposes to make its initial recipient decisions by each authorized state, tribal, and territorial NPDES program and for each data group. For example, if more than 90 percent of NPDES-regulated facilities that are required to submit DMRs in a particular state do so in accordance with the State Readiness Criteria, then all NPDES-regulated facilities in that particular state that are required to submit DMRs would not need to electronically report to EPA under the proposed rule. EPA notes that facilities that are exempt from electronic reporting through use of a temporary waiver would not be included in the 90 percent adoption rate percentage calculation. EPA solicits comment on the 90% threshold that it will use for each state, tribe, and territory by data group. EPA also solicits comment on the appropriate date after the effective date of the final rule when EPA should perform the 90 percent adoption rate percentage calculations prior to the start of the Phase 1 data collection (one year after effective date of final rule).

EPA will work closely with states, tribes, and territories to identify the authorized programs that have met State Readiness Criteria and permittees that have all of the minimum Federal electronic reporting requirements in their permits. EPA will create a search feature on its Web page to identify for each NPDES permittee the data group it does and does not need to report to EPA (*e.g.,* for example a POTW may be exempt from electronically reporting DMR data directly to EPA but may still be required to electronically report pretreatment, biosolids, and sewer overflow data to EPA and also continue their pre-existing hard-copy reporting requirements to their state permitting agency if required to do so by their permit).

As proposed in 40 CFR 127.27(c), EPA would publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated entities by state, tribe, and territory and by NPDES data group. Regulated entities that must report Phase 1 data should consult EPA's Web site and the **Federal Register** to determine whether EPA, the state, tribe, or territory is the initial recipient for the NPDES program data that they need to report. States, tribes, and territories will also update the language in new or re-issued NPDES permits to ensure that any electronic reporting done by the permittee meets all of the minimum Federal reporting requirements for 40 CFR part 3 (CROMERR, 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule).

Consequently, regulated entities that must report Phase 1 data should consult their permit to see if it requires electronic reporting in compliance with 40 CFR part 3, 122.22, and part 127. Regardless of whether a federal, state, tribal, territorial, or third-party electronic reporting tool is used by the regulated entity, or whether data is provided to EPA by the state (computer-to-computer transfer), NPDES program data from regulated entities would be included in ICIS–NPDES and be made available to the public through EPA's Web site. EPA has accounted for this increased burden related to the concurrent reporting when a state, tribe, or territory does not meet the State Readiness Criteria in the supporting economic analysis and the ICR. See Section VII for more detailed discussion on savings and costs associated with this proposal. Additionally, during Phase 1, EPA expects states, tribes, and territories with NPDES program authorization to comply with 40 CFR 123.62(e) by making appropriate and timely revisions to their programs by two years after the expected promulgation date of the final rule. That subsection of the regulations indicates that any approved State section 402 permit program which requires revision to conform to this part shall be so revised within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within 2 years.

As indicated above, existing regulations allow states one or two years (if statutory revisions are necessary) to make the required permit changes to their programs. In order to make these changes more efficiently, EPA is also proposing changes to 40 CFR 122.63 (''Minor modifications of permits'') that would allow states to use the minor modification procedure with the consent of the permittee to change reporting of NPDES program data from a paper process to an electronic process. This proposed change to the minor modification process would ease the burden on states to update existing NPDES permits to include the electronic reporting requirements for regulated entities. Section V also solicits comment on an alternative approach to minor modifications of the permit; in this alternative approach, the consent of the permittee would not be required to convert the permit to require electronic reporting.

Under this proposed rule, all NPDES-regulated entities will electronically report Phase 1 data to their state permitting authority or EPA in compliance with this rulemaking after one year of the effective date of the final rule. This proposed rule would also update the standard permit conditions to include a requirement for NPDES-regulated entities to ensure that their electronic submissions of DMR and other NPDES information (see 40 CFR 127.27) are sent to the appropriate initial recipient, as identified by EPA, and as defined in 40 CFR 127.2(b).

2. Phase 2 Implementation

During Phase 2, all data required to be reported (see Appendix A to 40 CFR 127) by NPDES-regulated entities under this proposed rule would be electronically reported to the authorized program or EPA. NPDES program data from regulated entities would be included in ICIS–NPDES and be made available to the public through EPA's Web site. It is expect that during Phase 2 all states, tribes, and territories with NPDES program authorization will have made appropriate and timely revisions to their programs. EPA is proposing to retain authority to require regulated entities to send their NPDES program data to EPA when the authorized state, tribe, or territory does not meet the State Readiness Criteria. This proposed electronic reporting requirement is in addition to any pre-existing paper-based reporting requirements specified in permits.

As proposed, during Phase 2, regulated entities should consult EPA's Web site and the **Federal Register** to determine whether they should directly report to EPA. In a similar procedure as Phase 1, EPA will work closely with states, tribes, and territories to identify the authorized programs that have met State Readiness Criteria and permittees that have all of the minimum Federal electronic reporting requirements in their permits. EPA will create a search feature on its Web page to identify for each NPDES permittee the data group it does and does not need to report to EPA. It is important to note that existing EPA regulations allow some NPDES-regulated facilities to obtain automatic coverage under a general permit without having to submit a NOI (see 40 CFR 122.28). This regulation does not change this option for permitting authorities to allow for automatic coverage under a general permit. This also means that there is no burden for these NPDES-regulated facilities associated with electronically submitting a NOI. States would also not necessarily need to provide information to EPA on these NPDES permittees that obtain automatic coverage under a general permit. States may need to provide inspection, compliance determination, and enforcement action data on these facilities.

Under this proposed rule, all NPDES-regulated entities will electronically report Phase 2 data to their authorized program or EPA after two years after the effective date of the final rule. NPDES-regulated entities shall identify the initial recipient for their electronic submissions of NPDES information (see 40 CFR 127.27).

Finally, under this proposed rule, all new permits issued or existing permits re-issued after two years after the expected promulgation date of the final rule would contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127 [see 40 CFR 123.62(e)]. EPA has accounted for this increased burden related to the potential for concurrent reporting when a state, tribe, or territory does not meet the State Readiness Criteria in the supporting economic analysis and the ICR. See Section VII of the preamble for more detailed discussion on savings and costs associated with this proposal.

TABLE IV.3—PROPOSED IMPLEMENTATION SCHEDULE FOR RULE

Key milestones	Due dates
ICIS–NPDES batch functionality is completed and all states, tribes, and territories are migrated from PCS to ICIS–NPDES.	December 2012 (completed).
Phase 1	
Final NPDES Electronic Reporting Rule promulgated	TBD.
Collaborative forum between EPA and authorized states, tribes, and territories to develop data exchange protocols.	Final Rule Published in **Federal Register** (start).
EPA sponsored webinars, recorded training, and technical assistance to states, tribes, and territories to review and test data exchange protocols.	Final Rule Published in **Federal Register** (start).
NPDES authorized states, tribes, and territories identify for EPA the NPDES data groups for which they wish to be the initial recipient of electronic NPDES information from NPDES-regulated entities. These authorized programs will provide a description to EPA of how their data system will be compliant with 40 CFR part 3, 122.22, and part 127, and the date or dates when the state, tribe, or territory would be ready to accept NPDES information from NPDES-regulated entities in a manner compliant with 40 CFR part 3, 122.22, and part 127. These dates should not come after the start of the applicable implementation phase (*e.g.,* states cannot propose to be the initial recipient of DMR data after the start of Phase1, states cannot propose to be the initial recipient of NPDES program reports after the start of Phase 2).	120 days after the promulgation date for the final rule.
EPA will publish on its website and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated entities by state, tribe, or territory and by NPDES data group. This listing will provide NPDES-regulated entities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions.	210 days after the promulgation date for the final rule.
States, tribes, and territories begin submitting all required data elements associated with their implementation activities (*e.g.,* permit issuance, inspections, violations, and enforcement actions. EPA will hold monthly teleconferences and webinars with authorized programs during this transition period to assist with data migration and reconciliation.	Eight to nine months after promulgation date for the final rule.
States, tribes, and territories make changes to their NPDES program to implement Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) without amending or enacting a statute [see 40 CFR 123.62(e)]. These authorized programs may elect to modify existing permits through the minor modification process (40 CFR 122.63) to include a requirement for electronic reporting that is compliant with 40 CFR part 3, 122.22, and part 127. All new permits issued or existing permits re-issued after the authorized state, tribe, or territory incorporates Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) into their authorized program shall contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. Regulated entities, which now have the Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) in their permit, shall start (or continue) electronic reporting to initial recipient (as defined in 40 CFR 127.27) as of the effective date of their permit. Authorized NPDES programs must also update their NPDES data systems.	One year after promulgation date for the final rule.
EPA preparation before requiring direct reporting by NPDES permittees: —EPA updates website to allow permittees to determine if they do not need to report their data directly to EPA; —Improvements to ICIS–NPDES or existing tools; and —Registration (including any necessary subscriber agreements) of permittees for use of electronic reporting tools	One year after promulgation date for the final rule.
EPA requires NPDES-regulated entities to electronically send Phase 1 data (*i.e.,* DMRs, general permit reports for Federally-issued general permits, to EPA if the states, tribes, or territories are not ready to implement Federal electronic reporting requirements. All NPDES-regulated entities subject to this proposed rule should assume that they will electronically submit their Phase 1 data to EPA unless otherwise noted in the **Federal Register** or EPA's website. These electronic data submissions will be compliant with 40 CFR part 3, 122.22, and part 127	One year after effective date for the final rule.

TABLE IV.3—PROPOSED IMPLEMENTATION SCHEDULE FOR RULE—Continued

Key milestones	Due dates
The remaining states, tribes, and territories make changes to their NPDES program to implement Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) by amending or enacting a statute [see 40 CFR 123.62(e)]. These authorized programs may elect to modify existing permits through the minor modification process (40 CFR 122.63) to include a requirement for electronic reporting that is compliant with 40 CFR part 3, 122.22, and part 127. All new permits issued or existing permits re-issued after the authorized state, tribe, or territory incorporates Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) into their authorized program shall contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. Regulated entities, which now have the Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) in their permit, shall start (or continue) electronic reporting to initial recipient (as defined in 40 CFR 127.27) as of the effective date of their permit. Authorized NPDES programs must also update their NPDES data systems.	Two years after promulgation date for the final rule.
Phase 2	
EPA preparation before requiring direct reporting by NPDES permittees: —EPA updates website to allow permittees to determine if they do not need to report their data directly to EPA; —Improvements to ICIS–NPDES or existing tools; and —Registration (including any necessary subscriber agreements) of permittees for use of electronic reporting tools	Twenty months after effective date for the final rule.
All NPDES program data from regulated entities subject to the proposed rule electronically reported to their authorized state, tribe, or territory or EPA. NPDES program data from regulated entities would be included in ICIS–NPDES and be made available to the public through EPA's website. EPA would retain authority to require regulated entities to send their NPDES program data to EPA until the state, tribe, or territory meets the State Readiness Criteria. These electronic data submissions will be compliant with 40 CFR part 3, 122.22, and part 127.	Two years after effective date for the final rule.

EPA would also issue a **Federal Register** notice if it needs to delay or extend any aspect of implementation and make such determinations public in the initial recipient listing in the proposed 40 CFR 127.27(c).

EPA also notes that it will be providing technical assistance and support to help states, tribes, and territories with this transition to electronic reporting. EPA is also open to considering other options for phasing the collection of the information under this proposed rule. Specifically, EPA would like to hear from authorized NPDES programs that have experience in implementing electronic reporting, especially their experience in phasing the implementation so that it is successful. EPA seeks additional data on alternative options that might reduce implementation costs on authorized NPDES programs and permittees while also preserving the proposed implementation schedule and benefits of electronic reporting.

L. Procedure for Determining Initial Recipient of Electronic NPDES Information

In this proposal, EPA identified the procedure for identifying the initial recipient of information from NPDES-regulated entities. See 40 CFR 127.27. This procedure requires each authorized state, tribe, or territory to identify the specific NPDES data groups (*e.g.,* DMR information from facilities, information from general permit covered facilities, program reports) for which the state, tribe, or territory would be the initial recipient of electronic NPDES information from NPDES-regulated entities, a description of how their data system will be compliant with 40 CFR part 3, 122.22, and part 127, and the date or dates when the state, tribe, or territory would be ready for accepting NPDES information from NPDES-regulated entities electronically in a manner compliant with 40 CFR part 3, 122.22, and part 127.

The purpose of the initial recipient procedure is to ensure that the authorized state, tribe, or territory receiving NPDES program data from an NPDES regulated entity complies with the CROMERR signatory, certification, and security standards (40 CFR part 3) and the proposed NPDES Electronic Reporting Rule (40 CFR part 127). Built into the proposed procedure is an understanding that EPA will support any authorized state, tribe, or territory that wishes to be the initial recipient for electronically reported NPDES program data and will help the authorized state, tribe, or territory resolve any issues that temporarily prevent it from being the initial recipient of electronically reported NPDES program data.

EPA would review these submissions and publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated entities by state, tribe, and territory and by NPDES data group. This listing would provide NPDES-regulated entities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. EPA would update this listing on its Web site and in the **Federal Register** if a state, tribe, or territory is approved by EPA to be the initial recipient of NPDES electronic data submissions.

A state, tribe, or territory that is designated by EPA as an initial recipient of electronic NPDES information from NPDES-regulated entities, as defined in 40 CFR 127.2, must maintain this data and share all the required NPDES information with EPA through timely automated data transfers, as identified in 40 CFR 127.21(a)(1)-(5) and in Appendix A to this part, in accordance with all requirements of 40 CFR 3 and 127. Timely means that the authorized state, tribe, or territory submit these automated data transfers (see the data elements in Appendix A to 40 CFR part 127) to EPA within 30 days of the completed activity. For example, the data regarding a state inspection of a NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (*e.g.,* 30 days after October 15th).

EPA would be the initial recipient of electronic NPDES information from NPDES-regulated entities if the state, tribe, or territory fails to collect data and consistently maintain timely automated data transfers in compliance with 40 CFR part 3 and part 127. The regulatory text in 40 CFR 127.27 lays out the procedure for identifying and correcting problems preventing states, tribes, and territories from being the initial recipient of NPDES data. EPA would continue to work with the Director of the authorized NPDES program to remediate all issues identified by EPA

that prevent the authorized NPDES program from being the initial recipient. When all issues identified by EPA are resolved, EPA would update the initial recipient listing in 40 CFR 127.27(c) and publish this listing on its Web site and in the **Federal Register**.

V. Matters for Which Comments Are Sought

The following sections identify specific issues on which EPA invites comment. In Section V.A, EPA discusses comment questions regarding the proposed rule. In section V.B EPA commits to publish a supplemental notice after the close of the comment period for this proposal should it receive substantial number of comments that significantly change the direction of this proposed rule. This will allow stakeholders to see how EPA addressed their comments and to provide further input on those sections generating significant number of comments. In Section V.C, EPA summarizes the various approaches identified in Section IV and for which EPA invites comment. In the remaining sections of Section V, EPA identifies other approaches for which EPA invites comment.

A. Response to Early Public Comments

Through the Clean Water Act Action Plan Discussion Forum and consultation with states, tribes, and stakeholders, EPA solicited ideas and comments on electronic reporting. EPA identified several misconceptions about the proposed rule. This section of the preamble identifies some of these misconceptions and provides clarification based upon the proposed rule, as currently drafted and subject to public comment.

• *The proposed rule would focus on existing collection and reporting requirements:* The proposed rule is *not* an EPA effort to impose the collection of additional information beyond that which the permittee is already required to report and the state, tribe, or territory is already required to collect. The proposed rule changes the means by which the information is provided to EPA or to the authorized program, requiring electronic reporting rather than existing hard-copy reporting from the NPDES-regulated facilities.

• *The proposed rule would not require states, tribes, and territories to develop their own electronic tools for use by NPDES-regulated facilities or require states, tribes, and territories to develop their own electronic databases:* In support of ICIS–NPDES and this proposed rule, EPA plans to develop national tools to allow NPDES-regulated facilities to provide NPDES information electronically to EPA, states, tribes, and territories. EPA plans to make those EPA-developed tools available for use within each state, tribe, and territory. Alternatively, a state (or tribe or territory) may choose to develop its own state-specific electronic tools or state data systems rather than utilizing what EPA makes available, or the electronic reporting tools could be developed by third parties. However, the proposed rule would require these new electronic reporting tools to provide the same basic nationally-consistent set of NPDES information required by EPA under this rule. Additionally, the new state, tribe, territory, or third-party electronic reporting tools would need to meet the requirements of EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (*see* 40 CFR part 3).

• *The proposed rule would not stop utilization of existing electronic reporting tools by states, tribes, and territories:* The proposed rule would not require states, tribes, and territories to stop utilizing tools that they have developed to enable NPDES-regulated facilities to report electronically. However, EPA does seek to ensure that each electronic reporting tool utilized in the state, tribe, or territory would provide the same nationally-consistent set of NPDES information required by EPA, regardless of whether this was an existing or newly-developed tool. EPA also seeks assurance that such electronic reporting tools would meet the requirements of CROMERR. Therefore, states, tribes, and territories with existing electronic tools may need to modify them as appropriate to ensure that the tools obtain all required NPDES information and meet the necessary requirements.

• *The proposed rule does not specify particular electronic reporting tools:* The proposed rule does not specify any details of what electronic tools would be developed or should be used to ensure that the required NPDES data would be provided in a timely, accurate, complete, and nationally consistent manner by permittees, states, tribes, and territories to EPA. The proposed rule focuses on establishing requirements for what types of NPDES data the NPDES-regulated facilities would be required to report to EPA, states, tribes, and territories electronically; what facility-specific information states would be required to provide to EPA regarding their implementation activities; and how these requirements would be implemented in a NPDES-authorized program.

• *The proposed rule does not mandate direct entry of NPDES data into ICIS–NPDES as the only means of compliance:* The proposed rule establishes what data the permittees, states, tribes, and territories would be required to provide to EPA on a nationally consistent, timely, accurate and complete basis. Although EPA wants to ensure that the data is provided in a manner which is fully compatible with ICIS–NPDES, the proposed rule does not presume that direct data entry into ICIS–NPDES is the only approach that would meet the proposed requirements.

• *The proposed rule will provide significant benefits to states, tribes, and territories:* Based upon results of the economic analysis, as summarized in Section VII, the proposed rule would provide long-term savings to the states, tribes, and territories, providing states, tribes, and territories the opportunity to reallocate or redistribute existing resources more efficiently. The near-term costs are small in comparison to these savings, and the proposed rule would not impose significant costs upon the states, tribes, and territories in the long term. EPA would also be providing technical assistance and support to help states, tribes, and territories transition to this new cheaper and more accurate approach.

• *The proposed rule does not increase the reporting burden on state NPDES programs:* As described in more detail in Sections IV and VII of the preamble, most of the data required for the NPDES program under the proposed rule (see Appendix A to 40 CFR part 127) would be electronically provided by NPDES regulated entities. States, tribes, and territories would not need to key punch these data supplied by NPDES regulated entities into ICIS–NPDES. Also, many of the required data are required only for particular NPDES subprograms (*e.g.,* CAFOs, pretreatment, etc.) and it is highly unlikely that any NPDES regulated entity would be covered by each and every one of these subprograms. Furthermore, over 60 percent of these required data are required to be entered only once every five years or less frequently (particularly facility and permit information obtained from electronic notices of intent to discharge or individually-issued NPDES permits, but also where obtained from certain inspections). In addition, some of the data would rarely be used because they are conditional in nature, with their data entry contingent upon certain other unique conditions being present (*e.g.,* removal credits in approved local pretreatment programs). Therefore, any calculation of the data entry resource burden on states, tribes, and territories which contains an assumption that every data element is required for every

facility is incorrect. These concepts are explained in much more detail in the context of data entry considerations in Section IV.D.

B. Supplemental Notice

This proposed rule as currently drafted, subject to public comment, requires a conversion to electronic reporting of information from the majority of the NPDES regulated universe and from states, tribes, and territories authorized to implement the NPDES program. As such, this proposed rule will affect hundreds of thousands of NPDES-regulated entities and all states, tribes, and territories. The proposed rule will also impact the public, making more complete NPDES information available nationally for the first time.

Given the large scope of this proposal, EPA commits to offer an additional opportunity for transparency and engagement should we receive public comments that require significant changes to the rule. If that occurs, EPA will issue a supplemental notice with its response to any public comments that prompted a change in direction, so that states, tribes, territories, permittees, and other stakeholders can review and comment on how EPA revised the parts of the proposed rule that generated significant amount of comment. EPA plans to publish the supplemental notice within 180 days after the public comment period for this proposed rule has closed.

Although EPA is requesting comment on all aspects of the proposed rule, there are three specific areas for which EPA is particularly interested in getting comment from states, tribes, territories, permittees, and other stakeholders. The three areas include: governance of the data; phasing the implementation proposed under this rule; and the specific information the rule proposes to collect.

1. Governance of the Data

It is important that the governance processes surrounding the management and public release of data be clearly defined. The proposed rule relies on data that is currently required under existing regulations for the NPDES program. It also respects and does not change the role of authorized state, territorial, and tribal agencies as the primary implementors of the NPDES program or as data stewards for NPDES data within their jurisdiction. EPA invites comments from states, tribes, territories, permittees, and other stakeholders on the governance and management of data to be electronically reported to states and EPA under this proposed rule, including data stewardship and use of the information.

2. Phasing the Data Collection

Currently the proposed rule has two phases that will be implemented for collecting this information (see Section IV of the preamble for a detailed discussion on the phasing of the implementation of the rule). EPA will be providing technical assistance and support to help states, tribes, and territories with this transition to electronic reporting. EPA is also open to considering other options for phasing the collection of the information under this proposed rule. Specifically, EPA would like to hear from authorized NPDES programs that have experience in implementing electronic reporting, especially their experience in phasing the implementation so that it is successful. EPA seeks additional data on alternative options that might reduce implementation costs on authorized NPDES programs and permittees while also preserving the proposed implementation schedule and benefits of electronic reporting.

3. Specific Information the Rule Proposes To Collect

The proposed rule lists each data element proposed for electronic reporting. This information can be found in Appendix A of 40 CFR part 127 of the proposed regulation text. The proposed rule explains throughout the preamble why the information is proposed to be submitted electronically. In particular, there is a detailed discussion for each data family by program area that can be found in Section IV of the preamble. Additionally, this proposed rule does not require the generation of new data that is not already required in the existing regulations for the NPDES program.

EPA would like to hear from states, tribes, territories, permittees, and other stakeholders any comments for adding, changing, or deleting data elements from this proposed list.

C. Summary of Items for Comment Identified in Section IV of This Preamble

In Section IV, EPA identified several specific approaches on which comments are invited. These include:

- Taking into account the limitations of broadband availability and technological capabilities, EPA is considering providing a temporary waiver to the electronic reporting requirements for facilities lacking broadband capability or high-speed internet access and invites comments on such an exception.
- EPA invites comment on how to best address the variability in general permits issued by EPA, states, tribes, and territories.
- EPA is considering the elimination of reporting ''time'' from the annual report for CAFOs [see 40 CFR 122.42(e)(4)(vi)]. EPA estimates that the reporting of ''date'' of discharges is sufficient for permitting and compliance determinations. EPA invites comment on this considered change.
- EPA is not considering requiring the electronic submission of LTCPs as these reports are unique to each POTW. EPA invites comment on this approach.
- EPA invites comment on whether electronic sewer overflow event reports should be limited to sewer overflow events above a de minimis volume.
- EPA invites comment on whether the list of minimum federal data for sewer overflow and bypass events (Appendix A to 40 CFR part 127) provides sufficient distinction between the different types of sewer overflow and bypass events.
- For the pretreatment reports not identified in this proposed rule, as currently drafted, for electronic submission, EPA invites comment on which other pretreatment reports (if any) EPA should require for electronic submission as electronic documents (*e.g.,* searchable PDFs).
- For the pretreatment reports, EPA is first focusing its efforts on collecting electronically annual reports from control authorities, acknowledging that these reports include summary data from IU reports, and collecting compliance reports from IUs in cities without pretreatment programs. EPA invites comment on whether EPA should re-examine this decision for the final rule.
- EPA invites comment on the phasing out of reports currently required by 40 CFR 123.45 and 40 CFR 501.21, the new provisions for the NNCR, and the retention of existing thresholds in Appendix A to 40 CFR 123.45.
- EPA's VGP currently contains the monitoring, reporting, inspection, operation and maintenance requirements. EPA is not considering using this proposed rule, as currently drafted, to make any changes to NPDES regulations that would be specific to the vessels program. EPA invites public comment on this approach.
- EPA is not considering using this proposed rule, as currently drafted, to make any changes to NPDES regulations that would be specific to the pesticide

applicators program. EPA invites public comment on this approach.

• EPA invites comment on whether it should expand electronic noncompliance reporting to other forms of noncompliance [see 40 CFR 122.41(l)(6) and (7)], besides sewer overflow incidents and bypasses.

• EPA notes that the list of minimum federal data (Appendix A to 40 CFR part 127) from states, tribes, and territories only includes construction stormwater inspection data when the authorized program identifies violations and completes a formal enforcement action (*i.e.,* authorized state, tribe, and territory programs are not required to report construction stormwater inspection data to EPA for inspections that do not identify violations). EPA made this distinction based on the large number of facilities in this segment of the NPDES universe (approximately new 222,000 facilities each year). EPA invites comment on this approach.

• EPA invites comment on whether CAFO NOIs and NOTs should be included in Phase I of the rule implementation, as currently being considered, or in Phase II.

• EPA is seeking comment on how it should evaluate, update, and revise the lists of pollutants in Appendix A to 40 CFR 123.45. These lists are used to determine Category I (most serious) and Category II noncompliance. EPA's preamble for the final rule for 40 CFR part 123, NPDES Noncompliance and Program Reporting (FR, Vol. 50, No. 165, Monday, August 26, 1985) describes the conventional and nonconventional/toxic pollutants as lists of general types. It was expected that new parameters may be added from time to time. EPA has never revised these lists in part due to the complexity of re-opening the regulation to make such changes. This has resulted in a situation where, the most frequent cause of water impairment, pathogens, (which is directly related to pollutants such as fecal coliform and eColi) are not listed as pollutants that cause a Category I listing in the regulations. This means that a violation of a pathogen effluent limit alone (no matter how severe) is not required to be reported to EPA under 40 CFR 123.45 and, therefore, will not automatically trigger evaluation of the violation for ''significant noncompliance (SNC)'' status. EPA also seeks comment on eliminating the need for pollutant specific lists such as the current one in Appendix A and instead requiring that all effluent limitations in NPDES permits be considered noteworthy when involving exceedances greater than a certain, specified amount and basing the threshold amounts on whether or not the limit is a water-quality based effluent limit or a technology-based limit.

• In addition, when the 40 CFR 123.45 noncompliance reporting requirement were originally developed, EPA believed that violations of monthly average permit effluents limits were indicative of more serious long term noncompliance problems. However, EPA's thinking has evolved on this point and, in consultation with Regions and States, EPA revised its management tool (i.e., EPA's NPDES Significant Noncompliance Policy) in 1995 to also identify egregious NPDES violations of non-monthly permit effluent limits that meet EPA's criteria. EPA is specifically seeking comment on whether noncompliance reporting of permit effluent limits in 40 CFR 123.45 should be limited to monthly average permit limit violations and those violations that are of a specific magnitude and frequency.

EPA invites comment on the 90 percent threshold, currently considered in the proposed rule, that it will use as one of the State Readiness Criteria for each state, tribe, and territory by data group. EPA also invites comment on the appropriate date when EPA should perform the percent adoption rate percentage calculations prior to the start of the Phase 1 data collection.

D. Possible Adjustments to the Universe of Facilities for Which Electronic Reporting Is Required

1. Construction Sites With Potential Stormwater Issues

Based upon preliminary EPA estimates, the number of facilities covered by NPDES permits to control stormwater discharges related to construction (approximately 200,000 such facilities in any particular year) constitutes a very large percentage of the total universe of NPDES-permitted facilities in any given year. This universe of facilities changes as construction is completed. Based upon existing regulatory requirements,[50] few of the construction stormwater permits require the submission of DMRs from these facilities; therefore, much of the available information regarding the compliance status of such facilities is based upon inspections rather than on self-reported effluent monitoring data.

For these construction sites, NPDES permit coverage is provided through the construction site operator's submission of a notice of intent (NOI) to be covered under a general permit issued by EPA or by the authorized state, tribe, or territory. The NOI information from the prospective NPDES-regulated facilities includes basic information regarding the facility and its discharges, and provides some basis for possible inspections and enforcement by authorized agencies.

In the development of this proposed rule, as currently drafted, EPA has considered whether facility-specific data should be required only for those sites that had been inspected (rather than for the entire universe of such facilities) due to the transient nature of these sites. Based on the 2007 version of EPA's Compliance Monitoring Strategy (CMS), EPA recommended annual EPA-state goals to inspect at least 10percent of NPDES-permitted construction sites greater than five acres in size (Phase I), and at least 5percent of construction sites which are 1–5 acres in size (Phase II). Adjusting data reporting requirements to only require information on the facilities inspected would provide facility data for a much smaller set of facilities.

In discussions with states about reporting for potential wet-weather facilities such as construction sites, EPA has also considered requiring reporting on an even smaller subset of these construction sites, namely those sites that have been subject to a formal enforcement action, an administrative penalty order, or another informal enforcement action if that informal action addressed significant noncompliance. Closer tracking of these particular facilities would help ensure timely compliance and could help EPA to identify noncompliance patterns by particular companies across watershed or state, tribe, or territory boundaries, or nationally in scope. It is difficult to determine an accurate percentage of such facilities that may be subject to these future actions; however, as a preliminary estimate, EPA expects that only 1percent of such facilities would be the recipients of such enforcement actions in a given year.

In this proposed rule, as currently drafted, every construction site seeking coverage under a NPDES general permit would be required to electronically submit a NOI form. Therefore, this rule would establish the initial universe for which construction site inspections would most likely be performed. There is no way of pre-determining which sites would receive such inspections or which sites will be subject to enforcement actions, so it makes more

[50] In a separate rulemaking effort, EPA is drafting proposed regulatory language that may change reporting requirements associated with construction sites. At this time, it would be premature for EPA to speculate on what that proposed or final rule would contain.

sense to include the entire universe of such facilities in the requirement to electronically submit an NOI. The states, tribes, and territories would then be required to provide EPA with inspection information, violation determination information, and enforcement action information only for those sites where such actions are taken by the states, tribes, or territories. For facilities that qualify for and receive low erosivity waivers (LEWs), this proposed rule, as currently drafted, requires the electronic submission of the date such waiver was approved by the authorized state, tribe, territory, or EPA. Comments are invited on viable alternatives to this approach that would provide sufficient facility-specific information regarding construction sites.

2. Municipal Satellite Sanitary Sewer Systems (MSSSs)

Some municipalities that do not have NPDES permits to discharge nonetheless have sanitary sewer systems (SSSs) which discharge their sewage to the collection system of a POTW that has a NPDES permit to discharge. This sewage system discharging to another NPDES collection system or POTW is referred to as a municipal satellite sanitary sewer system. Based upon preliminary EPA estimates, there are over 4,800 such municipal satellite SSSs in the nation. This figure represents approximately 24 percent of the total number of SSSs in the entire nation.

Not all of these satellite systems have applied for and received NPDES permits. Some amount of NPDES information is tracked by states, tribes, territories, and EPA for POTWs which have NPDES permits, particularly for those POTWs which were designated as major permittees. However, information regarding the non-permitted municipal satellite SSSs and their possible impacts is far less complete.

Under CWA section 308, EPA could seek facility-specific information for each municipal satellite SSS facility as a point source; such information would include basic facility information, identification of the receiving NPDES-permitted POTW, incident report information, inspection information, and if applicable, violation information, enforcement information, and limits and monitoring data for each of these municipal satellite facilities. Detailed information regarding overflows from municipal satellite systems is critical to reducing water quality impairments attributable to overflows.

In this proposed rule, as currently drafted, EPA is not considering new reporting requirements on permitting authorities regarding such municipal satellite SSSs. EPA is considering whether EPA's needs may be served by receipt of information for municipal satellite systems which have been subject to a formal enforcement action, an administrative penalty order, or another informal enforcement action if that informal action addressed significant noncompliance, because closer tracking of these particular facilities, whether NPDES-permitted or a necessary party to ensuring compliance under an enforcement action, would help ensure timely compliance and more complete solutions to possible SSO violations. However, more complete information regarding the entire universe of municipal satellite systems may be very useful in evaluating the national compliance status of these facilities and in targeting. EPA invites comment on whether more specific information regarding municipal satellite systems, all or some defined subset, would prove useful and should be required by EPA from the states, tribes, and territories.

3. Industrial Users

As described in Section IV.E.1.e, in the absence of approved local pretreatment programs, EPA, the authorized state, tribe, or territory function as the control authority with the direct responsibility to oversee these industrial users. EPA estimates that there are approximately 1,400 industrial users located in cities without approved local pretreatment programs.

Section IV.E.1.e describes the types of reports which categorical industrial users and other significant industrial users are required to provide to the control authority. EPA is considering industrial users located in cities without approved local pretreatment programs be required to send the industrial user reports required under 403.12(e) and 403.12(h) electronically to EPA or pretreatment-authorized states, tribes, and territories. These self-monitoring reports will provide information similar to the information contained in DMRs from direct dischargers. Essentially, this would increase the universe for which self-monitoring results are required to be submitted electronically. Electronic submittal of these reports will give states, tribes, territories, and EPA better access to information concerning the pretreatment processes and compliance status of industrial users located in cities without approved local pretreatment programs. Comments are invited on this requirement and on whether to expand the requirement for electronic reporting of these reports to all industrial users.

4. Facility Universe for Which Biosolids Annual Reports Are Required

EPA's biosolids regulations (40 CFR part 503) establish the same recordkeeping requirements for all POTWs and Treatment Works Treating Domestic Sewage (TWTDSs). However, EPA's biosolids regulations only require annual reporting from POTWs with a design flow rate equal to or greater than one million gallons per day, POTWs that serve 10,000 people or more, and Class I sewage sludge management facilities (*e.g.,* POTWs with design flow rates less than one million gallons per day that also have approved pretreatment programs) to the appropriate authorized state, tribe, territory or EPA region. These biosolids reporting requirements are described in Section IV.E.1.f. There are no existing reporting requirements for smaller POTWs (*e.g.,* design flow rate less than one million gallons per day and serving less than 10,000 people) without pretreatment programs or for TWTDSs that are not identified by EPA or the authorized state, tribe, or territory as Class I sewage sludge management facilities. This proposed rule, as currently drafted, is not considering changing the applicability of EPA's biosolids reporting requirements.

EPA invites comment on expanding the biosolids reporting requirements (see 40 CFR 503.18, 503.28, 503.48) to all POTWs and TWTDSs. The increased availability of such biosolids information regarding all POTWs and TWTDSs would provide significant information regarding the effectiveness of the national, state, tribe, and territory biosolids programs, as well as key information regarding the effectiveness and compliance status of the regulated facilities. In particular, EPA notes that the existing reporting requirements apply to only a minority of POTWs and TWTDSs, although they have the vast majority of the flow volume compared to the smaller POTWs and TWTDSs. According to EPA's 2008 Clean Watersheds Needs Survey, there are approximately 3,200 POTWs that have a design flow rate above one million gallons per day and 11,500 POTWs have a design flow rate below one million gallons per day. Consequently, there are many more facilities for which EPA, states, tribes, and territories have little information on hand to determine compliance with EPA's biosolids regulations and no comprehensive way of conveying the biosolids management performance of these facilities to the public. As indicated in the proposed rule as currently drafted, expanding the reporting requirements to all POTWs

and TWTDSs will aid in producing a national consistent assessment of biosolids management, which is not available with the current reporting requirements (see DCN 0034). The efficiencies in electronic reporting will reduce the burden on POTWs, TWTDSs, states, tribes, territories, and EPA in reporting, receiving, reviewing, and maintaining these data.

Finally, EPA notes that some POTWs use lagoons or impoundments for their wastewater treatment. These POTWs may not be discharging biosolids each year as these lagoons or impoundments are not necessarily annually dredged. Some lagoons or impoundments may be dredged on a frequency of once every five, ten, or more years. EPA invites comment whether to expand the biosolids reporting requirements to POTWs that use lagoons or impoundments and do not perform annual dredging.

E. Quality Assurance and Quality Control Requirements

This proposed rule, as currently drafted and subject to public comment, establishes quality assurance requirements to better ensure that the required NPDES data will be provided in a timely, accurate, and complete manner by each NPDES permittee and by each NPDES-authorized state, tribe, and territory.

EPA has suggested establishing timeliness criteria of 30 days for permitting authorities to transmit NPDES data electronically to EPA. Suggested criteria for states, tribes, and territories regarding accuracy (at least 95 percent of the data elements should be identical to data reported) and completeness (at least 95 percent of the expected data elements should be provided for each facility) are based on quality assurance targets identified in existing EPA guidance.

In August 1992, EPA issued the ''Permit Compliance System (PCS) Quality Assurance Guidance Manual'' as guidance for EPA regional offices and states toward the development of similar quality assurance procedures for PCS data entry. This guidance document described quality assurance and quality control (QA/QC) targets for the data entry of the Water Enforcement National Data Base (WENDB) data, the data identified (through the PCS Policy Statement, as amended) from EPA regional offices, states, tribes, and territories for PCS, and described how permitting authorities should develop and implement their own quality assurance plans to ensure that the data provided in PCS was timely, accurate, and complete. Although these criteria were developed as quality assurance guidelines for PCS, the NPDES national data system at that time, these long-established quality assurance requirements would still be valid as criteria for timeliness, accuracy, and completeness of NPDES data that would be required through this proposed rule, as currently drafted, to be provided electronically in a manner fully compatible with EPA's PCS replacement system, ICIS–NPDES. EPA is inviting comment on whether these quality assurance and quality control targets identified in the August 1992 guidance cited above should serve as the basis for similar regulatory requirements in this proposed rule, as currently drafted.

Specifically, the 1992 EPA guidance sets timeliness targets (in numbers of working days since a specific trigger event) for the availability of NPDES data from states, tribes, and territories for specific data families, such as basic facility data, pipe schedule data, limits data, monitoring data, violation data, inspection data, program reports data, enforcement action data, compliance schedule data, etc. As an alternative approach to timeliness criteria identified in this proposed rule, as currently drafted, EPA could instead propose that these timeliness targets in the 1992 EPA guidance be instituted as timeliness deadlines. This approach would better ensure that the NPDES data required under this proposed rule, as currently drafted, would be provided by each NPDES permittee and by each authorized state, tribe, and territory to EPA in a nationally-consistent, timely, accurate, and complete manner fully compatible with EPA's NPDES data system. A few examples of such timeliness deadlines are identified below:

- For basic facility data, this information would be required from the permitting authority within five working days of receipt of an application for an individual NPDES permit;
- For basic permit information, this information would be required from the permitting authority within five working days of the issuance of an individual permit; and
- For enforcement action data, this information would be required from the permitting authority within five working days of the issuance of the enforcement action.

Although electronic submission of NPDES information could certainly occur much more expeditiously for NOI data, DMR data, or program report data, if that data is sent electronically by the NPDES permittee to a permitting authority's electronic reporting system for subsequent submission to EPA, the timeliness requirement for the permitting authority could be that:

- The eNOI data would be available from the state, tribe, or territory to EPA within 5 working days of receipt of the eNOI;
- The DMR data would be available from the state, tribe, or territory to EPA within 10 working days of receipt of the DMR; and
- The program report data would be available from the state, tribe, or territory to EPA within 30 working days of receipt.

EPA invites comment on whether to include QA/QC criteria for timeliness, accuracy, and completeness in the final rule. In addition, EPA invites comment on the alternative timeframes described here.

F. Possible Use of Minor Modifications of Permits To Require Electronic Reporting, Without Requiring Consent of the Permittees

In 40 CFR 122.63, federal regulations indicate the conditions under which minor modifications to existing NPDES permits could be made upon consent of the permittee. The existing regulations indicate that minor modifications to NPDES permits may be done to correct typographical errors, require more frequent monitoring or reporting, change interim compliance dates, indicate ownership or operational control changes, change new source construction dates, or incorporate conditions of an approved pretreatment program.

EPA is very interested in facilitating the move toward electronic reporting by states, tribes, territories, and regulated entities and has examined the possibility of modifying the existing federal regulations regarding minor modifications to require electronic reporting by NPDES-regulated facilities. By including the incorporation of electronic reporting requirements as a minor modification, states, tribes, and territories could more easily change existing NPDES permits to require electronic reporting, while reducing the paperwork and process time that would normally be associated with modifying a permit. Therefore, in this proposed rule, as currently drafted, EPA has suggested adding, as a minor modification, the incorporation of electronic reporting requirements into existing permits.

EPA invites comment specifically on whether such incorporation of electronic reporting requirements should be identified as a minor modification of a NPDES permit even absent the consent of the permittee. This

possible change, which would reduce paperwork, facilitate electronic reporting and improve reporting efficiency, may either be added to 40 CFR 122.63 or could be identified in another part of regulation.

VI. Outreach

A. Past Efforts

As described previously in Sections II.E and III, EPA has recognized for many years the need to better track facility-specific NPDES information nationally, particularly to include nonmajor facilities which have merited increased attention (*e.g.,* stormwater, CSOs, SSOs, CAFOs, biosolids and pretreatment) due to their potential impact on public health and the environment. In addition, computer technology has advanced significantly since the Permit Compliance System (PCS) was implemented in the 1980s as the NPDES national database of record.

EPA has had extensive interactions with states in the design of the ICIS–NPDES system, in the identification of possible ICIS–NPDES required data, and in efforts to develop a draft ICIS–NPDES Policy Statement.

1. PCS Modernization

Since FY 2000, EPA has worked with the states in designing a modernized data system for the NPDES program, including the identification of critical data elements. In FY 2002, EPA and 36 subject matter experts from the states developed recommendations identifying specific data needed to successfully implement and manage the NPDES program; these recommendations were distributed to the states and EPA Regions for review.

Since then, EPA has worked closely with its state, tribe, and territory partners in an effort to modernize PCS as a NPDES component of ICIS, ensuring that the system could accommodate the NPDES program data needs identified by EPA and the state subject matter experts in FY 2002. In March 2004, an EPA-state workgroup developed a framework for the content and scope of an ICIS–NPDES policy statement. In addition, the PCS Steering Committee, comprised of EPA and state participants, served as the primary contact in the development of ICIS–NPDES and worked toward the development of the associated draft policy statement.

EPA and authorized states began using ICIS–NPDES in 2006. Currently, all authorized states are either direct users of the ICIS–NPDES system or do some data entry directly and supply some data electronically from their own state databases into ICIS–NPDES. All EPA Regional offices use ICIS–NPDES for direct data entry of information related to their NPDES implementation activities; also, in their capacity as NPDES permitting authorities, they currently provide NPDES information from four states, two tribes, and nine territories or other jurisdictions. EPA has provided extensive training courses to states, tribes, territories, and EPA Regions to ensure a degree of national proficiency and familiarity with ICIS–NPDES. EPA also provides user support, national conference calls and meetings, and a national newsletter to personnel in states, tribes, territories, EPA Regions, and EPA Headquarters.

2. ICIS–NPDES Draft Policy Statement

At the request of the Environmental Council of States (ECOS), the PCS Steering Committee was expanded in late 2005 from 10 to 18 states to include representatives of ECOS and ACWA. In 2006, three face-to-face multi-day meetings were held to discuss the development of a draft ICIS–NPDES Policy Statement, which would specify required data to be entered or otherwise made available by the states to EPA, and the timing considerations for such data entry requirements.

In conjunction with those meetings, issue papers were developed by EPA and by the states, addressing EPA's needs for the data and states' proposals regarding alternative data availability. In an effort to better identify which data were being collected by states (whether or not those data were required to be entered into PCS), ACWA conducted a survey of states regarding each of the proposed required data. The specific states providing each response were not identified to EPA, preserving some anonymity in the responses but also inadvertently making it difficult for EPA to interpret the survey data and determine reasons for the responses. For example, it was not clear whether the fact that a particular state was not collecting biosolids information was because that state did not have the authority to implement and enforce the NPDES biosolids program.

EPA also consulted with in-house subject matter experts and re-assessed and reduced the number of proposed required ICIS–NPDES data, making several of the data elements required to be entered only by EPA Regional offices. Within an EPA-state workgroup organized to examine data entry resources, EPA developed a fairly detailed Excel-based data entry estimate model to determine data entry estimates nationally, for roughly a dozen individual states, for specific NPDES subprograms, and for specific data families or data groupings. Another EPA-state workgroup focused on issues related to possible sequencing of data from specific program areas.

These outreach efforts culminated in the development of a draft ICIS–NPDES Policy Statement issued by EPA for review and comment on April 30, 2007. State comments on that draft did not focus on specifics of the policy statement, or on the merits of particular approaches or data, but rather they raised general concerns regarding resource burden (beyond data entry) and federalism issues (*e.g.,* possible increased EPA oversight). In response to the comments from some states, and in an effort to ensure broader participation by other interested parties (including environmental groups), EPA decided that it would be more appropriate to proceed with rulemaking instead of a final ICIS–NPDES Policy Statement. This intention was conveyed to ECOS in a letter in September 2007.

3. Addendum to the PCS Policy Statement

In December 2007, EPA issued an addendum to the PCS Policy Statement. This addendum identified those ICIS–NPDES data which were considered to be comparable to the required WENDB (Water Enforcement National Data Base) data in PCS, as well as data which are system-required in ICIS–NPDES (the entry of those data is required before the system will save the record). This addendum stated that these ICIS–NPDES data constituted the list of data which EPA expected to be entered by ICIS–NPDES users during the period until a federal regulation on such reporting was promulgated by EPA.

4. Other Interactions—NetDMR, Alternatives Analysis

EPA also worked with states on two efforts that were independent of the initial rulemaking, but impact possible implementation of this proposed rule. EPA has implemented the NetDMR tool which can be used to electronically transmit Discharge Monitoring Report (DMR) from regulated facilities directly into ICIS–NPDES. This tool has significant impacts on implementation of the NPDES Electronic Reporting Rule, because approximately 90% of the estimated data entry burden associated with this proposed rule is linked specifically to the data entry of DMR information by the states, tribes, and territories.

During a similar timeframe, EPA and authorized programs also implemented the recommendations of an alternatives analysis which assessed the best means

for providing state data electronically (*i.e.,* those which will send NPDES information electronically from their own state data systems to ICIS–NPDES, without the necessity for direct data entry into ICIS–NPDES) to ensure that state data is available in ICIS–NPDES.

5. Rule Development Process

a. Early Interactions

During the rulemaking process, EPA hosted a listening session with states and interested stakeholders in Washington, DC, on October 14, 2008. This session was announced in the **Federal Register** by a notice on September 17, 2008. In this meeting, which was complemented by a concurrent conference call and web access to materials that EPA presented, EPA provided states, tribes, territories, and stakeholders an opportunity to hear EPA's rulemaking plans and an opportunity to provide comments on those plans. This effort included over 30 participants, including representatives of several states.

Later in the rulemaking process, EPA conducted a meeting in Washington, DC on March 9, 2009 with representatives from four states. A similar meeting was conducted by EPA in San Francisco on March 13, 2009 with an additional four states. The goal of these meetings was to seek individual state comment on a variety of options under consideration in the rulemaking to effectively reduce potential data entry burden. EPA then conducted two conference calls (on March 18, 2009 and April 8, 2009) with seven additional states to seek comment on those same options under consideration. This series of outreach events provided valuable input from a total of fifteen states from nine EPA regions regarding the feasibility of the implementation options under consideration for this proposed rule.

b. Interactions Focused on Electronic Reporting—Directional Change

Beginning in summer 2010, EPA conducted several outreach efforts focused primarily on electronic reporting. These efforts are described below.

i. Meetings and Webinars

On July 13, 2010, EPA conducted a meeting [51] in Washington, DC with over 100 attendees to announce the electronic reporting approach to this proposed rule. Representatives from states, local and tribal governments, and industry and environmental associations participated in person and by web access. EPA provided attendees the opportunity to learn of EPA's rulemaking plans for the NPDES Electronic Reporting Rule and to provide comments about those plans.

Subsequent to this meeting, EPA hosted a series of 20 web sessions conducted from July 2010 through July 2012. The goal of these meetings was to provide further opportunity for comment on the merits of the proposed rule. This effort included over 1,000 participants with representation from many states and industry. As a result, EPA obtained valuable input.

During this rulemaking, EPA also conducted additional meetings and consultations in order to comply with various statutes and executive orders that direct federal agencies, including EPA, to coordinate with organizations representing elected officials of states, counties, and municipalities, and consult, as required, with tribes and small businesses and small governmental jurisdictions.

The first of these meetings was held on September 15, 2010, and was attended by 11 state and local government organizations. The focus of this meeting was to comply with Executive Order 13132 (''Federalism'') which requires Federal agencies to consult with elected state and local government officials, or their representative national organizations, when developing regulations or policies that might impose substantial compliance or implementation costs on state and local governments. EPA received substantive feedback on the feasibility of the implementation options under consideration for this rulemaking.

Additionally, EPA met with tribal entities to describe the rulemaking effort and to provide an opportunity for discussion in two separate meetings on November 9, 2010 with the National Tribal Caucus, and on November 10, 2010, with the National Tribal Water Council. The National Tribal Caucus meeting was attended by 19 tribal representatives elected on a regional basis, who correspond with tribes in each of EPA's ten regions. The Tribal Water Council consists of 19 tribal water professionals who represent a national tribal perspective. In addition, after mailing information to 563 nationally-recognized tribal entities, EPA conducted follow-up conference calls on December 14 and December 16, 2010.

The focus of these meetings was to provide an additional opportunity for consultation and thus comply with Executive Order 13175, which states that EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. These calls did not raise any key issues from the participants, and, in particular, the likely availability of electronic reporting was not an issue from the participants.

ii. Web Site

In concert with these meetings and the series of web sessions, EPA also implemented a Web site in support of the NPDES Electronic Rule. The purpose of the Web site was to provide background information on the rule, status of rule development, announcements of upcoming stakeholder meetings, and a discussion forum with questions and topics.

iii. State Working Group

EPA has also engaged in a dialogue with a State Working Group to help explore the implementation issues related to this proposed rule. This technical working group's focus was to help to identify issues, identify roadblocks to implementing various aspects of the proposed rule, and share information concerning how these issues could be best addressed in this context. EPA worked with ACWA and ECOS to identify a group of 11 states.

From this group's efforts, EPA was able to glean a sense of the concerns of individual states with this proposed rule. The individual states represented in this group supported the concept of electronic reporting and understood why many states would benefit from a rule, but some states expressed concern about the implementation requirements, funding, and available resources. As indicated in previous outreach opportunities, some states in the group requested that EPA explicitly identify the data that will be required and have a strong need for each item to be collected. In addition, some states in the group indicated that they wanted EPA to be cognizant, as EPA drafted the proposed rule, of the varying degrees of state readiness for electronic reporting. EPA has addressed these concerns by some states in the identification of required data (Section IV.B and Appendix A to Part 127), and in the implementation plan (Section IV.I).

6. Plans for Future Outreach Efforts

Upon proposal of this rule, EPA will provide a comment period and will

[51] EPA published a notice of this meeting in the **Federal Register** on July 1, 2010

likely conduct additional stakeholders meetings to further discuss and refine particular aspects of the rule prior to promulgation. Outreach to stakeholders will continue to be supported through the NPDES Electronic Reporting Rule Web site; however, the Web site may be expanded to include more robust rule schedules as the rule nears promulgation, as well as additional rule documentation that may or may not be included as part of the formal docket library. Additionally, social media tools such as Twitter, Facebook and YouTube [52] will continue to be utilized to engage stakeholders.

EPA would provide technical assistance and support to states, tribes, and territories during the transition to electronic reporting. Outreach from EPA to the states, tribes, and territories may be very useful in the identification of specific needs and the development of such assistance, support, and funding.

EPA anticipates that the State Working Group may elect to continue its efforts through implementation of the rule in another possible phase of work. This proposed rule, as currently drafted and subject to public comment, includes a phase-in period for the implementation of the rulemaking; as such, the State Working Group may continue to explore implementation issues on a variety of selected topics.

VII. Non-Monetary Benefits and Economic Analysis

A. Non-Monetary Benefits From Electronic Reporting

1. Overview

A Presidential memorandum on regulatory compliance, issued on January 18, 2011, made the following observations:

> Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.[53]

In September 2011, the Office of Information and Regulatory Analysis (OIRA) issued guidance encouraging agencies to provide individual consumers of goods and services with direct access to relevant information and data sets. The memo focused on ''smart disclosure,'' defined as the timely release of complex data in standardized formats. The OIRA memo dovetails Executive Order 13563, signed by President Obama earlier in 2011, which encourages agencies to consider alternative regulatory approaches including the ''provision of information to the public in a form that is clear and intelligible.''

In this vein, the OIRA memo states: ''To the extent permitted by law, and where appropriate in light of government-wide policies . . . agencies should give careful consideration to whether and how best to promote smart disclosure.''

Regulatory approaches harnessing the power of public disclosure to improve performance through public accountability can increase government effectiveness and efficiency and generate a variety of important benefits. Electronic reporting is one such approach. This proposed rule justifies itself on the cost/benefit analysis alone, but many qualitative benefits will also be realized. EPA anticipates that this proposed rule will save money for regulators and the regulated community and will contribute to increased compliance, improved water quality, and a fairer and more level playing field for regulated entities. These benefits are made possible through greater use of 21st century technologies, of which electronic data submission is a cornerstone.

This section describes EPA's expectations, experience, and a variety of publicly accessible studies supporting the conclusion that electronic reporting—alone or as a component of broader monitoring and reporting programs—can improve compliance, reduce pollution, allow for better government and public decision making, and reduce paperwork-related costs for regulators and the regulated community alike. Even where it is difficult or impossible to isolate or apportion a specific share of overall program benefits to an electronic reporting component alone, the available literature, supporting evidence, and program experience all suggest that electronic reporting is often a significant contributor to the overall compliance and efficiency benefits these programs provide. This section also describes benefits from several additional approaches to public reporting of information. Although some of the cases described below do not involve electronic reporting, they all share the key characteristic of providing regulators and the public with performance information more efficiently or directly than was previously possible.

Research and experience suggests that the benefits of making timely and accurate compliance and performance data available—whether through electronic reporting or other approaches—occur through at least two pathways. The first pathway is that, within each regulated entity, it brings information about compliance or discharge performance to the attention of personnel with the authority to address them. If the information indicates problems, those personnel can act promptly to minimize the impact. The associated ability to use performance monitoring and benchmarking information systematically as a regulatory tool has been described as a watershed event enabling and compelling facilities to monitor, compare, and improve their environmental performance.[54]

The second pathway is that by ensuring timely government and public access to compliance and performance information, regulated entities can be provided with powerful incentives to avoid the negative effects of government and public awareness of pollution. An example of this effect appears in the Bennear & Olmstead Safe Drinking Water Act (SDWA) study.[55] In this study, the researchers found that when larger utilities were required to mail annual Consumer Confidence Reports on water supplier compliance pursuant to the 1998 Safe Drinking Water Act amendments, total violations were reduced by 30–44% and more severe health violations by 40–57%. Examples in areas other than environmental enforcement include the documented effects of red-light camera enforcement on fatal crashes.[56] This and previous

[52] **Note:** References to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service, or enterprise.

[53] See DCN 0051.

[54] Karkkainen, B. (2001). ''Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?'' Georgetown Law Journal 89: 257, DCN 0052.

[55] Bennear & Olmstead, *The Impacts of the ''Right to Know'' Information Disclosure and the Violation of Drinking Water Standards,* JEEM Vol. 50, Iss. 2; pp. 117–130 (2008), DCN 0053.

[56] Hu, W., et. al.; *Effects of Red-Light Camera Enforcement on Fatal Crashes in Large U.S. Cities* (Insurance Institute for Highway Safety; February 2011), DCN 0054.

research establish that ''Red light camera enforcement programs reduce the citywide rate of fatal red light running crashes and, to a lesser but still significant extent, the rate of all fatal crashes at signalized intersections.'' The relevance of this approach to electronic reporting is that, like electronic reporting, it relies on technology and disclosure to positively influence compliance behavior.

Electronic reporting can help identify problems that are now hidden in extensive paper reports. In the case of EPA's NPDES program, some states, tribes, and territories are overwhelmed with the volume of data they receive, and are sometimes unable to process all of the reports in a timely manner. Electronic reporting by permittees substantially reduces the need for costly and time-consuming data entry by the states, tribes, and territories. Instead, permittee data will be received in a form that can be applied directly to the information systems, bringing that data into the open in a timely manner. As a result, electronic reporting will allow the states, tribes, territories, and EPA to quickly highlight important information and it will allow government and the public to identify, pursue, and address pollution problems. More accurate and timely data can help facilities and governments identify issues earlier and more accurately, which should save money and improve performance. Electronic reporting has also resulted in better private sector performance in unrelated areas, such as when the financial services sector revises its products and services based on data from industries they service.

Electronic reporting of information facilitates the rapid and automated compilation and analysis of data to identify the most important, serious, chronic violators quickly and efficiently. This helps focus limited government and community resources on the most important compliance problems by targeting enforcement where it is most needed.

Electronic reporting—and the timely and more accurate information it provides—can help provide the public with access to information on the performance of both regulated facilities and governments, and help them make government accountable for results. Electronic reporting also levels the playing field by giving the public, including other regulated entities, information they need in order to determine whether comparable violations are being treated similarly.

Electronic reporting promotes facility-to-facility and government-to-government learning by enabling cross-facility and government benchmarking, comparison of results, and the identification of the most effective compliance and performance strategies, thereby promoting the creation and transfer of innovation. It can help prevent minor self-reported violations from escalating into more serious problems by enabling immediate feedback on those violations.

Electronic reporting also creates a potential for private sector development of reporting tools, as evidenced by the development and commercial success of products such as Tax-Cut and Turbo-Tax.[57] Having access to more timely and accurate information could also help promote pathways for private sector links and two-way communication to obtain compliance assistance for reported violations, as well as pursue opportunities to improve environmental performance and save money through innovations, such as improved wastewater treatment methods or energy efficiency.

Electronic reporting can allow the comparison of electronic data with other information to better target government efforts. For example, it could facilitate comparing DMR data with ambient water pollution data to more readily identify the individuals or groups of sources contributing the most pollution in watersheds with impaired water quality. Electronic data can also be compared more readily with other information as a check on data accuracy. For example, the IRS can compare directly-reported taxpayer information with equivalent third-party information from employers or banks. Individuals and corporations know the IRS can make such comparisons, and, as a result, they tend to report more accurately. In a similar vein, EPA could explore potential new electronic reporting-supported options such as cross-checking DMR data with TRI data and data in public complaints.

Electronic reporting has the potential to save cost and effort in simpler and more direct ways, too. One example would be by obviating the need for time-consuming manual data entry, photocopying, and mailing of reports. Also, time and money that might otherwise have been spent correcting errors by facilities and states due to illegible entries and transcription issues could be saved. Immediate electronic feedback alerting or requiring facilities to check and correct decimal point placement and internally inconsistent entries could further save facilities and regulators time and costs. The secondary business costs of having to explain these types of errors to third persons such as financial institutions or the public could also be eliminated.

Finally, governments could avoid wasting their time and money spent addressing apparent ''violations'' that were actually mistakes, such as someone writing down the wrong number on a form, or entering data incorrectly. Electronic reporting systems can be designed to identify many of these errors for correction during data entry.

2. Supporting Cases

As discussed above, the available studies and experiences all suggest that electronic reporting can help promote an array of tangible and significant compliance and efficiency benefits. The remainder of this section describes specific publicly available literature and studies documenting how electronic reporting can enhance the ability of regulators, firms, markets, and the public to access and use compliance or other data to:

- Promote public confidence in regulatory programs;
- Promote accurate and complete discharge data;
- Improve compliance and reducing violations;
- Reduce pollution;
- Compel facilities to monitor, compare, and improve their environmental performance through benchmarking;
- Enhance transparency and accountability to external parties;
- Induce firms to become environmentally cleaner;
- Decrease the time required to compile, verify, and analyze data;
- Reduce the time between when regulators receive data and are able to make it publicly available;
- Facilitate agency auditing and detection of erroneous data without costly site investigations or complex measurement;
- Produce significant efficiency savings (time and resources) while increasing data quality;
- Reduce paperwork-related costs for regulators and regulated community;
- Enable regulators to shift staff resources away from data entry tasks;
- Simplify regulators' ability to cross-reference e-reported data against other data sources to allow errors to be caught and corrected more efficiently; and,

Enable governments, regulated communities, interest groups, and the public to be better informed for decision-making.

[57] **Note:** References to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service, or enterprise.

a. Acid Rain Program

Standardized electronic reporting is one component of EPA's Acid Rain Program and contributed to the ''largest quantified human health benefits of any federal regulatory program implemented in the last 10 [years], with annual benefits exceeding costs by >40 to 1.'' It did so by promoting ''public confidence in the programs, highly accurate and complete emissions data, and a high compliance rate (>99% overall).'' [58]

b. Toxics Release Inventory (TRI)

Under the Toxic Release Inventory (TRI), the systematic use of performance monitoring and benchmarking as a regulatory tool has been cited as a watershed event enabling and compelling facilities to monitor, compare, and improve their environmental performance. At the same time, it enhances transparency and accountability to external parties.[59]

Several studies have linked the public availability of TRI data to improved compliance and reduced pollution. For example, using a micro-level data set linking TRI releases to plant level Census data, one researcher found that the local and state governmental use of TRI disclosures helps induce firms to become cleaner.[60]

By decreasing the time required for EPA to compile, verify, and analyze data, e-reporting can reduce the lag times from when EPA receives data to when the Agency is able to make it publicly available. TRI electronic reporting, for example, achieves this by reducing costly and cumbersome paperwork for reporters while speeding EPA's ability to make it publicly available.[61] Electronic reporting reduces the error rates typically found in manually transcribed data and facilitates agency auditing and detection of erroneous data without costly site investigations or complex measurement.[62]

c. Enhanced Disclosure and Environmental Compliance Under the SDWA

A prominent study of enhanced disclosure regulations and environmental compliance in the Safe Drinking Water Act (SDWA) context linked enhanced disclosure to statistically significant compliance improvements. In that case, the disclosures were made by industry directly to consumers by mail (rather than to the government electronically), but, as is intended in this proposed electronic reporting rule, a key effect was to facilitate the delivery of compliance information to the public so as to motivate and better behavior from the regulated parties responsible who submitted the information. Bennear & Olmstead found that when larger utilities were required to mail annual Consumer Confidence Reports on water supplier compliance pursuant to the 1998 Safe Drinking Water Act amendments reduced total violations by 30%–44%. More severe health violations were reduced by 40–57%.[63]

d. Ohio EPA's eDMR System

As discussed in Section III.B.1.a, Ohio EPA launched its electronic discharge monitoring report (eDMR) system and, as of 2011, has achieved a 99% electronic reporting adoption rate by its permit holders. E–DMR systems allow stakeholders to report their discharge measurements online. According to Ohio EPA, based on interviews and data collection, their work demonstrates how electronic reporting in this instance produced significant efficiency savings (time and resources) while increasing data quality. In the opinion of Ohio EPA, this has led to more effective human health and environmental protection through improving its ability to monitor and enforce CWA compliance. (Case Study: Ohio Environmental Protection Agency's Electronic Discharge Monitoring Report (eDMR) System Reaches 99% Adoption. *http://eitlc.ross-assoc.net/images/4/4c/Ohio_eDMRs_Case_Study_04_30_10_FINAL.doc*). In the Ohio EPA Case Study, the authors found that the automated compliance tools within its eDMR system informed permit holders if their discharge amounts exceeded authorized permit limits or were otherwise entered erroneously, and reduced errors from 50,000 to 5,000 per month. Permit holders were often able to quickly to correct their data, leaving the Ohio EPA with more accurate and robust data. Simultaneously, as the need for data entry and error checking diminished, Ohio EPA was able to move almost five full-time personnel away from those tasks and into other productive types of work. Id.

e. Internal Revenue Service E-file

The United States Internal Revenue Service's E-file program was also mentioned in Section III.B.1.a.i. According to United States Internal Revenue Service (IRS) officials, electronic reporting of digital data has simplified the Service's ability to cross-reference the e-reported data against other data sources, allowing errors to be caught and corrected more efficiently.[64] The IRS notes that the error rate for electronically filed returns is less than 1 percent, compared to an error rate for paper returns of about 20 percent.[65] One explanation for the low error rate is that software for electronic reporting allows for automated calculations and can check for obvious transcription errors, such as unusually large numbers. Electronic filing has also expedited processing of tax payment and refunds. One study examined the empirical implications of electronic filing with regard to the earned income tax credit (EITC), which was substantially under-utilized by qualifying households in the early 2000s. The authors found that access to electronic filing had a significant and positive effect on EITC claims.[66] Given all of the above, benefits, the IRS has established an 80%-of-taxpayers E-file goal.[67]

f. ECOS Exchange Network Return on Investment (ROI) and Business Process Analysis Project

The Exchange Network Return on Investment (ROI) and Business Process Analysis Project, funded by the Environmental Council of the States (ECOS), was conducted to better understand the effects Exchange Network technologies have on the quality and efficiency of environmental data exchanges for states, tribes, territories, and local agencies.[68]

The analysis included an in-depth review of the four participating states' specific business processes for up to five different data flows: Air Quality System (AQS); Resource Conservation and Recovery Act (RCRA); Safe Drinking Water Information System (SDWIS);

[58] Schakenbach, et al.; *Fundamentals of Successful Monitoring, Reporting, and Verification under a Cap-and-Trade Program,* J. Air & Waste Manage. Assoc., 56:1576–1583 2006), DCN 0055.

[59] DCN 0052.

[60] Bui, *L.; Public Disclosure of Private Information as a Tool for Regulating Environmental Emissions: Firm-Level Responses by Petroleum Refineries to the Toxics Release Inventory;* Brandeis Univ. Working Paper Series (June 2005), DCN 0057.

[61] Karkanian, *supra* at 289, 336–37.

[62] *Id.* at f.n. 149.

[63] See DCN 0053, pp. 117–130.

[64] See DCN 0041.

[65] ''IRS E-File: It's Fast, It's Easy, It's Time'' at *http://www.irs.gov/newsroom/article/0,,id=218319,00.html.*

[66] Kopczuk, W., and C. Pop-Eleches (2007). ''Electronic Filing, Tax Preparers, and Participation in the Earned Income Tax Credit.'' Journal of Public Economics 91: 1351–1367, DCN 0003.

[67] IRS; Advancing *E-file* Study Phase 1 Report—Achieving the 80% *E-file* Goal Requires Partnering with Stakeholders on New Approaches to Motivate Paper Filers (Sept. 30, 2008), DCN 0002.

[68] Environmental Information Exchange Network: Exchange Network—Return On Investment And Business Process Analysis Final Report (Sept. 5, 2006), DCN 0061.

Toxics Release Inventory (TRI); and Electronic Discharge Monitoring Report (eDMR). The review compared the business processes for each data flow before and after the implementation of Exchange Network technologies in order to estimate the total cost savings as a result of the implementation. A return on investment model was then applied to all of the data flows.

Overall, the results show a positive return for most of the data flows analyzed. Indeed, all participating states experienced a positive return on their investment in Exchange Network technologies to flow data. The coupling of electronic reporting systems with Exchange Network technologies produced particularly impressive savings.

g. Michigan DEQ eDMR System

Electronic reporting of environmental data is being increasingly adopted by states because of the positive environmental and financial benefits it provides. One example is Michigan Department of Environmental Quality's (DEQ's) eDMR system for wastewater facilities. As Michigan DEQ reports on its Web page, the benefits of the state's electronic reporting system include: (1) Saving compliance costs for wastewater discharge facilities through a streamlined reporting method and readily available computer tools; (2) saving program costs by reducing resources required for managing paper-based DMR reports; (3) improving the accuracy of compliance data by eliminating potential errors that might otherwise be introduced through non-electronic data entry in the database; and (4) improving the DEQ wastewater program's overall effectiveness with faster responses to data analyses, compliance assessment, and decision-making.[69] Other states are increasingly adopting similar systems for the same reasons.[70]

h. DMR Electronic Reporting in 24 States

Twenty-four states currently have electronic reporting of DMR data, six of which began in 2010 and one of which is still in the testing stage. Of these, 13 states transfer their DMR data for major and nonmajor entities to EPA. Most of these states offer electronic reporting as an option, but have not made it mandatory. Ohio is one exception to the norm. Ohio requires electronic reporting unless there is a verifiable reason why the permittee cannot do it, in which case they can continue to submit paper reports.

States tend to have one of four types of electronically available systems in place: the e2 system (AL, FL, MI, OH, OK, PA, VA); Net DMR (AR, CT, HI, LA, TN, TX, UT); eDMR (IL, IN, MS, NC, WV, WY); or EFIS (ME, SC). Of these four systems, e2 is the oldest, having been implemented in Florida in 2001 and Michigan in 2002. In addition to these four systems, California and Washington have each developed their own unique eDMR systems. The voluntary movement of a large number of states to electronic reporting of DMR data suggests the existence of potential net benefits.

i. U.S. Security and Exchange Commission (SEC) Quarterly Financial Data

The U.S. Security and Exchange Commission's online system, EDGAR (the Electronic Data Gathering, Analysis, and Retrieval system), performs automated collection, validation, indexing, acceptance, and submittal of forms filed electronically with the SEC. Researchers evaluated the effect of making quarterly financial data available to all market participants at the same time versus the prior hard-copy filing (*i.e.,* submittal) method that required an individual interested in the financial health of a company to request the data from the SEC or the firm itself. Using a random sample of firms, the researchers compared an electronic filing via EDGAR to a previous year's filing via the traditional paper method. They did not find a market response to firm financial data when it was filed via the traditional method, but they did detect a discernible market response when the data were filed electronically via EDGAR. The authors found further that quarterly financial data are filed more quickly through EDGAR than was the case with the earlier method.[71]

B. Summary of the Economic Analysis

1. Regulatory Requirements Addressed by the Economic Analysis

Executive Order (E.O.) 12866 requires federal agencies to perform an economic analysis (EA) to give decision makers information to determine that:

There is adequate information indicating the need for and consequences of the proposed action; The potential benefits to society justify the potential costs, recognizing that not all benefits and costs can be described in monetary or even in quantitative terms, unless a statute requires another regulatory approach; The proposed action will maximize net benefits to society (including potential economic, environmental, public health and safety, and other advantages; distributional impacts; and equity), unless a statute requires another regulatory approach; Where a statute requires a specific regulatory approach, the proposed action will be the most cost-effective, including reliance on performance objectives to the extent feasible; Agency decisions are based on the best reasonably obtainable scientific, technical, economic, and other information.'' [72]

E.O. 12866 defines the threshold for ''significant'' rules as one that is expected to:

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' [73]

The EA must address the following requirements:

The EA that the agency prepares should also satisfy the requirements of the ''Unfunded Mandates Reform Act of 1995'' (Pub. L. 104–4). Title II of this statute (Section 201) directs agencies ''unless otherwise prohibited by law [to] assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector . . .'' Section 202(a) directs agencies to provide a qualitative and quantitative assessment of the anticipated costs and benefits of a Federal mandate resulting in annual expenditures of $100 million or more, including the costs and benefits to State, local, and tribal governments or the private sector. Section 205(a) requires that for those regulations for which an agency prepares a statement under Section 202, ''the agency shall [1] identify and consider a reasonable number of regulatory alternatives and [2] from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the proposed rule.'' If the agency does not select ''the least costly, most cost-effective, or least burdensome option, and if the requirements of Section 205(a) are not ''inconsistent with law,'' Section 205(b) requires that the agency head publish ''with the final rule an explanation of why the least costly, most cost-effective, or least burdensome method was not adopted.''

The ''Regulatory Flexibility Act'' (Pub. L. 96–354) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The Act specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates that a regulation will have a significant impact on a substantial number of small entities. The EA that the agency

[69] See DCN 0062

[70] *See, e.g.,* FL DEP's identical list of eDMR benefits at DCN 0063.

[71] ''The Effect of EDGAR on the Market Reaction to 10–K Filings.'' Journal of Accounting and Public Policy 20: 349–372, DCN 0036.

[72] Economic Analysis of Federal Regulations Under Executive Order 12866, Office of Management and Budget, January 11, 1996, DCN 0064.

[73] Id.

prepares should incorporate the regulatory flexibility analysis, as appropriate.

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et. seq.*) requires Federal agencies to review their proposed rules and regulations to determine if they will have ''a significant economic impact on a substantial number'' of small entities. But the RFA does not define ''significant economic impact'' or ''substantial number.'' In its regulatory flexibility analysis EPA adopted the Small Business Administration's (SBA) definition of small entities, and used a threshold of 1% of revenue to determine economic significance. Using the SBA definition, EPA estimated that 108,000 small entities would incur costs under the proposed rule. EPA estimates implementation costs for the regulated facilities to be no more than $258 per facility, most of which will occur within two years of the effective date of the rule. EPA also estimates that those small entities required to report electronically to EPA in 2014 and 2015 will each incur as much as $105 in additional annual costs. None of these costs is thought to exceed the threshold of 1% of annual revenue for any of the affected entities. For that reason EPA has determined that the proposed rule does not have a significant economic impact on any small entity.

2. EPA's EA Guidance

EPA has issued internal guidance implementing each of the EO and statutory requirements applicable to the EA. EPA's EA guidance instructs EPA personnel how to proceed, and what factors to take into account. Among other things, that guidance requires an EA of a rule with a multi-year impact to apply discount factors of three percent and seven percent as a way to gauge the sensitivity of the projections and the effects of inflation. The EA for this proposed rule has been conducted following the most recently issued EPA EA guidance. To simplify this summary of the EA, unless otherwise indicated, this document will use only data from the three percent discount version of the analysis. Tables at the end of this section provide summaries of both the three percent and seven percent discount versions.

3. Economic Significance of This Rule

According to the threshold set out in EO 12866, this proposed rule is not economically significant. The threshold for a finding of economic significance is an economic impact, either costs or savings, of $100 million annually. The EA for this proposed rule estimates the largest annual economic impacts to be $25.2 million in net costs in one year after promulgation of the rule, and $30.1 million in net savings in three years after promulgation of the final rule (estimated based on a 3% discount rate). Because these economic impacts are less than $100 million, this rule is below the economic threshold of a significant federal mandate under the Unfunded Mandates Reform Act of 1995.

Although this proposed rule does not meet the economic significance threshold, it does include most of the elements that would be required if the threshold were passed—a statement of the need for the rule, an examination of alternatives, and the costs and benefits. For the purpose, the statement of the need is located in Section III, and a description of the alternative approaches that were considered is located at Section IV. The non-monetary benefits were discussed in the first portion of Section VII. The balance of this section summarizes the estimated savings and costs of the selected approach.

4. Overall Savings and Costs

The EA for this proposed rule estimates savings and costs over a ten-year period, beginning on the date when the rule would become final. Three years after final rule, applying a 3% discount rate, and using 2012 dollars, the largest annual net savings are $30.1 million in three years after final rule. Those savings continue indefinitely, but at a steadily declining dollar value as a result of discounting. During the ten-year period, the highest annual costs are $25.2 million in one year after the final rule. Annual costs are significantly less in all other years.

Cumulative savings for the ten-year period are $290.2 million while cumulative costs are $69.9 million. As a result the overall economic effect of this rule is a net cumulative savings of $220.3 million over the ten years of the projection.

5. Changes in Data Volume and Universe Coverage

The proposed rule would reduce the data entry burden on the states, tribes, and territories while increasing the percentage of the NPDES universe for which data is available. Compared to the current reporting guidance, known as WENDB, the proposed rule would reduce the data entry burden on states, tribes, and territories by 25 percent, increase the number of NPDES-regulated facilities for which NPDES data is available to EPA by several hundred percent, and expand the scope of the available data for all NPDES-regulated facilities covered by this proposed rule.

In contrast, a previously considered approach would have expanded the data set and the number of covered permittees, but, still relied on the states, tribes, and territories to supply all of the data. This approach would have expanded the state, tribe, and territory data entry burden by 500 percent.

6. Major Factors Used in the EA

The main elements of this EA are the reporting universe, reporting frequencies, required data, changes in who reports the data, systems and infrastructure changes to make the reporting possible, and the schedule for implementation.

a. Estimated Universe of Potentially Affected Permittees

This proposed rule would change the universe of permit types for which EPA will receive data. As described in Section II, the current reporting guidance instructs the states to provide EPA with data on the major dischargers (6,700 permittees) and nonmajor dischargers with individual permits (38,900 permittees). Some states provide data on a larger section of the permittee universe.

Under this proposed rule, EPA would receive data on virtually the entire permittee universe (over 440,000 permittees, not including pesticides applicators and vessels), as represented in Table VII.1. Due to the large number of stormwater permittees, the EA pays this part of the NPDES program particular attention by modeling the expected number of wet-weather incidents for each state, tribe, and territory.

TABLE VII.1—UNIVERSE OF NPDES PERMITS

Subprogram	Number of permits
Major Individual Permits	6,700
Non-subprogram nonmajor Individual Permits	38,900
Non-subprogram nonmajors covered by general permits	31,800
Stormwater MS4s	6,600
Stormwater Industrial	100,000
Stormwater Construction (annual)	222,000
POTWs Submitting Biosolids Reports	4,900
POTWs with Approved Pretreatment Programs	1,500
POTWs with Separate Sanitary Sewers and SSOs	15,600
POTWs with Combined Sanitary Sewers and CSOs	830
CAFOs	14,400

It should be noted that Table VII–1 shows the types and estimated numbers of permits in each of the applicable categories. Note, however, that some facilities are subject to more than one type of permit or subprogram, in which case they are counted in each applicable group because that is the basis for regulation and reporting. For example, a POTW might have an individual permit as a major facility, a separate stormwater system, a pretreatment program, and be a biosolids generator. Also note that SIUs do not have an NPDES permit but are included in the EA.

Changes in the reportable universe affect virtually every aspect of the EA, including data entry costs, training costs, the need for electronic signatures and training, savings in paper and postage, the impact of dual reporting, and notification to permittees.

b. Data Elements and Data Systems

Section IV describes how and why the inventory of reportable data is changed by this proposed rule. For the EA, the biggest impacts of the change in reportable data are the costs of enhancing the database structures to store the additional data and the costs of data entry.

Estimating the cost of modifying the databases involves several factors, chiefly the number of additional data elements, the number of categories those data elements fall into (e.g., CAFO, biosolids, DMRs, etc.), the number of data entry screens that will be needed, and the completeness of various state, tribe, territory, and EPA data systems prior to the final rule.

Based on the number of data elements and their planned structure, EPA developed a detailed estimate of its own costs to modify ICIS to accommodate the additional data elements. Because EPA does not have independent estimates of the comparable system costs for each state, tribe, and territory, EPA's estimate of system costs for those NPDES-authorized programs is based on EPA's costs to modify ICIS.

Data entry costs are one of the major aspects of the EA, and involve several additional factors, such as who generates the data, changes in the need for the states, tribes, and territories to enter permittee-created data into an information system, the number of permittees to which each data element applies, the frequency with which each type of data element is reported, the time required to enter each type of data element, and the labor costs associated with data entry.

c. Responsibility for Creating Data

''Responsibility for creating data'' refers to the act of initially determining the value of any particular required data element and writing it on paper or entering it into an electronic storage system. Each data element required by this proposed rule has exactly one creator, although the identity of the creator can be affected by the nature of the permit. For example, DMR data is always created by a permittee, and enforcement data is always created by the permitting authority, but basic facility data might be created by either the permitting authority or the permittee, depending on the type of permit that will be used.

The EA uses a detailed understanding of responsibility for data creation to estimate and assign data entry costs and savings for permittees, states, tribes, and territories.

d. Changes in the Need for State, Tribes, and Territories To Enter Permittee-Created Data

Under the current system of operations, states, tribes, and territories are responsible for collecting data from their permittees and providing the WENDB data to EPA, and paper submissions are the primary means by which permittees submit data to the states, tribes, and territories. As described in Section II, this means the states, tribes, and territories are required enter large amounts of data created by permittees into the permitting authority's information systems, or into ICIS–NPDES. Several types of reports are affected by this rule, but DMRs comprise a substantial majority of the permittee-created data that the states, tribes, and territories enter into data systems. As a result, a significant portion of the data collected is essentially being entered twice. The first is when permittees commit it to a paper form. The second is when the states enter the permittee-created data into an information system.

One of the chief contributions of this proposed rule is that it virtually eliminates the need for such double entry of data in this sense: When DMRs and other reports are submitted electronically by permittees, these reports can be received electronically by the states, tribes, and territories, inserted directly into the applicable information systems, and shared with EPA through the NEIEN.

The EA sees no difference between the time required for a permittee to fill out a paper form and the time required for them to enter the same data on an electronic form. Therefore, permittee data creation costs and savings are not affected by the move to electronic reporting. The permittees are required to supply the same data, regardless of the media in which is it reported. However, during the transition period, some permittees will incur some additional costs until electronic reporting is required without concurrent hard-copy reporting to the permitting authority. Those costs are estimated to range from zero to $104.64 per report submitted.

The impact on the states, tribes, and territories is very different. Every data element a state, tribe, or territory does not have to enter into a data system is a saving compared to the current mode of operation. This does not mean, however, that every state, tribe, and territory will see the same savings from the rule. Some permitting authorities have already begun shifting to electronic reporting. Thirty-four states have either implemented an eDMR system or are at some point in the process of doing so. Some permitting authorities have also begun moving to e-reporting in other areas, such as NOI. However, participation in most of the state, tribe, or territory e-reporting systems is voluntary, so participation rates are highly variable. Ohio is thought to be the only state with a mandatory eDMR system and they have achieved participation of over 99%. Other states have indicated much lower participation rates, which mean they are bearing the costs of operating both paper-based and electronic reporting systems. The EA includes the best available information on all of these factors.

e. Permittees Reporting Various Data Elements

As described in Section II, the current reporting guidelines require states, tribes, and territories to provide EPA with data for only a portion of the permittee universe. This proposed rule expands the universe of permittees for which required reporting must be shared with EPA, primarily by requiring data on the so-called NPDES subprograms. This is a significant development because subprogram data elements are specific to the permittees in each of the subprogram universes. For example, the data elements applicable to CAFOs apply only to CAFO permittees, biosolids data elements apply only to biosolids permittees and so on. As a result of this and the electronic reporting of data directly from the NPDES-regulated facilities, under this proposed rule the total volume of data does not increase in direct proportion to the larger portion of the permittee universe covered or the

expanded required data set. EPA's best understanding of all of these factors is included in the EA.

f. Frequency of Data Element Reporting

Another factor that affects the overall volume of data being submitted, and therefore the data entry costs and savings, is the variety of reporting frequencies. Reporting frequencies are dictated by the types of reports containing the data elements and the compliance monitoring strategy. DMR data elements are submitted on DMR forms, which are generally submitted monthly, thus explaining why they comprise the largest portion of total data volume, and why eliminating the need for the states, tribes, and territories to enter the data from DMRs produces most of the savings from the proposed rule.

Facility data is submitted on initial permit applications or on NOIs, and might be reviewed and updated every five years when the permit is reviewed for reissuance. A large part of the facility data is never changed. Portions that are subject to change are generally addressed during the permit's reviews.

Permit data, such as limits and limit sets, are established when the permit is issued, and reviewed and possibly revised on a five-year cycle. Permit conditions are seldom revised except during the regular five-year reviews, or as a result of enforcement actions.

Enforcement and compliance data are contained in specialized documents which are created on an as-needed basis. It is possible that some permittees will never have any enforcement actions against them, and therefore very little enforcement data associated with them.

Subprogram data elements can be found on any of the major submissions, but are primarily contained in the applicable annual reports.

Each of the data types and possible submissions has been evaluated and the frequencies assigned for proper mapping into the EA.

g. Time Required to Enter Data Elements

Understanding how long it takes to enter data elements is a critical piece of the EA. Nine states were surveyed to develop this information. Each respondent was asked to estimate the time it took them to enter various types of data elements. The respondents were grouped according to whether they were in a direct entry, batch entry or hybrid state, and average data entry times were computed for each data element within each group of states.

The EA uses the data entry times from the survey to estimate how much data entry time states, tribes, and territories will spend entering different types of data elements.

h. Labor Costs of Data Entry

Labor rates for the rulemaking are taken from work produced by the Bureau of Labor Statistics. Several hourly rates are used, depending on the type of work and whether the worker is a government or private sector worker.

i. System Development Costs

As described in Section IV, EPA intends to develop electronic reporting tools for each of the reports covered by this rule—DMRs, NOIs, and program reports. Those EPA-developed tools will be offered to all of the states, tribes, territories, and permittees for their use. The cost of developing those reporting tools by EPA and the infrastructure to accommodate them were calculated and documented in a series of technical reports, and comprise the majority of the EPA HQ implementation costs as reported by the EA. EPA also intends to encourage third-party development of electronic reporting tools. Ultimately each authorized state, tribe, and territory will decide whether to use, and allow their permittees to use, the EPA-provided electronic reporting tools or other tools. Each state, tribe, and territory has the option of adopting one or more of the EPA tools and rejecting the others. However, because EPA is building, and making available, a comprehensive set of tools, the EA does not include any estimate for state, tribe, and territory costs to develop comparable independent tools.

The costs of modifying ICIS and the state, tribe, and territory NPDES data systems are somewhat different. Each of the authorized states, tribes, or territories either has its own data system, or uses ICIS–NPDES. All of these data systems are thought to need some degree of modification to accept the additional data elements, and in the case of state, tribe, and territory data systems, to share that data with EPA. EPA developed an estimate of its costs to modify ICIS. The EA includes those EPA costs, and uses those costs to estimate the cost of database changes in the states, tribes, and territories. The EA uses this approach because EPA does not have detailed information about the data structures in the states, tribes, and territories. The EA does take the available information about state, tribe, and territory data systems into consideration.

All of these expenditures are included in the implementation costs of the rule, most of which are expended by EPA prior to rule promulgation and by the states, tribes, territories, and permittees one year after the effective date of the rule under the implementation schedule described in Section IV.

The EA also estimates marginal operation and maintenance (O&M) costs for EPA and the states, tribes, and territories. Marginal O&M costs are the annual O&M costs, over and above current costs, to support the tools required by the rule.

j. Permittee Notifications

As described in Section IV, the entire permittee universe is assumed to receive initial notification of the rule by reading the **Federal Register**, from EPA's Web site, or from reading about the rule in one or more trade publications. Accordingly, there are no unique costs for that notification in the EA. However, as work proceeds, EPA may determine that additional outreach is necessary.

As described in Section IV, EPA will engage the states, tribes, and territories in a variety of forums to determine which permittees will be required to report directly to EPA under the rule, to notify those permittees of the requirement via the **Federal Register** and EPA's Web site, and as appropriate to tell them when to stop reporting directly to EPA. Those costs are included in the EA. The EA assumes the majority of those notices will be delivered via EPA's Web site.

k. State, Tribe, Territory, and EPA Coordination

Throughout the implementation process, EPA and the states, tribes, and territories should coordinate closely to minimize inconvenience to the states, tribes, territories, and permittees, and to ensure that concurrent electronic and hard-copy reporting of the same data by the same facility is minimized during the transition period. Those coordination efforts are described in Section IV. The EA assumes most of that coordination will be accomplished electronically—telephone, email, and webinars—with little or no travel by EPA HQ or the states, tribes, and territories.

l. Permit Revisions

In most states, tribes, and territories, permittees must follow the reporting requirements specified in their NPDES permits. And in most states, tribes, and territories, the permits cannot be changed unilaterally—*i.e.,* there must be some form of notice and comment before amending a permit. For these reasons, EPA's Office of Water has generally implemented permit changes in conjunction with the five-year permit review cycle. Using that approach, the permit changes are applied to each

permit as it comes up for review and there would be no separately identifiable costs associated with individual permit changes.

However, if that approach were used, the rule would not be fully implemented until roughly 2020. Given current technology, it would be unreasonable to delay nearly a decade to achieve the benefits and savings available through electronic reporting. For that reason, the proposed rule uses a preferred two-year implementation strategy, as described in Section IV.I, and does impose some identifiable but modest near-term costs on the states, tribes, territories, and permittees, estimated in the EA.

Permitting authority costs for permit changes are based on the assumption that some states, tribes, and territories will implement those changes with individual ''minor modification,'' which require separate notifications to, and possible dialog with, each permittee. The EA assumes some states, tribes, and territories will adopt other approaches, such as ''mass minor modifications,'' which involve the use of a form letter, or changes to statutes. Permittee costs for the permit change are estimated as the time required for them to read and respond to the permit change notification, regardless of its form.

m. Changes in State Reporting Requirements

When the rule is fully implemented, EPA would essentially have complete data on almost the entire NPDES universe of permittees. As a result, EPA HQ will have all of the data necessary to prepare the Annual Notice of Non-Compliance, the Quarterly Non-Compliance Report, and the Semi-Annual Statistical Summary Report, all currently required from NPDES-authorized states, tribes, and territories by 40 CFR 123.45. For that reason, the rule proposes to replace all of those reports with a single report generated by EPA HQ using the data in the data systems after implementation of the rule. The EA estimates the reduced burden on the states, tribes, and territories as a result of this reporting change.

n. Paper and Postage Savings

As described in Section II, the majority of permittee submittals are being sent to the states, tribes, and territories on paper. Each of those submittals therefore requires paper, an envelope, and postage. EPA estimates that there are more than 1 million permittee submittals sent by mail each year.

Converting to electronic reporting under this rule will eliminate paper submittals of the covered reports for the vast majority of permittees. The EA estimates the percentage of permittees that will be required to use e-reporting, the number and mix of reports they submit annually, as well as the number of pages in each report, and the required postage.

o. Electronic Signatures, Service Agreements and Training

Instituting electronic reporting will entail some effort from the permittees. The EA assumes that every permittee will have to take certain steps in order to begin reporting electronically, whether they report directly to EPA or to their respective state, tribe, or territory. Permittees that are already reporting electronically will most likely not incur any additional costs at this time, but EPA does not have information as to which permittees are reporting electronically, and therefore has made the simplifying assumption that all permittees are affected.

There are some differences in the costs to different permittees, based on the activities they are engaged in, and these differences have been included in the EA. All permittees will need to register with CDX. All permittees reporting anything other than NOIs will also need to have a CROMERR service agreement. Permittees that are required to submit DMRs will need DMR training. The EA assumes the training will be conducted by webinar. The EA estimates implementation costs for individual permittees of $258 or less.

p. Reporting During the Transition Period

As described in Section IV, each state, tribe, and territory, for each report or NPDES data group, will be evaluated against several criteria to determine whether its permittees will be required to electronically submit their reports to the authorized program or to EPA directly. If permittees are required to begin reporting directly to EPA, the EA assumes that they will also be required to continue hard-copy reporting to the state, tribe, or territory as stipulated in their NPDES permit. For that reason, the EA estimates the additional effort required by the affected permittees to create the second submittal at $105 or less per type of submittal. The EA uses the implementation schedule to estimate when the states, tribes, and territories will complete their own conversion to electronic reporting and the permittees will be released from reporting directly to EPA.

q. State, Tribe, and Territory Costs for Statutory or Regulatory Revisions

The EA does not attempt to estimate the costs the states, tribes, and territories will incur to revise their statutes or regulations to implement the changes required by this proposed rule.

C. Summary of Costs and Savings

The following tables summarize the EA cost and savings findings using the 3% (Table VII–2) and 7% (Table VII–3) discount rates as required by EPA's EA guidance. The entire EA uses 2012 dollars.

Each table is followed by a graph showing the annual costs and savings in bar form, and the cumulative costs and savings in line form. The point at which the two lines cross, sometimes referred to as the breakeven, is the point at which cumulative savings exceed cumulative costs.

There are both qualitative and quantitative benefits associated with this proposed rule. EPA has estimated some of the benefits of this proposed rule by performing calculations based on: The reporting universe; reporting frequencies and required data; changes in who reports the data; systems and infrastructure changes to make the reporting possible; and the schedule for implementation. Using a 3% discount rate, and 2012 dollars, the annual total net benefits associated with reduced paperwork and management of information are approximately $29 million, with 97% of those savings going to the states, tribes, and territories, due to approximately a 25% decrease in the amount of information they will be required to enter into data systems.

In this section of the preamble, EPA described the qualitative benefits such as improved compliance, reduced pollution, allowing for better government and public decision making but was unable to monetize these benefits,

The cost of implementing the proposed rule in the first three years after the effective date is approximately $51.0 million. The cost is estimated to drop to $2.9 million per year after that time period, when all regulated facilities will be converted to electronic reporting. However, two years after rule promulgation, annual savings greatly outweigh annual costs, by approximately $29 million per year.

Also, the threshold for a finding of economic significance is an economic impact, either costs or savings, of $100 million or more annually. The economic analysis for this rule estimates the largest annual net cost to be $25.2 million one year after the effective date

of the rule, and $30.1 million in net savings three years after the effective date of the rule; therefore, this proposed rule is not considered economically significant per Executive Order 12866.

Table VII-2. Ten-Year Projected Costs and Savings - 3% Discount Rate

Costs				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$4,440,000	$0	$0	$0
1	$920,000	$240,000	$20,330,000	$17,580,000
2	$880,000	$330,000	$2,790,000	$120,000
3	$850,000	$290,000	$1,890,000	$400,000
4	$820,000	$280,000	$1,830,000	$0
5	$800,000	$270,000	$1,780,000	$0
6	$780,000	$260,000	$1,730,000	$0
7	$750,000	$260,000	$1,680,000	$0
8	$730,000	$250,000	$1,630,000	$0
9	$710,000	$240,000	$1,580,000	$0
10	$690,000	$230,000	$1,530,000	$0

Cost Savings				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$ -	$ -	$ -	$ -
1	$ -	$ (740,000)	$ (12,830,000)	$ (320,000)
2	$ -	$ (800,000)	$ (31,660,000)	$ (1,290,000)
3	$ -	$ (810,000)	$ (31,490,000)	$ (1,250,000)
4	$ -	$ (780,000)	$ (30,570,000)	$ (1,210,000)
5	$ -	$ (760,000)	$ (29,680,000)	$ (1,180,000)
6	$ -	$ (740,000)	$ (28,820,000)	$ (1,140,000)
7	$ -	$ (720,000)	$ (27,980,000)	$ (1,110,000)
8	$ -	$ (700,000)	$ (27,170,000)	$ (1,080,000)
9	$ -	$ (680,000)	$ (26,370,000)	$ (1,050,000)
10	$ -	$ (660,000)	$ (25,610,000)	$ (1,020,000)

Graph VII-1. – Cost and Savings with Cumulative Breakeven - 3% Discount Rate

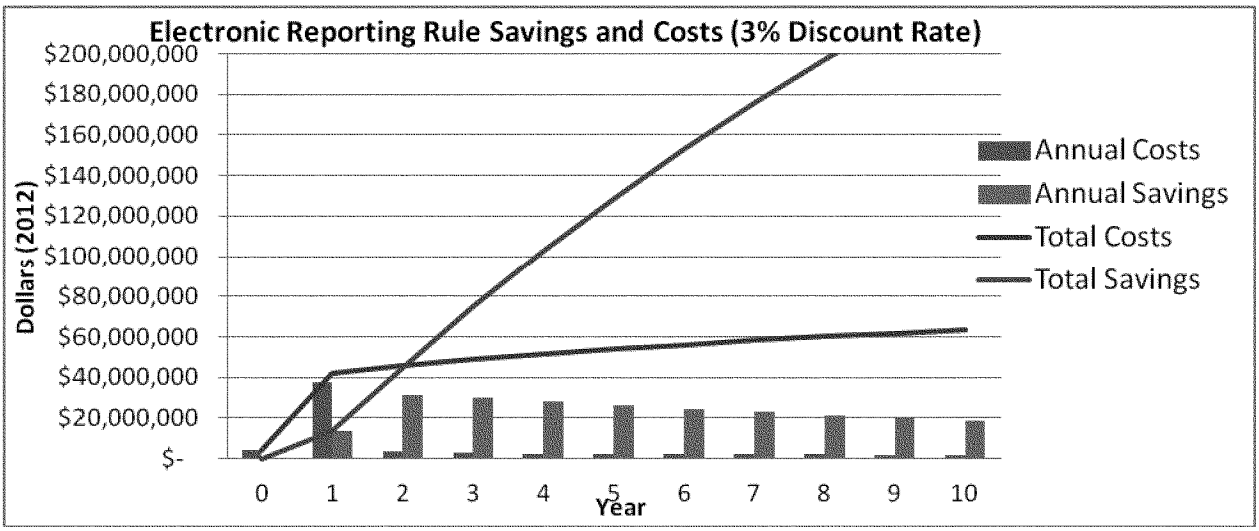
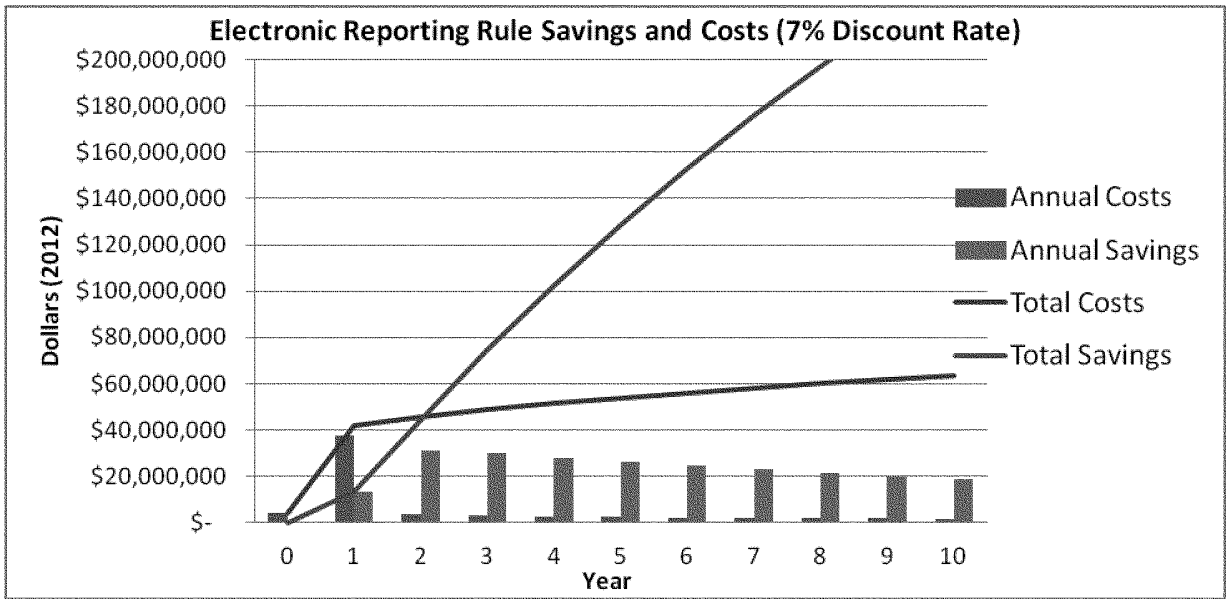


Table VII-3. Ten-Year Projected Costs and Savings - 7% Discount Rate

Costs				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$4,440,000	$0	$0	$0
1	$890,000	$240,000	$19,570,000	$16,920,000
2	$820,000	$300,000	$2,590,000	$110,000
3	$760,000	$260,000	$1,680,000	$400,000
4	$710,000	$240,000	$1,570,000	$0
5	$660,000	$220,000	$1,470,000	$0
6	$620,000	$210,000	$1,370,000	$0
7	$580,000	$200,000	$1,280,000	$0
8	$540,000	$180,000	$1,200,000	$0
9	$500,000	$170,000	$1,120,000	$0
10	$470,000	$160,000	$1,050,000	$0

Cost Savings				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$ -	$ -	$ -	$ -
1	$ -	$ (710,000)	$ (12,350,000)	$ (310,000)
2	$ -	$ (740,000)	$ (29,340,000)	$ (1,190,000)
3	$ -	$ (720,000)	$ (28,090,000)	$ (1,110,000)
4	$ -	$ (670,000)	$ (26,250,000)	$ (1,040,000)
5	$ -	$ (630,000)	$ (24,540,000)	$ (970,000)
6	$ -	$ (590,000)	$ (22,930,000)	$ (910,000)
7	$ -	$ (550,000)	$ (21,430,000)	$ (850,000)
8	$ -	$ (510,000)	$ (20,030,000)	$ (790,000)
9	$ -	$ (480,000)	$ (18,720,000)	$ (740,000)
10	$ -	$ (450,000)	$ (17,490,000)	$ (690,000)

Graph VII-2. – Cost and Savings with Cumulative Breakeven - 7% Discount Rate



VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action,'' due to novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB's recommendations are documented in the docket for this action.

In addition, EPA prepared a detailed analysis of the potential costs, savings, and benefits of this action. That analysis, the ''Economic Analysis of the NPDES Electronic Reporting Proposed Rule,'' can be found in the EPA docket, and is summarized in Section VII.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2468.01.

EPA is proposing this regulation to better utilize current technology to ensure that facility-specific information under the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program is submitted to EPA, states, tribes, and territories on a nationally timely, consistent, accurate, and complete basis for national program management, oversight, and transparency. This regulation would require that most of this NPDES information be submitted electronically by the regulated facilities; this information will be supplemented by required information regarding NPDES implementation activities by EPA, states, tribes, and territories authorized to implement the NPDES program.

The projected burden and cost of the regulation are summarized in Table VIII.1. Note that, consistent with the Information Collection Request (ICR), these estimates reflect the net burden and cost to regulated facilities and states, tribes, and territories over the first three years following promulgation of the rule. Although the proposed rule will result in long-term net burden reduction and savings, the burden [defined at 5 CFR 1320.3(b)] and cost associated with initial investment for electronic reporting to EPA for regulated facilities, training, one-time provision of facility information to EPA, data reconciliation, and data entry for states, tribes, and territories will initially outweigh burden reduction and cost savings in the first three years. Burden is defined at 5 CFR 1320.3(b).

TABLE VIII.1—PROJECTED BURDEN AND COST OVER THE FIRST THREE YEARS OF THE PROPOSED RULE

Unit of analysis	Affected entity	
	Regulated facilities	States, tribes, and territories
Average Annual Number of Respondents (# of affected entities) [1]	233,166	47
Average Annual Number of Responses (# of Permits for which entity must submit information × annual frequency of response)	187,114	1,069,905
Frequency of Response (range)	1–36	1–36
Total Burden (hours)	108,201	−298,493
Total Cost	$6,249,803	−$17,758,888
Average Annual Burden per Respondent	0.46 hrs	−6,351 hrs
Average Annual Burden per Response	0.58 hrs	−0.28 hrs
Average Annual Cost per Respondent	$26.80	−$377,848
Average Annual Cost per Response	$33.40	−$16.60

[1] The average annual number of regulated facility respondents is based on the following: In the first year regulated facilities must check the EPA website, and some may incur savings associated with paper mailings. In the second year, some regulated facilities must dual report to EPA and some may incur savings associated with paper mailings. In the third year, fewer regulated facilities must dual report to EPA and a greater number incur savings associated with paper mailings.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OECA–2009–0274. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 30, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by August 29, 2013. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA's) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is the government of a city, county, town, school districts, or special districts with a population of less than 50,000 people; or (3) a small organization that is any ''not-for-profit enterprise which is

independently owned and operated and is not dominant in its field.'' Note that under the RFA definition, states and tribal governments are not considered small governmental jurisdictions. For the detailed analysis of small entity impacts see Chapter 5 of the following document in the rulemaking docket, ''Economic Analysis of the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Proposed Rule,'' (see DCN 0040).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small businesses (e.g., industrial sectors, electricity generating facilities, and agricultural sectors) and small governmental jurisdictions (e.g., POTWs operated by municipalities). We have determined that 108,036 small entities (100 percent of the small entities considered in this analysis) will experience an impact of less than 1 percent of revenues.

Note that fewer facilities are considered in the small entity analysis than were estimated as the affected universe for the proposed rule (see Chapter Two of the Economic Analysis). Due to the magnitude and diversity of facilities and sectors affected by this rule, it was not possible to conduct a detailed analysis of parent entity-specific impacts. Because small entity status is based on industrial sector, the small entity analysis required data sources where industry sector (NAICS codes) of each facility could be identified. Although not a complete inventory of all potentially affected facilities, the universe of facilities currently in ICIS–NPDES and PCS was used. The assumption is made that facilities affected by the proposed rule but not currently in ICIS–NPDES and PCS would experience small entity impacts similar to the facilities currently in ICIS–NPDES and PCS.

Although this proposed rule, as currently drafted and subject to public comment, will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In fact, this rule creates annual savings for small entity analyses through elimination of mailing and postage costs.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. In order to determine the burden on states, tribes, and territories, the workgroup conducted an economic analysis of what the cost may be. The analysis examined implementation using various options including the potential burden to state, tribal, and territorial governments. Preliminary indications suggest that the rule would not only cost states, tribes, territories, and local governments well below the threshold of $100 million, it will actually result in cost savings over time. Thus, this proposed rule is not subject to the requirements of Sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although this proposed rule will impose electronic reporting requirements on small governments such as municipalities as well as tribes, EPA does not expect these impacts to be substantial or sufficiently unique to meet the UMRA standards. According to EPA's Interim Small Government Agency Plan, actions have a significant impact if the cost is above $100 million. As stated above, EPA does not expect this proposed rule to exceed that threshold. EPA guidance states that an action could uniquely affect small governments if it disproportionately affects small governments, requires the hiring of experts, requires sophisticated or expensive equipment, or requires offsite training. Preliminary small entity screening analysis for this proposed rule indicates that the cost to any of these entities, and additional requirements, will not exceed 1 percent of total costs. Additionally, although some computer access would be needed to comply with this rule unless a waiver is obtained, this proposed rule will not require purchase of sophisticated or expensive equipment. Furthermore, the proposed rule will not require significant offsite training; training associated with the proposed rule will be offered on-line by EPA rather than offsite.

E. Executive Order 13132: Federalism

Under section 6(b) of Executive Order 13132, EPA may not issue an action that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed action. In addition, under section 6(c) of Executive Order 13132, EPA may not issue an action that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed action.

EPA has concluded that this action may have federalism implications because it will impose electronic reporting requirements on states to provide certain NPDES information to EPA. However, because the largest annual impact on states is $12.0 million (occurring within the first year after the effective date), this action will not exceed the threshold of $25 million per year annually, nor will it preempt state law. Thus, the requirements of Sections 6(b) and 6(c) of Executive Order 13132 do not apply to this action.

Consistent with EPA policy, EPA nonetheless consulted with state and local officials [74] and representatives of state and local governments [75] early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. As described in Section VI, EPA provided significant opportunities for such consultation in public meetings, a series of webinars, a state working group, and in a meeting on September 15, 2010 specifically linked to notifications and consultations required under this Executive Order. This meeting was attended by 11 state and local government officials and organizations. EPA received useful feedback in these meetings, with support for the concept of electronic reporting, comments on the feasibility of

[74] **Note:** ''State and local officials'' are defined narrowly under E.O. 13132 as ''elected officials of State and local governments or their representative national organizations.'' For purposes of E.O. 13132, OMB defines representative national organizations as: National Governors Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council of State Governments, International City/County Management Association, National Association of Counties, County Executives of America, and National Association of Towns and Townships. As a policy matter, EPA also includes the Environmental Council of the States in this list. As noted in the Agency Guidance, for actions that have federalism implications, but do not impose substantial direct compliance costs or preempt State or local law, at a minimum you should consult with each of these organizations.

[75] Representatives of State and local governments'' include non-elected officials of State and local governments and any representative national organizations not listed in the previous footnote.

various implementation options, and interest in developing details of how the rule would be implemented.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials. EPA will continue to consult with state and local officials throughout the process of developing the proposed and final action to permit them to have meaningful and timely input into its development. In addition to stakeholder outreach, EPA will contact elected representatives as well as appropriate organizations to ensure compliance with Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not impose requirements not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a Tribal Summary Impact Statement (TSIS).

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments nor will it preempt tribal law. Although no tribes have yet received approval from EPA to implement an authorized NPDES program, this proposed rule will impose electronic reporting requirements on tribal facilities and on facilities operating on tribal lands.

EPA consulted with tribal representatives in developing this rule via conference calls and webinars with the National Tribal Caucus and National Tribal Water Counsel in November 2010. For additional information, see Section VI. No concerns were raised during those consultations.

In addition, EPA mailed information to 563 tribes regarding an opportunity to participate in two additional tribal outreach efforts in December 2010. Again, during these conference calls, no concerns were raised by participants during those consultations.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and it is not a significant energy action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

The following are data standards that EPA recommends for use in this regulation: *Enforcement and Compliance Data Standard, Standard No.: EX000026.2, July 30, 2008.* This data standard should be used in this regulation because it identifies and defines the major areas of enforcement and compliance information that could be used for the exchange of data among environmental agencies and other entities. The purpose of the standard is to provide a common lexicon, so that information about functionally similar activities and/or instruments can be stored and to provide and receive data in a clearly defined and uniform way.

EPA proposes to use the following data standards which were developed by the Exchange Network Leadership Council (ENLC), which governs the National Environmental Information Exchange Network (NEIEN). The ENLC identifies, prioritizes, and pursues the creation of data standards for those areas where information exchange standards will provide the most value in achieving environmental results. The ENLC involves tribes and tribal nations, state, and federal agencies in the development of the standards. More information about ENLC is available at *www.exchangenetwork.net.*

Permitting Information Data Standard, Standard No.: EX000021.2, January 6, 2006. This data standard should be used in this regulation because it specifies the key data groupings necessary for the consistent identification of information pertaining to permits of interest to environmental information exchange partners. This data standard provides a minimum set of data, which need to be reported for permitting information such as permit name, number, type, organization or facility name, and affiliation type.

Facility Site Identification Data Standard, Standard No.: EX000020.2, January 6, 2006. The purpose of this data standard is to identify a facility of environmental interest. This data standard should be used in this regulation because it provides for the unique identification of facilities regulated or monitored by EPA, states, tribes, and territories. Each facility is assigned a unique factory identification number, which identifies information for the facility specified. This standard provides and describes data groupings that are used to exchange facility site identification data and information. This standard helps EPA, states, tribes, and territories integrate and share facility information across multiple information systems, programs, and governments.

Contact Information Data Standard, Standard No.: EX000019.2, January 6, 2006. This data standard should be used in this regulation because it provides information regarding the source of contact. This standard offers data groupings that are used to describe a point of contact, address, and communication information. For example, the data grouping ''Point of Contact'' subdivides to lower levels such as individual, affiliation, and organization. These intermediate data groupings are further defined at the elemental levels with Name, Title, Code, and Prefix.

Representation of Date and Time Data Standard, Standard No.: EX000013.1, January 6, 2006. This data standard should be used in this regulation because it provides and describes data groupings that are used for exchange of Date and Time data and information. The standard provides information on the high level, intermediate, and elemental representation of date and time data groupings.

Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006. This data standard should be used in this regulation because it establishes the requirements for documenting latitude and longitude coordinates and related method, accuracy, and description data for all places used in the data exchange transaction. Places include facilities, sites, monitoring stations, observations points, and other regulated or tracked features. This standard describes data and data groupings that are used to exchange latitude and longitude data and information. The purpose of the standard is to provide a common set of data to use for recording horizontal and vertical coordinates and associated metadata that define a point on the earth.

SIC/NAICS Data Standard, Standard No.: EX000022.2, January 6, 2006. This data standard should be used in this regulation because it provides a common set of data groupings to specify a way to classify business activities, including industry classifications, product classifications, and product codes. This data standard provides information on business activity according to the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 [59 FR 7629 (Feb. 16, 1994)] establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule offers substantial environmental justice benefits. As described in the context of non-monetary benefits, discussed in Section VII.A and described below, the proposed rule would significantly increase transparency and access to crucial information that is relevant to the protection of the health and environment of minority, low income, and tribal populations.

Pollution sources addressed by the NPDES electronic reporting rule may release disease-causing pathogens, nutrients, or other contaminants that threaten public health, leading to public advisories against fishing and swimming. Disadvantaged and underserved communities are likely to suffer a wide range of environmental burdens based on their differential proximity and exposure to environmental hazards from these pollution sources. Analyzing cumulative effects on a community from multiple stressors allows a more realistic evaluation of a community's risk to pollutants. For example, medical professionals can improve their capacity to identify the cause of acute and chronic disease symptoms through awareness of environmental exposures, thereby improving diagnosis, treatment and prevention. Improved access to NDPES data on releases, both permitted and unpermitted, would thus help to improve the health of minority, low-income, and tribal populations.

The proposed rule will also support meaningful participation by potentially impacted community members in regulatory proceedings, including permitting and compliance, designed to improve the ability of EPA, states, tribes, and territories to protect and preserve water quality. Regarding permitting, electronic notice of intent (eNOI) will provide minority, low-income and tribal populations with information in a timely manner to assess the need for and mechanisms to seek public hearings and submit comments on NPDES permits proposed in their community. It will also facilitate their understanding of multiple NPDES discharges into the same water body which may affect permit limits. Regarding compliance, electronic discharge monitoring reports (eDMRs) will enable minority, low-income and tribal populations to determine whether permit limits have been violated and the length of time of such violations. In turn, this information can help these populations pursue appropriate recourse with regulatory agencies.

Ultimately, increasing the availability and transparency of information resulting from this rule will enable overburdened communities faced with these water pollution issues to be better informed to engage in decision-making associated with the regulation of sources, and to take action to reduce risk.

Although computer access to such information may be problematic in some situations, the rule will ensure that the information will be publicly available on-line and more accessible than it was in the past, when the information was only submitted in hard-copy form; this information would also be available through Freedom of Information Act (FOIA) requests.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 127

Administrative practice and procedure, Electronic reporting requirements, Water pollution control.

40 CFR Part 403

Administrative practice and procedure, Compliance monitoring, Enforcement program and activities, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 501

Administrative practice and procedure, Indians-lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Sewage disposal.

40 CFR Part 503

Reporting and recordkeeping requirements, Sewage disposal.

Dated: July 15, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons cited in the preamble, title 40, chapter I is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 122.22 by adding paragraph (e) to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

* * * * *

(e) *Electronic reporting.* If documents described in paragraph (a) or (b) of this section are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR part 3 (Cross-Media Electronic Reporting) and 40 CFR part 127 (Electronic Reporting Requirements for the NPDES Program) are met for that submission.

■ 3. Amend § 122.26 by:

■ a. Revising paragraph (b)(15)(i)(A);

■ b. Adding paragraph (b)(15)(i)(C); and

■ c. Revising paragraph (g)(1)(iii).

The revised text reads as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(15) * * *

(i) * * *

(A) The value of the rainfall erosivity factor (''R'' in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE),* pages 21–64, dated January 1997. (This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* A copy may also be inspected at EPA's Water Docket, 1200 Pennsylvania Ave. NW. Washington, DC 20460). An operator shall certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

* * * * *

(C) For all certifications submitted in compliance with paragraphs (b)(15)(i)(A) and (b)(15)(i)(B) of this section after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable POTW permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], all certifications submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, § 122.22, and 40 CFR part 127, as well as with any additional requirements imposed by the Director.

* * * * *

(g) * * *

(1) * * *

(iii) Submit the signed certification to the NPDES permitting authority once every five years. For all certifications submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable POTW permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR part 127], all new and renewed certifications submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, § 122.22, and 40 CFR part 127, as well as with any additional requirements imposed by the Director.

* * * * *

4. Amend § 122.28 by revising paragraphs (b)(2)(i) and (ii) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) * * *

(i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director either a written or electronic notice of intent to be covered by the general permit. For all notices of intent submitted to the Director of an EPA-administered NPDES program after [one year after the effective date of 40 CFR Part 127], or if required by the applicable general permit on or before [one year after the effective date of 40 CFR Part 127], all new and renewed notices of intent submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director. For all notices of intent submitted to the Director of an NPDES-authorized program (excluding EPA-administered NPDES programs) after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable general permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], all new and renewed notices of intent submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director.

(ii) The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for stormwater discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with § 122.22. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in § 122.21(i)(1) and the applicable information in Appendix A to 40 CFR Part 127, including a topographic map.

* * * * *

■ 5. Amend § 122.34 by revising paragraph (g)(3) introductory text to read as follows:

§ 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

* * * * *

(g) * * *

* * * * *

(3) *Reporting.* Unless you are relying on another entity to satisfy your NPDES permit obligations under § 122.35(a), you must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. For all annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], all annual reports submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director. Your report must include:

* * * * *

■ 6. Amend § 122.41 by:

■ a. Revising paragraphs (l)(4)(i), (l)(6)(i), and (l)(7);

■ b. Adding paragraph (l)(9); and

■ c. Revising paragraph (m)(3).

The revisions and additions read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(l) * * *

(4) * * *

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. For all monitoring results submitted after [one year after the effective date of 40 CFR Part 127], or if required by the applicable permit on or before [one year after the effective date of 40 CFR Part 127], all monitoring results shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director.

* * * * *

(6) * * *

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written or electronic submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written or electronic submission shall contain a description of the noncompliance (including, for discharge violations, the type, volume, and latitude and longitude of the discharge, and name of the waterbody most likely to receive the discharge) and its cause; the period of noncompliance, including exact dates and times (including the date and time of discovery, and the duration of the noncompliance event), and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these submissions shall identify the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), discharge volumes untreated by the POTW's treatment works, and whether the noncompliance was related to dry or wet weather. All noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, and any additional requirements imposed by the Director.

* * * * *

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these submissions shall contain the information described in paragraph (l)(6) of this section and the applicable required data in Appendix A to 40 CFR Part 127. All noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

* * * * *

(9) *Identification of the Initial Recipient for NPDES Electronic Reporting Data.* For an NPDES-regulated facility, the owner, operator, or their designated representative is required to electronically submit the required NPDES information (as specified in Appendix A to 40 CFR Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in § 127.2(b). EPA shall identify and publish the initial recipient, as defined in § 127.2(b), and as designated in compliance with § 127.27(c), on an EPA Web site and in the **Federal Register**, by state and by NPDES data group [see § 127.2(c)]. EPA shall update this listing on its Web site and in the **Federal Register** when a state, tribe, or territory newly gains authorization status to implement an NPDES program and is also approved by EPA to be the initial recipient of NPDES electronic data submissions for that program.

* * * * *

(m) * * *

* * * * *

(3) *Notice*—(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. All POTW anticipated bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice). All POTW unanticipated bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE

OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

* * * * *

■ 7. Amend § 122.42 by revising paragraphs (c) introductory text, (e)(4) introductory text, and (e)(4)(vi) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under 40 CFR 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director. The report shall include:

* * * * *

(e) * * *

* * * * *

(4) *Annual reporting requirements for CAFOs.* The permittee must submit an annual report to the Director. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director. The annual report must include:

* * * * *

(vi) Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including, for each discharge, the date of discovery, duration of discharge, and approximate volume; and

* * * * *

■ 8. Amend § 122.43 by revising paragraph (a) to read as follows:

§ 122.43 Establishing permit conditions (applicable to State programs, see § 123.25).

(a) In addition to conditions required in all permits (§§ 122.41 and 122.42), the Director shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of CWA and regulations. These shall include conditions under §§ 122.46 (duration of permits), 122.47(a) (schedules of compliance), 122.48 (monitoring), electronic requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program), and, for EPA permits only, 40 CFR 122.47(b) (alternates schedule of compliance) and § 122.49 (considerations under Federal law).

* * * * *

■ 9. Amend § 122.44 by revising paragraph (i)(2) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(i) * * *

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503 (where applicable), but in no case less than once a year. All monitoring results submitted after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

* * * * *

■ 10. Amend § 122.48 by revising paragraph (c) to read as follows:

§ 122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).

* * * * *

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation), § 122.44, and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program). Reporting shall be no less frequent than specified in § 122.44.

■ 11. Amend § 122.63 by adding paragraph (f) to read as follows:

§ 122.63 Minor modifications of permits.

* * * * *

(f) Allow the incorporation of electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program).

* * * * *

■ 12. Amend § 122.64 by adding paragraph (c) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

* * * * *

(c) Permittees that wish to terminate their permit shall submit a Notice of Termination (NOT) to their permitting authority. All NOTs submitted to the Director of an EPA-administered NPDES program after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director. All NOTs submitted to the Director of an NPDES-authorized program (excluding EPA-administered NPDES programs) after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

PART 123—STATE PROGRAM REQUIREMENTS

■ 13. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 14. Amend § 123.22 by adding paragraph (g) to read as follows:

§ 123.22 Program description.

* * * * *

(g) A state, tribe, or territory that newly seeks to implement an NPDES program after [90 DAYS AFTER THE EFFECTIVE DATE FOR 40 CFR PART 127] shall identify in its application whether the state, tribe, or territory is requesting to be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups (see 40 CFR 127.2(c) and 127.27). In this application, the state, tribe, or territory shall identify the specific NPDES data groups for which the state, tribe, or territory will be the initial recipient of electronic NPDES information from NPDES-regulated facilities and how the electronic data system of the state, tribe, or territory will be compliant with 40 CFR Part 3, § 123.26, and 40 CFR Part 127.

* * * * *

■ 15. Amend § 123.24 by revising paragraph (b)(3) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator.

* * * * *

(b) * * *

* * * * *

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall also implement the requirements of §§ 123.41(a) and 123.43 and 40 CFR Part 127 (including the required data elements in Appendix A to 40 CFR Part 127).

* * * * *

■ 16. Amend § 123.25 by revising paragraph (a)(46) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

* * * * *

(46) 40 CFR part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR part 127 (Electronic Reporting Requirements for the NPDES Program).

* * * * *

■ 17. Amend § 123.26 by:

■ a. Revising paragraphs (b) introductory text, (b)(1), (b)(2)(ii), (b)(2)(iii) and adding paragraph (b)(2)(iv);

■ b. Revising paragraph (e)(1);

■ c. Removing and reserving paragraph (e)(4); and

■ d. Adding paragraph (f).

The revised and added text reads as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall implement and maintain:

(1) An automated, computerized system which is capable of identifying and tracking all facilities and activities subject to the State Director's authority and any instances of noncompliance with permit or other program requirements (e.g., identifying noncompliance with an automated, computerized program to compare permit limits to reported measurements). State programs shall maintain a management information system which supports the compliance evaluation activities of this part (e.g., source inventories; compliance determinations based upon discharge monitoring reports, other submitted reports, and determinations of noncompliance made from inspection or document reviews; and subsequent violation notices, enforcement actions, and penalties) and is compliant with 40 CFR part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR part 127 (Electronic Reporting Requirements for the NPDES program). State programs may use EPA's NPDES national data system for their automated, computerized system;

(2) * * *

* * * * *

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data;

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information; and

(iv) Protect surface waters and public health.

* * * * *

(e) * * *

(1) Maintaining a comprehensive electronic inventory of all sources covered by NPDES permits and an electronic schedule of reports required to be submitted by permittees to the State agency;

* * * * *

(f) A state, tribe, or territory that is designated by EPA as an initial recipient of electronic NPDES information, as defined in § 127.2, from NPDES-regulated entities shall maintain this data and share all the required NPDES information with EPA through timely data transfers in compliance with all requirements of 40 CFR parts 3 and 127 (including the required data elements in Appendix A to 40 CFR part 127). Timely means that the authorized state, tribe, or territory submits these data transfers (see the data elements in Appendix A to 40 CFR part 127) to EPA within 30 days of when the state, tribe, or territory completed the activity or received a report submitted by a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (e.g., 30 days after October 15th). EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated entities if the state, tribe, or territory does not consistently maintain these timely data transfers or does not comply with 40 CFR parts 3 and 127. See 40 CFR 127.2(b) and 127.27 regarding the initial recipient.

■ 18. Amend § 123.41 by revising paragraph (a) to read as follows:

§ 123.41 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. This includes the timely data transfers in compliance with all requirements of 40 CFR parts 3 and 127 (including the required data elements in Appendix A to 40 CFR part 127). If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2. If EPA obtains information from an authorized state NPDES program, which is not claimed to be confidential, EPA may make that information available to the public without further notice. Timely means that the authorized state, tribe, or territory submits these data transfers (see the data elements in Appendix A to 40 CFR part 127) to EPA within 30 days of when the state, tribe, or territory completed the activity or received a report submitted by a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no

later than November 14th of that same year (e.g., 30 days after October 15th). EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated entities if the state, tribe, or territory does not consistently maintain these timely data transfers or does not comply with 40 CFR parts 3 and 127. See 40 CFR 127.2(b) and 127.27 regarding the initial recipient.

* * * * *

■ 19. Amend § 123.43 by revising paragraph (d) to read as follows:

§ 123.43 Transmission of information to EPA.

* * * * *

(d) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or of this part. This includes the timely data transfers in compliance with all requirements of 40 CFR part 127 (including the required data elements in Appendix A to 40 CFR part 127).

* * * * *

■ 20. Revise § 123.45 to read as follows:

§ 123.45 Noncompliance and program reporting by the Director.

EPA shall prepare public (quarterly and annual) reports as set forth here from information that is required to be submitted by NPDES-regulated facilities and the State Director.

(a) *NPDES Non-Compliance Reports (NNCR)—Quarterly.* EPA shall produce an online report on a quarterly basis with the minimum content specified here. The Director shall electronically submit timely, accurate, and complete data to EPA that allows EPA to prepare these quarterly NNCRs.

(1) *Content.* The NNCR shall include the following information:

(i) A stratified list of NPDES-regulated entities in violation, including non-POTWs, POTWs, Federal permittees, major facilities, and nonmajor facilities, as well as a list of CWA point sources that did not obtain NPDES permits authorizing discharges of pollutants to waters of the United States.

(ii) For each identified NPDES point source in violation and with discharges of pollutants to waters of the United States:

(A) The name, location, and permit number or other identification number, if a permit does not exist.

(B) Information describing identified violation(s) that occurred in that quarter, including the date(s) on which violation(s) started and ended (if applicable). Where applicable, the information shall indicate the pipe, parameter, and the effluent limit(s) violated. Violations shall be classified as Category I and II as described in § 123.45(a)(2).

(C) The date(s) and type of formal enforcement and written informal enforcement action(s) taken by the Director to respond to violation(s), including any penalties assessed.

(D) The status of the violation(s) (e.g., corrected or continuing, and the date that the violation(s) was resolved), which can be reported by linking violations to specific enforcement actions, or tracking noncompliance end dates.

(E) Any optional details that may help explain the instance(s) of noncompliance as provided by the Director or EPA.

(F) All violations shall be reported in successive quarterly reports until the violation(s) is documented as being corrected (i.e., the regulated entity is no longer in violation). After a violation is reported as corrected in the NNCR, that particular violation will not continue to appear in subsequent quarterly reports, although it will appear in the relevant annual report.

(G) If the permittee or discharger is in compliance with an enforcement order, but has not yet achieved full compliance with permit conditions and/or regulations and has no new, additional violation(s), the compliance status shall be reported as ''resolved pending'' in the NNCR. The permittee/discharger will continue to be listed on the NNCR until the violation(s) is documented as being corrected.

(2) *Violation Classifications.* A violation shall be classified as ''Category I Noncompliance'' if one or more of the criteria set forth below are met. All other types of noncompliance that do not meet the criteria for Category I Noncompliance shall be classified as ''Category II Noncompliance.''

(i) *Reporting Violations.* These include failure to submit a complete, required report (e.g., final compliance schedule progress report, discharge monitoring report, annual report) within 30 days after the date established in a permit, administrative or judicial order, or regulation. In addition, these also include any failure to comply with the reporting requirements at 40 CFR 122.41(l)(6).

(ii) *Compliance Construction Violations.* These include failure to start construction, complete construction, or achieve final compliance within 90 days after the date established in a permit, administrative or judicial order, or regulation.

(iii) *Effluent Limits.* These include violations of interim or final effluent limits established in a permit, administrative or judicial enforcement order, or regulation that exceed the ''Criteria for Noncompliance Reporting in the NPDES Program'' in Appendix A to § 123.45.

(iv) *Compliance Schedule Violations.* These include violations of any requirement or condition in permits, or administrative or judicial enforcement orders, excluding reporting violations, compliance construction milestones and effluent limits.

(v) *Non-Numeric Effluent Limit Violations.* These include violations of non-numeric effluent limits (e.g., violations of narrative permit requirements or requirements to implement best management practices) that caused or could cause serious impacts on water quality. Examples of such serious impacts on water quality include, but are not limited to, discharges that may have caused or contributed to exceedances in water quality standards, fish kills, oil sheens, beach closings, fishing bans, restrictions on designated uses, and pass through or interference with the operations of a POTW (see § 403.3 of this chapter).

(vi) *Other Violations.* These include any violation or group of violations, which in the discretion of the Director or EPA, are considered to be of concern. These violations include repeat violations by a specific point source, geographic clusters of violations, corporations with violations at multiple facilities, or industrial sectors with identified patterns of violation that have a cumulative impact on water quality, but otherwise would not meet Category I criteria. EPA shall determine whether to issue policy or guidance to provide more specificity on identifying these types of violations and how to report them.

(3) EPA shall provide an easy-to-use interface to facilitate public access, use, and understanding of the NNCR, including the ability to sort violations by duration, severity, frequency, detection method (e.g., self-reported effluent, monitoring, inspection), flow and pollutant loadings, type of discharger, waterbody receiving the discharge, proximity to impaired waters, and category of violation (I or II). EPA shall exclude from public release any confidential business information or enforcement-sensitive information associated with the NNCR.

(b) *NPDES Noncompliance Reports—Annual Summary (Annual).* EPA shall prepare annual public reports that provide a summary of compliance monitoring and enforcement activities within each state, tribe, and territory, as well as summary information on

violations identified in the four quarterly NNCRs for that federal fiscal year. EPA shall provide these annual reports by no later than March 1st of the following year.

(1) *Facility Types Covered by Reports.* EPA shall produce, at a minimum, Annual Summary Reports for the following universes: individually-permitted NPDES-regulated entities; all other NPDES-regulated entities that are not individually permitted; Clean Water Act point sources that had unauthorized discharge(s) of pollutants to waters of the US; and a combined report that includes totals across all three reports above. Individually-permitted facilities are defined in this subsection as those permits that are unique to the permittee, that include permitted effluent limits, and require the submission of discharge monitoring reports.

(2) *Content of Reports.* Reports shall include applicable data for NPDES-regulated entities:

(i) The number of NPDES permittees;

(ii) The number inspected by on-site inspections;

(iii) The number reviewed in which permitted limits were compared to measured data to determine violations;

(iv) The number evaluated by other, off-site compliance monitoring activities;

(v) The number with any violations;

(vi) The number with Category I violations;

(vii) The number receiving paper or electronic written informal enforcement actions;

(viii) The total number receiving formal enforcement actions with a compliance schedule;

(ix) The total number receiving a penalty assessment;

(x) The total amount of penalties assessed; and

(xi) The number of permit modifications extending compliance deadlines more than one year.

(c) *Effective Dates.* The quarterly and annual reports, noncompliance definitions, and other requirements of this subpart shall be effective starting [THREE YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(d) *Schedule for Producing NNCR Quarterly Information.* (1) The Director has until 45 days from the end of the calendar quarter to update or correct NPDES data submissions in EPA's data system for events that occurred within that calendar quarter covered by the NNCR.

(2) EPA shall publish the NNCR in electronic form within two months after the end date of the calendar quarter:

EPA SCHEDULE FOR QUARTERLY NNCR

Calendar quarter	EPA NNCR Publication date for calendar quarter
January, February, March	May 31.
April, May, June	August 31.
July, August, September	November 30.
October, November, and December.	February 28.

■ 21. Amend Subpart C by adding Appendix A to read as follows:

Appendix A to Subpart C—Criteria for Category I Noncompliance Reporting in the NPDES Program

This appendix describes the criteria for reporting Category I violations of NPDES permit effluent limits in the NPDES noncompliance report (NNCR) as specified under 40 CFR 123.45(a)(2)(C). Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. As specified in 40 CFR 123.45(a)(2), there are two categories of noncompliance, and the table below indicates the thresholds for violations in Category I. An agency's decision as to what enforcement action, if any, should be taken in such cases, shall be based on an analysis of facts, legal requirements, policy, and guidance.

Violations of Permit Effluent Limits

The categorization of permit effluent limits depends upon the magnitude and/or frequency of the violation. Effluent violations shall be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Category I Violations of Monthly Average Permit Limits—Magnitude and Frequency

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six-month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants—TRC = 1.4
Group II Pollutants—TRC = 1.2

b. Reporting Criteria for Chronic Violations of Monthly Average Limits

Chronic violations must be reported in the QNCR if the monthly average permit limits are exceeded any four months in a six-month period. These criteria apply to all Group I and Group II pollutants.

Group I Pollutants—TRC = 1.4

Oxygen Demand
- Biochemical Oxygen Demand
- Chemical Oxygen Demand
- Total Oxygen Demands
- Total Organic Carbon
- Other

Solids
- Total Suspended Solids (Residues)
- Total Dissolved Solids (Residues)
- Other

Nutrients
- Inorganic Phosphorus Compounds
- Inorganic Nitrogen Compounds
- Other

Detergents and Oils
- MBAS
- NTA
- Oil and Grease
- Other detergents or algicides

Minerals
- Calcium
- Chloride
- Fluoride
- Magnesium
- Sodium
- Potassium
- Sulfur
- Sulfate
- Total Alkalinity
- Total Hardness
- Other Minerals

Metals
- Aluminum
- Cobalt
- Iron
- Vanadium

Group II Pollutants—TRC = 1.2

Metals (all forms)
- Other metals not specifically listed under Group I

Inorganic
- Cyanide
- Total Residual Chlorine

Organics
- All organics are Group II except those specifically listed under Group I.

■ 22. Add a new part 127 to Title 40 to read as follows:

PART 127—NPDES PROGRAM ELECTRONIC REPORTING REQUIREMENTS

Subpart A—General

Sec.
127.1 Purpose and scope.
127.2 Definitions.

Subpart B—Electronic Reporting of NPDES Information From NPDES-regulated Facilities

127.11 Types of data to be reported electronically by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs.
127.12 Signature and certification standards for electronic reporting.
127.13 Requirements regarding quality assurance and quality control.
127.14 Requirements regarding timeliness, accuracy, completeness, and national consistency.
127.15 Temporary exemptions from electronic reporting.
127.16 Time extensions for electronic reporting due to catastrophic unforeseen circumstances.
127.17 Implementation plan and effective date.

Subpart C—Responsibilities of EPA and States, Tribes, and Territories Authorized To Implement the NPDES Program

127.21 Types of data to be reported electronically to EPA by states, tribes, and territories.
127.22 Requirements regarding quality assurance and quality control.
127.23 Requirements regarding timeliness, accuracy, completeness, and national consistency.
127.24 Responsibilities regarding review of temporary exemption requests and one-time extension requests from NPDES-regulated facilities.
127.25 Time for states, tribes, and territories to revise existing programs.
127.26 Implementation plan and effective date.
127.27 Procedure for determining initial recipient of electronic NPDES information.

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—General

§ 127.1 Purpose and scope.

(a) This part, in conjunction with the NPDES reporting requirements specified in 40 CFR parts 122, 123, 403, and 503, specifies the requirements for electronic reporting of information by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, to EPA or the states, tribes, or territories that have received authorization from EPA to implement the NPDES program. This part, in conjunction with 40 CFR parts 123 and 501, also specifies the requirements for electronic reporting of NPDES information to EPA by the states, tribes, or territories that have received authorization from EPA to implement the NPDES program.

(b) These regulations are not intended to preclude states, tribes, or territories from developing and using their own NPDES data systems. However, the states, tribes, and territories shall ensure that the required NPDES information regarding their permitting, compliance monitoring, and enforcement activities and required NPDES information electronically submitted by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs is then shared electronically with EPA in a timely, accurate, complete, and nationally-consistent manner fully compatible with EPA's national NPDES data system.

(c) Under 10 U.S.C. 130e, the Secretary of Defense may exempt Department of Defense ''critical infrastructure security information'' from disclosure under FOIA. NPDES program data designated as critical infrastructure security information in response to a FOIA request will be withheld from the public. In the instance where an NPDES program data element for a particular facility is designated as critical infrastructure security information in response to a FOIA request, a separate filtered set of data without the redacted information will be shared with the public; however, all NPDES program data will continue to be provided to EPA and the authorized state, tribe, or territorial NPDES program.

§ 127.2 Definitions.

(a) The definitions in 40 CFR parts 122, 403, 501 and 503 apply to all subparts of this part.

(b) *Initial recipient of electronic NPDES information from NPDES-regulated facilities (initial recipient)* means the entity (EPA or the state, tribe, or territory authorized by EPA to implement the NPDES program) that is the designated entity for receiving electronic NPDES data. Section 127.27 outlines the process for designating the initial recipient of electronic NPDES information from NPDES-regulated facilities. EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated facilities if the state, tribe, or territory does not collect the data required in Appendix A to this part and does not consistently maintain timely, accurate, complete, and consistent data transfers in compliance with 40 CFR parts 3 and 127. Timely means that the authorized state, tribe, or territory submits these data transfers (see the data elements in Appendix A to this part) to EPA within 30 days of when the authorized program completed the activity or received a report submitted by a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (e.g., 30 days after October 15th).

(c) *NPDES data group* means the group of related data elements identified in Table 1 in Appendix A to this part. These NPDES data groups have similar regulatory reporting requirements and have similar data sources.

(d) *Regulatory authority* means EPA or the state, tribe, or territory that EPA has authorized to administer all or part of the NPDES program; identifying the relevant regulatory authority must be done for each NPDES subprogram (e.g., NPDES core program, federal facilities, general permits, pretreatment, and biosolids).

Subpart B—Electronic Reporting of NPDES Information From NPDES-Regulated Facilities

§ 127.11 Types of data to be reported electronically by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs.

(a) NPDES-regulated facilities shall electronically submit information for these NPDES reports (if such reporting requirements are applicable):

(1) Discharge Monitoring Report [40 CFR 122.41(l)(4)];

(2) Biosolids Annual Program Report [40 CFR part 503];

(3) Concentrated Animal Feeding Operation (CAFO) Annual Program Report [40 CFR 122.42(e)(4)];

(4) Municipal Separate Storm Sewer System (MS4) Program Report [40 CFR 122.34(g)(3) and 122.42(c)];

(5) Pretreatment Program Annual Report [40 CFR 403.12(i)]; and

(6) Sewer Overflow and Bypass Incident Event Report [40 CFR 122.41(l)(6) and (7)].

(b) Facilities seeking coverage under an NPDES general permit, or indicating that such general permit coverage is not needed under existing regulations, shall electronically submit information for these NPDES notices, certifications, and waivers (if such reporting requirements are applicable):

(1) Notice of intent (NOI) to discharge by facilities seeking coverage under a general NPDES permit (rather than an individually-issued NPDES permit), as described in 40 CFR 122.28(b)(2);

(2) Notice of termination (NOT), as described in 40 CFR 122.64;

(3) No exposure certification (NEC), as described in 40 CFR 122.26(g)(1)(iii); and

(4) Low erosivity waiver (LEW) as described in Exhibit 1 to 40 CFR 122.26(b)(15).

(c) Industrial users located in cities without approved local pretreatment programs shall electronically submit this information (if such reporting requirements are applicable):

(1) Self-monitoring pretreatment-related information, as described in 40 CFR 403.12(e) and 403.12(h).

(2) [Reserved]

(d) Specific data elements that are required to be submitted electronically by NPDES-regulated facilities are identified in Appendix A to this part.

§ 127.12 Signature and certification standards for electronic reporting.

The signatory and certification requirements identified in 40 CFR part 3 and 40 CFR 122.22 and 403.12(l) shall also apply to the electronic submission of NPDES information by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, as required in accordance with this part and Appendix A of this part.

§ 127.13 Requirements regarding quality assurance and quality control.

(a) Primary responsibility for the quality of the information provided electronically in accordance with this part by the NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs rests with the owners and operators of those facilities. Facilities shall use quality assurance and quality control procedures to ensure the quality of the NPDES information submitted in accordance with this part.

(b) NPDES information required under this part from the NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs shall be submitted in accordance with the data quality requirements specified in § 127.14.

§ 127.14 Requirements regarding timeliness, accuracy, completeness, and national consistency.

After [THE EFFECTIVE DATE OF 40 CFR PART 127], each NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial user located in a city without an approved local pretreatment program, if required to submit the types of information specified in § 127.11, shall comply with all requirements in this part and electronically submit all applicable NPDES information identified in Appendix A to this part in the following nationally-consistent manner:

(a) Timely, in the electronic submission to the appropriate initial recipient, as defined in § 127.2(b), of NPDES information described in § 127.11 and in Appendix A to this part, including but not limited to this information:

(1) *Measurement data (including information from discharge monitoring reports, self-monitoring data from industrial users located outside of approved local pretreatment programs, and similar self-monitoring data).* The electronic submission of this data is due when that monitoring information is required to be reported in accordance with statutes, regulations, the NPDES permit, another control mechanism, or an enforcement action.

(2) *Program Report Data.* The electronic submission of this data is due when that program report data is required to be reported in accordance with statutes, regulations, the NPDES permit, another control mechanism, or an enforcement action.

(b) Accurate, means identical to the actual measurements taken;

(c) Complete, means all required data elements (see Appendix A to this part) are electronically submitted to the data system of the initial recipient, as defined in § 127.2(b); and

(d) Consistent, means all required data elements (see Appendix A to this part) are electronically submitted in compliance with EPA data standards and in a form (and measurement units) that is fully compatible with EPA's national NPDES data system.

§ 127.15 Temporary waivers from electronic reporting.

(a) Temporary waivers from electronic reporting may be granted by the regulatory authority (EPA, or states, territories, and tribes that have received authorization to implement the NPDES program), in accordance with this section and § 127.24, to NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs.

(1) Each temporary waiver shall not extend beyond one year. However, the reporting facility may re-apply for a temporary waiver. Temporary waivers from electronic reporting may be granted if the reporting facility is physically located in a geographic area (i.e., zip code or census tract) that is identified as under-served for broadband internet access in the most recent National Broadband Map from the Federal Communications Commission (FCC).

(2) To apply for such a temporary waiver, the appropriate facility representative, as identified in accordance with 40 CFR 122.22, for the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program, shall submit the following information to the regulatory authority:

(i) Facility name;

(ii) NPDES permit number (if applicable);

(iii) Facility address;

(iv) Name, address and contact information for the designated facility representative;

(v) Brief written statement regarding the basis for claiming such a temporary waiver; and

(vi) Copy of the relevant FCC information, from the most recent FCC report addressing such issues, identifying the zip code or census tract where that facility is located as being under-served for broadband internet access.

(3) If the regulatory authority determines that a temporary waiver is merited under the condition identified in paragraph (1) of this section, the regulatory authority shall provide such notification to the appropriate EPA regional office and the affected NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment programs, in accordance with the requirements of § 127.24(a)(2).

(4) These temporary waivers are only waivers from electronic reporting; the NPDES-regulated facilities receiving temporary waivers from electronic reporting are required to provide the required applicable information (identified in Appendix A to this part) in hard-copy format to the regulatory authority.

(5) The temporary waiver may remain in effect until the situation meriting such a temporary waiver is resolved, but for no more than one year. At that time, if the situation meriting such temporary waiver is still not resolved and if the NPDES-regulated facility does not re-apply for a temporary waiver, the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program, shall report the applicable required NPDES information, as identified in this part and in Appendix A to this part, electronically to the initial recipient through a third-party contractor or other available internet connections (e.g., public libraries).

(b) [Reserved]

§ 127.16 Time extensions for electronic reporting due to catastrophic circumstances.

(a) One-time extensions to due dates for electronic reporting may be granted by regulatory authorities to NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, for situations involving catastrophic circumstances beyond the control of the facilities, such as forces of nature (e.g., hurricanes, floods, earthquakes). This one-time extension for electronic reporting would allow written, rather than electronic, submission of information, if warranted by the incident.

(1) To apply for this one-time extension, the appropriate facility representative, as identified in accordance with 40 CFR 122.22, for the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program shall submit the following information toregulatory authority:

(i) Facility name;

(ii) NPDES permit number;

(iii) Facility address;

(iv) Name, address and contact information for the designated facility representative;

(v) Brief written statement regarding the basis for claiming such a one-time extension; and

(vi) Indication when the required written information will be provided to the regulatory authority.

(2) If the regulatory authority determines that a one-time extension is merited in accordance with this section, the regulatory authority shall provide notification to the appropriate EPA regional office and to the affected NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program, in accordance with the requirements of § 127.24(a)(3).

(3) The one-time extension may remain in effect until the situation meriting such a one-time extension is resolved (i.e., effects of the incident meriting the one-time extension no longer exist), but for no more than one year after the situation that merited the one-time extension arose. At that time, if the situation has not been resolved, the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program shall report the applicable required NPDES information, as identified in this part and in Appendix A to this part, electronically to theinitial recipient, through a third-party contractor or other available electronic connections (e.g., internet connection in public libraries).

(b) [Reserved]

§ 127.17 Implementation plan and effective date.

(a) The effective date for this section shall be [60 DAYS AFTER THE PROMULGATION DATE FOR 40 CFR PART 127].

(b) NPDES-regulated facilities, with the exception of those covered by any temporary waiver under § 127.15 or any one-time extension under § 127.16, must electronically submit to the designated initial recipient all information covered by this part in accordance with 40 CFR parts 3 and 122, and all requirements of this part, after the following dates:

(1) Discharge monitoring report information (if required), as required in 40 CFR 122.41(l)(4), shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(2) Notices of intent (if required), as described in 40 CFR 122.28(b)(2), for coverage under EPA-issued general permits, notices of termination, no exposure certifications, and low erosivity waivers shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(3) Notices of intent (if required), as described in 40 CFR 122.28(b)(2), for concentrated animal feeding operations for coverage under general permits shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(4) Biosolids annual reports (as described in 40 CFR part 503), concentrated animal feeding operation annual reports (as described in 40 CFR 122.42(e)(4)), municipal separate storm sewer system (MS4) program reports (as described in 40 CFR 122.34(g)(3) and 122.42(c)), pretreatment-related self-monitoring reports (if required) from industrial users located in cities without approved local pretreatment programs (as required in 40 CFR 403.12(e) and 403.12(h)), pretreatment program annual reports (as described in 40 CFR 403.12(i)), and sewer overflow and bypass incident event reports (as described in 40 CFR 122.41(l)(6) and (7)) shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(5) Notices of intent (if required), as described in 40 CFR 122.28(b)(2), for coverage under general permits not described in paragraphs (b)(2) and (3) of this section shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(c) If the applicable NPDES permit requires electronic reporting of the reports identified in paragraph (b) of this section sooner than the dates specified in paragraph (b) of this section, then the NPDES-regulated facility is required to provide that information electronically to the regulatory authority in accordance with the due date(s) in the permit.

(d) If the regulatory authority has granted a facility or group of facilities temporary waivers or one-time extensions from electronic reporting under §§ 127.15 or 127.16, the facility or facilities shall submit in hard-copy format, by the applicable due dates, to the regulatory authority, all of the required information applicable to that facility as identified in § 127.11 and in Appendix A to this part, in accordance with all requirements of this part, including the requirements of §§ 127.22 and 127.23. Upon the expiration date of a temporary waiver, unless the NPDES-regulated facility re-applies for and is approved for another temporary waiver, the NPDES-regulated facility shall be required to submit the applicable required information (as identified in § 127.11 and in Appendix A to this part) electronically to the initial recipient, as defined in § 127.2(b), for that information.

Subpart C—Responsibilities of EPA and States, Tribes, and Territories Authorized To Implement the NPDES Program

§ 127.21 Types of data to be reported electronically to EPA by states, tribes, and territories.

(a) States, tribes, and territories that have received authorization from EPA to implement the NPDES program shall report the following NPDES information (as specified in Appendix A to this part) to EPA electronically:

(1) facility and permit information for NPDES individual permits;

(2) permit information associated with NPDES general permits (including information specific to subprograms [if applicable] or to thermal variances [if applicable], and information regarding cooling water intakes for discharges of 2 million gallons per day or more [if applicable]);

(3) compliance monitoring and inspection activities;

(4) compliance determination information;

(5) enforcement action information; and

(6) information provided electronically or otherwise (e.g., from facilities granted temporary waivers from electronic reporting) by the NPDES-regulated facility to the authorized NPDES program rather than to EPA.

(b) If the authorized state, tribe, or territory NPDES program is the initial recipient of electronic NPDES information from NPDES-regulated facilities (see § 127.2(b)), the authorized NPDES program shall transfer these NPDES program data to EPA within 30 days of the completed activity or within 30 days of the receipt of a report from a regulated entity. Specific data elements that are required to be submitted electronically to EPA by the states, tribes, or territories that have received authorization from EPA to implement the NPDES program are identified in Appendix A to this part.

§ 127.22 Requirements regarding quality assurance and quality control.

(a) Primary responsibility for the quality of the information provided electronically to EPA in accordance with this part by the regulatory authorities rests with those government entities. Therefore, the regulatory authorities shall utilize quality assurance and quality control procedures to ensure the quality of the NPDES information submitted to EPA in accordance with this part.

(b) [Reserved]

§ 127.23 Requirements regarding timeliness, accuracy, completeness, and national consistency.

(a) After [THE EFFECTIVE DATE OF 40 CFR PART 127], the Director of each state, tribe, and territory that has been authorized by EPA to implement the NPDES program shall ensure that EPA is electronically provided with the NPDES information identified in Appendix A to this part, in a nationally consistent manner which is:

(1) Timely, in that the authorized state, tribe, or territory electronically provides the required data (as specified in Appendix A to this part) to EPA within 30 days of the completed activity or within 30 days of receipt of a report from a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (e.g., 30 days after October 15th).

(2) Accurate, in that 95% or more of the required data available in EPA's data system for NPDES information are identical to that reported on the permit or other source document for that information;

(3) Complete, in that 95% or more of submissions required for each NPDES data group are available in EPA's data system for NPDES information; and

(4) Consistent, in that data electronically submitted by states, tribes, and territories to EPA, by direct entry of information, data transfers from one data system to another, or some combination thereof, into EPA's designated NPDES national data system is in compliance with EPA's data standards and in a form and measurement units which are fully compatible with such data system.

(b) An authorized program shall consistently maintain the requirements identified in paragraph (a) of this section in order to be the initial recipient, as defined in § 127.2(b). If the authorized program does not maintain these requirements, EPA shall become the initial recipient.

§ 127.24 Responsibilities regarding review of temporary waiver requests and one-time extension requests from NPDES-regulated facilities.

(a) Under § 127.15, NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, may submit requests for temporary waivers or one-time extensions from electronic reporting. The responsibilities regarding the review and approval of these requests are:

(1) For temporary waivers due to the lack of broadband access in certain remote areas, the regulatory authority shall ensure that the temporary waiver request meets the requirements of § 127.15 and shall notify the requestor and the appropriate EPA regional office within 15 business days of the request as to whether the temporary waiver will be granted.

(2) For one-time extensions associated with catastrophic circumstances, the regulatory authority shall ensure that the waiver request meets the requirements of § 127.15, and shall notify the requestor and the appropriate EPA regional office within 15 business days of the request as to whether the temporary waiver will be granted.

(b) The regulatory authority may choose not to allow any temporary waivers or one-time extensions from electronic reporting. This would preclude the need to develop and implement standard procedures to review requests for temporary waivers or one-time extensions.

(c) EPA shall have the authority to review and disapprove decisions by the regulatory authority regarding the granting of temporary waivers from electronic reporting and one-time extensions of electronic reporting, ensuring that approvals of these requests are in compliance with §§ 127.15, 127.16, and this section.

§ 127.25 Time for states, tribes, and territories to revise existing programs.

A state, tribe, or territory that has received authorization from EPA to implement the NPDES program is required to make program revisions in accordance with 40 CFR 123.62(e). No additional time extensions shall be available from EPA for state, tribe, or territory program revisions to achieve compliance with this rule.

§ 127.26 Implementation plan and effective date.

(a) The effective date for this section shall be [90 DAYS AFTER THE PROMULGATION DATE FOR 40 CFR PART 127].

(b) Authorized state, tribe, and territory NPDES programs shall follow the procedure in § 127.27 for determining the initial recipient of electronic NPDES information from NPDES-regulated facilities (see § 127.2(b)).

(c) States, tribes, and territories shall electronically submit all applicable required data elements associated with their permitting, compliance monitoring, compliance determinations, and enforcement activities (see Appendix A to this part) to EPA by [9 MONTHS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127] and maintain updates thereafter. These state, tribe, and territory data transmissions to EPA shall be done in accordance with all requirements of this part, including the requirements of §§ 127.22 and 127.23.

(d) For the required NPDES information, as identified in § 127.11 and in Appendix A to this part, that an NPDES authorized state, tribe, or

territory receives from an NPDES-regulated facility, this information shall be electronically provided to EPA within 30 days after receipt from the NPDES-regulated facility.

(e) Authorized states, tribes, or territories that can implement 40 CFR part 3, 40 CFR 122.22, and this part without amending or enacting a statute shall do so by [12 MONTHS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127]. NPDES-authorized states, tribes, and territories that must amend or enact a statute in order to change their NPDES programs to implement 40 CFR part 3 (CROMERR) and this part shall do so by [24 MONTHS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127]. See 40 CFR 123.62(e). This includes updates to state NPDES data systems. All new permits issued or existing permits re-issued after the authorized state, territory, or tribe incorporates federal electronic reporting requirements (40 CFR part 3, 40 CFR 122.22, and this part) into its authorized program shall contain a permit condition requiring compliance with the electronic reporting requirements in 40 CFR part 3, 40 CFR 122.22, and this part. NPDES-regulated facilities which have the federal electronic reporting requirements (40 CFR part 3, 40 CFR 122.22, and this part) in their permits shall start (or continue) electronic reporting to the initial recipient (as defined in § 127.27).

§ 127.27 Procedure for Determining Initial Recipient of Electronic NPDES Information.

(a) A state, tribe, or territory that has received authorization from EPA to implement the NPDES program before the effective date of this rule may request to be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups by submitting a request to EPA. For states, tribes, and territories with NPDES authorization prior to the effective date of the rule, the Director shall submit this request prior to [120 DAYS AFTER THE EFFECTIVE DATE FOR 40 CFR PART 127]. This request shall identify the specific NPDES data groups for which the state, tribe, or territory will be the initial recipient of electronic NPDES information from NPDES-regulated entities, a description of how its data system will be compliant with 40 CFR parts 3 and 127, and the date or dates when the state, tribe, or territory will be ready to accept NPDES information from NPDES-regulated facilities in a manner compliant with 40 CFR parts 3 and 127.

(b) A state, tribe, or territory that seeks authorization to implement an NPDES program after [THE EFFECTIVE DATE OF 40 CFR PART 127] shall identify in its NPDES program application if it is requesting to be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups. See 40 CFR 123.22(g) and Appendix A to this part.

(c) By [210 DAYS AFTER THE EFFECTIVE DATE FOR 40 CFR PART 127], EPA shall publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated facilities by state, tribe, and territory and by NPDES data group. This listing shall identify for NPDES-regulated facilities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. EPA shall update this listing on its Web site and in the **Federal Register** if a state, tribe, or territory gains authorization status to implement an NPDES program and is also approved by EPA to be the initial recipient of NPDES electronic data submissions for that program.

(d) Failure to maintain all the requirements in 40 CFR parts 3 and 127 to be an initial recipient of electronic NPDES information from NPDES-regulated facilities shall prohibit the state, territory, or tribe from being the initial recipient of electronic NPDES information from NPDES-regulated entities. The following is the process for these determinations:

(1) EPA shall make a preliminary determination identifying if an authorized state, tribe, or territory is not complying with the requirements in 40 CFR parts 3 and 127 to be an initial recipient of electronic NPDES information from NPDES-regulated facilities. EPA shall provide to the Director of the authorized NPDES program the rationale for any such preliminary determination and options for correcting these deficiencies. Within 60 days of EPA's preliminary determination, the authorized state, tribe, or territory shall fully correct all deficiencies identified by EPA and notify EPA that such corrections have been completed. No response from the Director of the authorized NPDES program shall indicate that the state, territory, or tribe agrees to be removed as the initial recipient for that NPDES data group of electronic NPDES information. Within 90 days of the EPA's preliminary determination, EPA shall provide to the Director of the authorized NPDES program a final determination whether the state, tribe, or territory is not complying with the requirements in 40 CFR parts 3 and 127 to be an initial recipient of electronic NPDES information from NPDES-regulated facilities.

(2) EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated facilities if the state, tribe, or territory does not consistently maintain data transfers in compliance with 40 CFR parts 3 and 127.

(3) EPA shall update the initial recipient listing described in § 127.27(c) and publish this listing on its Web site and in the **Federal Register** when it provides a final determination described in paragraph (d)(1) of this section to the Director of the authorized NPDES program.

(4) Following any determination of noncompliance made in accordance with paragraph (d)(1) of this section, EPA will work with the Director of the authorized NPDES program to remediate all issues identified by EPA that prevent the authorized NPDES program from being the initial recipient. When all issues identified by EPA are resolved and the authorized state, tribe, or territory is again the initial recipient, EPA shall update the initial recipient listing in § 127.27(c) and publish this listing on its Web site and in the **Federal Register.**

Appendix A to Part 127

The following two tables identify the minimum set of data that states, tribes, territories, and NPDES-regulated entities must electronically report to the NPDES authorized program or EPA [see § 127.2(b)]. Use of these two tables ensures that there is consistent and complete reporting nationwide, and to expedite the collection and processing of the data, thereby making it more accurate and timely. Taken together, these data standardizations and the corresponding electronic reporting requirements in 40 CFR parts 3, 122, 123, 127, 403, and 503 are designed to save the NPDES authorized programs considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers typically review previous noncompliance events during permit renewal), ensure full exchange of NPDES general permit data between states and EPA to the public, improve better environmental decision-making, and to protect human health and the environment.

Instructions: Table 1 provides the list of data sources and minimum submission frequencies for the nine different NPDES Data Groups. Table 2 provides the data that must be electronically reported for each of these NPDES Data Groups. The use of each data element is determined by identifying the number(s) in the column labeled ''NPDES Data Group Number'' in Table 2 and finding the corresponding ''NPDES Data Group Number'' in Table 1. For example, a value of ''1'' in Table 2 means that this data element is required in the transmission of data from

the NPDES program to EPA (Core NPDES Permitting, Compliance, and Enforcement Data). Likewise, a value of ''1 through 9'' means that this data element is required in all nine NPDES data groups.

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS

NPDES Data group No. †	NPDES Data group	Program area	Data provider	Minimum frequency ††
1	Core NPDES Permitting, Compliance, and Enforcement Data [40 CFR parts 122, 123, 403, 503].	All NPDES Program Sectors.	Authorized NPDES Program.	Quarterly (four times annually) updates to EPA (although the frequency associated with any particular permittee may be considerably less [e.g., once every five years for most permit information].
2	General Permit Reports [Notice of Intent to discharge (NOI); Notice of Termination (NOT); No Exposure Certifications (NECs); Low Erosivity Waivers (LEWs)] [40 CFR 122.28 and 124.5].	All NPDES Program Sectors.	NPDES Permittee	Prior to Initial Permit Coverage, Consideration for Permit Exclusion, and Permit Coverage Termination.
3	Discharge Monitoring Report [40 CFR 122.41(l)(4)].	All NPDES Program Sectors.	NPDES Permittee	At least annual, although a more frequent submission required in the permit would apply.
4	Biosolids Annual Program Report [40 CFR part 503].	Biosolids	NPDES Regulated Biosolids Generator and Handler.	Annual.
5	Concentrated Animal Feeding Operation (CAFO) Annual Program Reports [40 CFR 122.42(e)(4)].	CAFO	CAFO	Annual.
6	Municipal Separate Storm Sewer System (MS4) Program Report [40 CFR 122.34(g)(3) and 122.42(c)].	MS4	NPDES Permittee	Year two and year four of permit coverage (Small MS4), Annual (Medium and Large MS4).
7	Pretreatment Program Annual Report [40 CFR 403.12(i)].	Pretreatment	Pretreatment Control Authority.	Annual.
8	Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs [40 CFR 403.12(e) and (h)].	Pretreatment	Significant Industrial User.	Bi-Annual.
9	Sewer Overflow Event Reports [40 CFR 122.41(l)(6) and (7)].	Sewer Overflows	NPDES Permittee	Within 5 days of the time the permittee becomes aware of the sewer overflow event (health or environment endangerment), Monitoring report frequency specific in permit (all other sewer overflow events).

† Note: Use the ''NPDES Data Group Number'' in this table and the ''NPDESData Group Number'' column in Table 2 to identify the required data elements for each NPDES Data Group.

†† Note: The applicable reporting frequency is specified in the NPDES permit or control mechanism, which may be more frequent than the minimum frequency specified in Table 1.

TABLE 2—REQUIRED NPDES DATA

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Basic Facility Information			
Facility Type of Ownership	The code/description identifying the type of facility (e.g., state government, municipal or water district, Federal facility, tribal facility). This data element is used by the EPA data system to populate the Permit Facility Type data element (i.e., POTW, Private, Non-POTW, and Federal).	122.21	1 through 9.
Facility Site Name	The name of the facility	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Address	The address of the physical facility location	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site City	The name of the city, town, village, or other locality, when identifiable, within whose boundaries (the majority of) the facility site is located. This is not always the same as the city used for USPS mail delivery.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site State	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. where the facility is located.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Facility Site Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location where the facility is located.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Tribal Land Indicator.	The Bureau of Indian Affairs code for every unit of land trust allotment (''tribal land'') within Indian Country. This code will identify whether the facility is on tribal land and the name of the American Indian tribe or Alaskan Native entity (if applicable).	122.21	1 through 9.
Facility Site Longitude	The measure of the angular distance on a meridian east or west of the prime meridian for the facility. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Latitude	The measure of the angular distance on a meridian north or south of the equator for the facility. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Source Map Scale Number.	The number that represents the proportional distance on the ground for one unit of measure on the map or photo for the facility. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Site Horizontal Accuracy Measure.	The measure of the accuracy (in meters) of the facility's latitude and longitude coordinates. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002/CWA 301(d), 304(b), and 304(m).	1 through 9.
Facility Site Horizontal Collection Method.	The text that describes the method used to determine the latitude and longitude coordinates for the facility. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Site Horizontal Reference Datum.	The code/description that represents the reference datum used in determining latitude and longitude coordinates for the facility. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Site Reference Point	The code/description for the place for which geographic coordinates were established. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Individual Affiliation Type Code.	The way that the contact or address is affiliated with the facility (e.g., ''Owner,'' ''Operator,'' or ''Main Contact''). This is a unique code that identifies the nature of the individual's affiliation to the facility.	122.21	1 through 9.
Facility Individual First Name.	The given name of an individual affiliated with this facility.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Individual Last Name.	The surname of an individual affiliated with this facility.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Individual Title	The title held by an individual in an organization affiliated with this facility.	122.21	1 through 9.
Facility Individual Organization.	The legal, formal name of an organization that is affiliated with the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual Street Address.	The physical address of the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual City	The name of the city, town, village, or other locality for the individual affiliated with this facility.	122.21	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Facility Individual State	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. for the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual E-Mail Address.	The e-mail address of the designated individual affiliated with this facility.	122.21	1 through 9.
Facility Organization Formal Name.	The legal, formal name of an organization that is affiliated with the facility.	122.21	1 through 9.
Facility Organization Street Address.	The physical address of the organization affiliated with the facility.	122.21	1 through 9.
Facility Organization City	The name of the city of the organization that is affiliated with the facility.	122.21	1 through 9.
Facility Organization State	The U.S. Postal Service abbreviation that represents the state or state equivalent for the organization affiliated with the facility.	122.21	1 through 9.
Facility Organization Zip Code.	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for the organization affiliated with the facility.	122.21	1 through 9.
Basic Permit Information			
NPDES ID	This is the unique NPDES permit number	CWA 301(d), 304(b), and 304(m)	1 through 9.
Master General Permit Number.	The unique identifier of the master general permit, which is linked to a General Permit Covered Facility.	CWA 301(d), 304(b), and 304(m)	1 through 9.
Permit Type	The unique code/description identifying the type of permit.	122.2	1 through 9.
Permit Issue Date	This is the date the permit was issued. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.46/CWA 301(d), 304(b), and 304(m)	1 through 9.
Permit Effective Date	This is the date on which the permit is effective. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.46	1.
Permit Modification/Amendment Date.	This is the date on which the permit was modified or amended. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.62, 122.63	1,2.
Permit Expiration Date	This is the date the permit will expire. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.46/CWA 301(d), 304(b), and 304(m)	1.
Permit Termination Date	This is the date the permit was terminated. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.64	1.
Permit Major/Minor Status Indicator.	The flag to indicate if the permit is a major or minor. Initially system generated (defaults to Minor) and updatable only by EPA OECA Headquarters.	122.2/CWA 301(d), 304(b), and 304(m)	1.
Permit Major/Minor Status Start Date.	The date that the Permit became its current Major/Minor status. Initially system-generated to match effective date and updatable only by EPA OECA Headquarters. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.2	1.
Permit Application Total Design Flow.	This is the flow that a permitted facility was designed to accommodate, in millions of gallons per day (MGD), as stated on its NPDES application.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Permit Application Total Actual Average Flow.	This is the actual average flow that a permitted facility will likely accommodate, in MGD, as stated on its NPDES application.	122.21,122.41	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Complete Permit Application/NOI Received Date.	This is the date on which the complete application for a NPDES permit was received or a complete Notice of Intent (NOI) for coverage under a master general permit was received. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.21	1.
Permit Application/NOI Received Date.	This is the date on which the application for a NPDES permit was received or a Notice of Intent (NOI) for coverage under a master general permit was received. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.21	1 through 9.
Permit Status	This is a code/description that indicates whether the permit is Effective, Expired, Administratively Continued, Pending, Not Needed, Retired, or Terminated.	122.64, 122.46	1.
Master General Permit Industrial Category.	This code/description identifies the industrial category covered by the master general permit. This field is system-required for master general permits only.	CWA 301(d), 304(b), and 304(m)	1.
Permit Issuing Organization Type.	This is the type of organization issuing or granting a permit.	122.46	1.
DMR Non-Receipt	Turns non-receipt tracking for discharge monitoring reports (DMRs) ''on'' or ''off'' for non-major permits (a.k.a. ''minors''). This field is always ''on'' for major permits. This field is initially set to ''on''.	123.45	1.
Reportable Noncompliance Tracking.	Turns Reportable Noncompliance (RNC) tracking ''on'' or ''off'' for non-major permits (a.k.a. ''minors''). This field is always ''on'' for major permits. This field is initially set to ''on''.	123.45	1.
Applicable Effluent Limitations Guidelines.	The applicable effluent limitations guidelines (e.g., BPT, BCT, BAT) and new source performance standards (NSPS) for the NPDES permit.	122.44/CWA 301(d), 304(b), and 304(m)	1.
Permit Compliance Tracking Status.	This is a code/description that indicates whether the permit is currently ''on'' or ''off'' for compliance tracking purposes. Initially system-generated to match effective date.	123.45	1.
Permit Compliance Tracking Status Start Date.	This is the date on which the permit's ''on'' or ''off'' period for compliance tracking status began. Initially system-generated to match effective date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
RNC Status Quarter	The quarter of the permit RNC status	123.45	1.
RNC Status Year	The year of the permit RNC status	123.45	1.
RNC Status (Manual)	The status of reportable noncompliance as it was entered by the user before the official Quarterly Noncompliance Report (QNCR) or NPDES Noncompliance Report (NNCR) for the RNC quarter for the permit.	123.45	1.
Associated NPDES ID Numbers.	If applicable, the unique identifier for a NPDES Permit that is related to another NPDES Permit or other NPDES ID number. For example, this data element could be used to identify the receiving POTW's permit number for an industrial user, the recipient POTW's permit number for a satellite collection system, municipalities covered under the same MS4 permit, etc.	CWA 301(d), 304(b), and 304(m)	1 through 9.
SIC Codes	The four-digit Standard Industrial Classification (SIC) code/description that represents the economic activity of the permitted facility.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
NAICS Codes	The six-digit North American Industry Classification System (NAICS) code/description that represents the economic activity of the permitted facility.	Agency Data Standard to replace SIC Codes/CWA 301(d), 304(b), and 304(m).	1 through 9.
Permittee Street Address	The address that describes the physical location of the permit holder.	122.21	1 through 9.
Permittee Organization Formal Name.	The legal, formal name of the organization that holds the permit.	122.21	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Permittee Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for the permit holder.	122.21	1 through 9.
Permittee City	The name of the city, town, or village where the mail is delivered for the permit holder.	122.21	1 through 9.
Permittee State	The U.S. Postal Service abbreviation that represents the state or state equivalent for the U.S. for the permit holder.	122.21	1 through 9.
Narrative Condition and Permit Schedules			
Description	The unique code/description that identifies the type of narrative condition.	122.47	1 through 9.
Narrative Condition Number	This identifies a narrative condition and its elements uniquely for a permit.	122.47	1 through 9.
Schedule Date	The date on which a schedule event is due to be completed and against which compliance will be measured. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.47	1 through 9.
Actual Date	The date on which the permittee achieved the schedule event. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.47	1 through 9.
Report Received Date	The date on which the regulatory authority receives a report (generally a letter) from the permittee indicating that a Schedule Event was completed (e.g., Start Construction) or the required report was enclosed. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.47	1 through 9.
Event	The code/description indicating the particular event with which the permittee is scheduled to comply.	122.47	1 through 9.
Permitted Feature			
Application Design Flow (MGD).	The flow that a permitted feature was designed to accommodate, in MGD.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Application Actual Average Flow (MGD).	The flow that a permitted feature actually had at the time of application, in MGD.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Permitted Feature ID	The identifier assigned for each location at which conditions are being applied.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Type	The code/description indicating the type of permitted feature (e.g. External Outfall, Sum, Intake Structure).	122.21/CWA 301(d), 304(b), 304(m), 316(b).	1.
Receiving Waterbody Name for Permitted Feature.	The name of the waterbody that is or will likely receive the discharge from each permitted feature.	122.21	1.
Permitted Feature Longitude	The measure of the angular distance on a meridian east or west of the prime meridian for the permitted feature. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Permitted Feature Latitude	The measure of the angular distance on a meridian north or south of the equator for the permitted feature. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Permitted Feature Source Map Scale Number.	The number that represents the proportional distance on the ground for one unit of measure on the map or photo for the permitted feature. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Permitted Feature Horizontal Accuracy Measure.	The measure of the accuracy (in meters) of the permitted feature's latitude and longitude coordinates. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002/CWA 301(d), 304(b), and 304(m).	1.
Permitted Feature Horizontal Collection Method.	The text that describes the method used to determine the latitude and longitude coordinates for the permitted feature. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.
Permitted Feature Horizontal Reference Datum.	The code/description that represents the reference datum used in determining latitude and longitude coordinates for the permitted feature. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.
Permitted Feature Reference Point.	The code/description for the place for which geographic coordinates were established. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.
Limit Set			
Limit Set Designator	The alphanumeric field that is used to designate a particular grouping of parameters within a limit set.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Type	The unique code/description identifying the type of limit set (i.e. Scheduled, Unscheduled).	122.45	1.
Default Months Limit Set Applies.	The default months that the limit set applies. Defaults to all 12 months.	122.45	1.
Initial Monitoring Date	The date on which monitoring starts for the first monitoring period for the limit set; this date will be blank for Unscheduled Limit Sets. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45	1.
Initial DMR Due Date	The date that the first DMR for the limit set is due to the regulatory authority; this date will be blank for Unscheduled Limit Sets. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45	1.
Number of Report Units	The number of months covered in each DMR monitoring period (e.g., monthly = 1, semi-annually = 6, quarterly = 3). For example, if the permittee was required to provide reports for each month, the number of report units would be one.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Number of Submission Units.	The number of months between DMR submissions (e.g., monthly = 1, semi-annually = 6, quarterly = 3); this data element will be blank for Unscheduled Limit Sets. For example, if the permittee was required to submit monthly reports every quarter, the number of report units would be one (=monthly) and the number of submission units would be three (=three months of information in each submission).	122.45	1.
Status	The status of the Limit Set (i.e., Active or Inactive); Limit Sets will not have violations generated when a Limit Set is Inactive unless an Enforcement Action Limit is present.	122 Subpart C	1.
Limit Set Status Start Date	The date that the Limit Set Status started. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
Limit			
Monitoring Location	The code/description of the monitoring location at which sampling should occur for a limit parameter.	122.45/CWA 301(d), 304(b), and 304(m)	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Season Number	Indicates the season of a limit and is used to enter different seasonal limits for the same parameter within a single limit start and end date.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Start Date	The date on which a limit starts being in effect for a particular parameter in a limit set. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45/CWA 301(d), 304(b), and 304(m)	1.
End Date	The date on which a limit stops being in effect for a particular parameter in a limit set. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Change of Limit Status Indicator.	The code/description that describes circumstances affecting limits, such as formal enforcement actions or permit modifications.	122 Subpart C	1.
Stay Type	The unique identifier of the type of stay applied to a limit (e.g., X, Y, Z), which indicates whether the limits do not appear on the DMR at all, are treated as monitor only, or have a stay value in effect during the period of the stay.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Stay Start Date	The date on which a limit stay begins. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	124.19	1.
Stay End Date	The date on which a limit stay is lifted. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	124.19	1.
Reason for Stay	The text that represents the reason a stay was applied to a permit.	124.19	1.
Stay Limit Value	The numeric limit value imposed during the period of the stay for the limit; if entered, during the stay period, the system will use this limit value for calculating compliance, rather than the actual limit value that was stayed.	124.19	1.
Limit Type	The code that indicates whether a limit is an enforceable, or alert limit (e.g., action level, benchmark) that does not receive effluent violations.	122.45	1.
Enforcement Action ID	The unique identifier for the Enforcement Action that imposed the Enforcement Action limit; this data element helps tie the limit record to the Final Order record in the database.	122.45	1.
Final Order ID	The unique identifier for the Final Order that imposed the Enforcement Action limit; this data element ties the limit record to the Final Order record in the database.	122.45	1.
Modification Effective Date	The effective date of the permit modification that created this limit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.62	1.
Modification Type	The type of permit modification that created this limit (e.g. major, minor, permit authorized change).	122.62	1.
Parameter	The unique code/description identifying the parameter being limited and/or monitored.	122.41(j)/CWA 301(d), 304(b), and 304(m).	1.
Months	The months that the limit applies. Defaults to limit set months.	122.46/CWA 301(d), 304(b), and 304(m)	1.
Value Type	The indication of the limit value type (e.g., Quantity 1, Concentration 2).	122.45(f)/CWA 301(d), 304(b), and 304(m).	1.
Quantity Units/Concentration Units.	The code/description representing the unit of measure applicable to quantity or concentration limits as entered by the user.	122.45(f)/CWA 301(d), 304(b), and 304(m).	1.
Statistical Base Code	The code/description representing the unit of measure applicable to the limit and DMR values entered by the user (e.g., 30-day average, daily maximum) CHECK DATA STANDARD.	122.45(d), CWA 301(d), 304(b), and 304(m).	1.
Optional Monitoring Flag	The flag allowing users to indicate that monitoring is optional but not required (i.e., effluent violation generation will be suppressed for optional monitoring).	122.45	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Qualifier	The unique code identifying the limit value operator (e.g., <, =, >).	122.45	1.
Value	The actual limit value number from the Permit or Enforcement Action Final Order.	122.45, CWA 301(d), 304(b), and 304(m).	1.
Biosolids Information on NPDES Permit Application or Notice of Intent			
Average Annual Dry Biosolids Production.	The average annual amount of biosolids (in dry metric tons) produced by the permitted facility.	122.21(q)	1,2.
Average Annual Amount of Exceptional Quality (EQ) Product Distributed and Marketed.	The average annual amount (in dry metric tons) of Exceptional Quality (EQ) biosolids product distributed and marketed. This refers to biosolids that meet the ceiling concentrations in Table 1 of 40 CFR 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8).	122.21(q)(8)(v)	1,2.
Average Annual Amount of Land Applied Biosolids.	The average annual amount (in dry metric tons) of biosolids land applied.	122.21(q)	1,2.
Average Annual Amount of Incinerated Biosolids.	The average annual amount (in dry metric tons) of biosolids incinerated.	122.21(q)	1,2.
Average Annual Amount of Biosolids Co-Disposed in MSW.	The average annual amount (in dry metric tons) of biosolids co-disposed in a municipal solids waste (MSW) landfill.	122.21(q)	1,2.
Average Annual Amount of Biosolids Surface Disposal.	The average annual amount (in dry metric tons) of biosolids used for surface disposal.	122.21(q)	1,2.
Average Annual Amount of Biosolids Otherwise Managed.	The average annual amount (in dry metric tons) of biosolids managed using methods not otherwise described. For example, if a POTW sends its biosolids to a regional composter or heat dryer, that tonnage would included in this data element.	122.21(q)	1,2.
Biosolids Management Facility Type.	The unique code indicating whether the facility was issued a permit as a biosolids generator, processor, or end user disposal site.	122.21(q)	1,2.
Animal Feeding Operation Information on NPDES Permit Application or Notice of Intent			
Facility CAFO Flag	A binary "yes/no" flag to indicate whether the facility is a Concentrated Animal Feeding Operation (CAFO).	122.23	1,2.
Facility Animal Types	The unique code/description that identifies the animal sector(s) at the facility.	122.23	1,2.
Facility Annual Average Total Number.	The annual average total number of each type of livestock at the facility.	122.23	1,2.
Facility Annual Average Total Number (Unhoused Confinement).	The annual average total number of each type of livestock at the facility in unhoused confinement. This is the number of animals, by type, in open confinement that are held at the facility for a total of 45 days or more on an annual basis.	122.23	1,2.
Permit/NOI CAFO Waste Type.	The type of CAFO waste described (i.e., manure, litter, process wastewater).	122.23	1,2.
Permit/NOI Status of the CAFO Waste.	The status of the CAFO waste described (i.e., generated, or generated and transferred).	122.23	1,2.
Permit/NOI 12-Month Amount of CAFO Waste.	The total amount of each CAFO waste (i.e., manure, litter, or process wastewater) (in tons) with that status (i.e., generated, or generated and transferred) from this facility in the previous 12 months.	122.23	1,2.
Total Number of Acres for Land Application Covered by the Nutrient Management Plan.	Total number of acres (to the nearest quarter acre) for land application covered by the nutrient management plan in the previous 12 months.	122.23	1,2.
Facility Manure Containment or Storage Containment Type Code.	The unique code/description for the type(s) of manure containment and storage used by the operation.	122.23	1,2.
Facility Manure Annual Average Total Capacity.	The annual average total capacity (in gallons) of manure containment and storage structure(s).	122.23	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Construction and Industrial Stormwater Information (from the permitting authority derived from the NPDES Permit Application, Notice of Intent, or Waiver)			
Permit Required by Residual Designation.	The permit writer may designate additional stormwater discharges as requiring NPDES permits when the stormwater discharge, or category of stormwater discharges within a geographic area, contributes to a violation of a water quality standard. This data element identifies whether the permit writer is using this authority, commonly referred to as the ''Residual Designation'' authority, to regulate stormwater discharges through a NPDES permit.	CWA Section 402(p)(2)(E) and (6), 122.26 (a)(9)(i)(D).	1.
Residual Designation Determination Date.	The date when the permit writer made the designation that stormwater discharges, or category of discharges within a geographic area, contributes to a violation of a water quality standard. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 402(p)(2)(E) and (6), 122.26 (a)(9)(i)(D).	1.
No Exposure Certification Approval Date.	This is the date on which the No Exposure Certification (NEC) was authorized by the NPDES permitting authority. Submission of a No Exposure Certification means that the facility does not require NPDES permit authorization for its stormwater discharges due to the existence of a condition of ''no exposure.'' A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. This date would be provided by the permitting authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26(g)	1.
Low Erosivity Waiver Approval Date.	The NPDES Stormwater Phase II Rule allows NPDES permitting authorities to accept ''low erosivity waivers'' (LEWs) for small construction sites. The waiver process exempts small construction sites (disturbing under five acres) from NPDES permitting requirements when the construction activity takes place during a relatively short time in arid or semi-arid areas. There is a similar waiver process for stormwater discharges associated with industrial activity [see 122.26(c)(1)(ii)]. This is the date when the permitting authority granted such waivers, based on information from the waiver submitter; this date would be provided by the permitting authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26(b)(15), 122.26(c)(1)(ii).	1.
Construction and Industrial Stormwater Information on NPDES Permit Application, Notice of Intent, or Waiver Request			
Total Area of the Site	This is the total area (to the nearest quarter acre) of the facility site.	122.26	1,2.
Total Activity Area	Total area (to the nearest quarter acre) of the facility that contains industrial activities and processes and construction activities. These activities and processes may include (but is not limited to) using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater; materials or products stored outdoors; materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers; and materials or products from past industrial activity. Construction activities include excavation of lands.	122.26	1,2.
Current Total Imperious Area.	The current total impervious area (to the nearest quarter acre) of the facility or site.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(E).	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Post-Construction Total Impervious Area.	Total impervious area (to the nearest quarter acre) of the permitted facility impervious area after the construction addressed in the permit application is completed.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(E).	1,2.
Proposed Best Management Practices for Industrial Activities and Stormwater.	This is a text field that describes the proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(C).	1,2.
Post-Construction Best Management Practices for Industrial Activities and Stormwater Discharges.	This is a text field that describes the proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements. This field also describes the nature of fill material and existing data describing soils.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(D).	1,2.
Soil and Fill Material Description.	This field describes the nature of fill material and existing data describing soils.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(E).	1,2.
Runoff Coefficient of the Site.	This is an estimate of the runoff coefficient of the site after the construction addressed in the permit application is completed.	122.26(b)(15), 122.26(c)(1)(ii)(E)	1,2.
Estimated Construction Project Start Date.	The estimated start date for the construction project covered by the NPDES permit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26	1,2.
Estimated Construction Project End Date.	The estimated end date for the construction project covered by the NPDES permit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26	1,2.
Municipal Separate Storm Sewer System (MS4) Information on NPDES Permit Application or Notice of Intent			
MS4 Permit Class	This is the code/description that identifies the size of the MS4 permit holder (small/medium/large).	122.26	1,2.
MS4 Public Education Program.	The unique code/description that identifies the public education programs the permittee intends to use to distribute educational materials to the community.	122.34(b)(1), 122.34(d)(1)(i)	1,2.
MS4 Measurable Goals Associated With Public Education Program.	The unique code/description that identifies the types of measurable goals associated with the public education programs.	122.34(d)(1)(ii)	1,2.
MS4 Public Involvement and Participation Program.	The unique code/description that identifies the public involvement and participation programs the permittee intend to use to distribute educational materials to the community.	122.34(b)(2), 122.34(d)(1)(i)	1,2.
MS4 Measurable Goals for the Public Involvement and Participation Program.	The unique code/description that identifies the types of measurable goals associated with the public involvement and participation programs.	122.34(d)(1)(ii)	1,2.
MS4 System Map	A data flag indicating whether the permittee has developed a storm sewer system map showing the location of all outfalls and names and locations of all waters of the U.S. that receive discharges from those outfalls.	122.34(b)(3)(ii)(A), 122.34(d)(1)(i)	1,2.
MS4 Prohibition Enforcement.	The unique code/description that identifies the procedures and actions the permittee will take to enforce the prohibition on non-stormwater discharges to the MS4.	122.34(b)(3)(ii)(B), 122.34(d)(1)(i)	1,2.
MS4 Detecting Non-Stormwater Discharges.	The unique code/description that identifies the procedures and actions the permittee will take to detect and address non-stormwater discharges, including illegal dumping, to permittee's system.	122.34(b)(3)(ii)(C), 122.34(d)(1)(i)	1,2.
MS4 Public Education: Illegal Discharges.	The unique code/description that identifies the procedures and actions the permittee will take to inform public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste.	122.34(b)(3)(ii)(D), 122.34(d)(1)(i)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
MS4 Construction Runoff Ordinance.	The unique code/description that identifies the permittee's ordinance or other regulatory mechanism, including sanctions to ensure compliance, to require erosion and sediment controls.	122.34(b)(4)(ii)(A), 122.34(d)(1)(i)	1,2.
MS4 Erosion and Sediment Controls.	The unique code/description that identifies the permittee's requirements for construction site operators to implement appropriate erosion and sediment control BMPs.	122.34(b)(4)(ii)(B), 122.34(d)(1)(i)	1,2.
MS4 Construction Site Waste.	The unique code/description that identifies the permittee's requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.	122.34(b)(4)(ii)(C), 122.34(d)(1)(i)	1,2.
MS4 Construction Site Review.	The unique code/description that identifies the permittee's procedures for site plan review which incorporate consideration of potential water quality impacts.	122.34(b)(4)(ii)(D), 122.34(d)(1)(i)	1,2.
MS4 Public Information	The unique code/description that identifies the permittee's procedures for receipt and consideration of information submitted by the public.	122.34(b)(4)(ii)(E), 122.34(d)(1)(i)	1,2.
MS4 Site Inspections And Enforcement.	The unique code/description that identifies the permittee's procedures for site inspection and enforcement of control measures.	122.34(b)(4)(ii)(F), 122.34(d)(1)(i)	1,2.
MS4 Controls For Stormwater From New Development And Redevelopment.	The unique code/description that identifies the combination of structural and/or non-structural best management practices (BMPs), which the permittee is using to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre.	122.34(b)(5)(ii)(A), 122.34(d)(1)(i)	1,2.
MS4 Stormwater Ordinance For New Development And Redevelopment.	The unique code/description that identifies the permittee's ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects.	122.34(b)(5)(ii)(B), 122.34(d)(1)(i)	1,2.
MS4 Maintenance Of BMPs	The unique code/description that identifies the permittee's program to ensure adequate long-term operation and maintenance of BMPs used for controlling runoff from new development and development projects.	122.34(b)(5)(ii)(C), 122.34(d)(1)(i)	1,2.
MS4 Runoff From Municipal Operations.	The unique code/description that identifies the permittee's operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.	122.34(b)(6)(i), 122.34(d)(1)(i).	1,2.
MS4 Additional Measures	The unique code/description that identifies the any other additional measures in the permittee's stormwater management program that is required by the permit.	122.34(b), 122.34(d)	1,2.
MS4 Measurable Goals for Additional Measures.	The unique code/description that identifies the measurable goal for each of the programs or BMPs to address stormwater including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action.	122.34(b)(1), 122.34(d)	1,2.
Collection System Information on NPDES Permit Application or Notice of Intent			
Name of Collection System	This is the name of each collection system (by municipality or area) providing flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Owner Name of Collection System.	This is the owner name of each collection system (by municipality or area) providing flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Owner Type of Collection System.	This is the ownership type of each collection system (including municipality owned, privately owned). This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Permit Number for Collection System.	This is the NPDES permit number (if applicable) of each collection system (by municipality or area) providing flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Population of Collection System.	This is the population served for each collection system (by municipality or area) that provides flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Percentage of Collection System That Is a Combined Sewer System.	This is the percentage of the collection system, for each collection system (by municipality or area), that is a combined sewer system. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv) and (vii)	1,2.
Combined Sewer System Information on NPDES Permit Application or Notice of Intent			
Complete and Implement a Long-Term CSO Control Plan.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit requires the permit holder to complete and implement a long-term CSO control plan and whether the permit holder is in compliance with this permit language.	CWA 402(q)(1)	1,2.
Nine Minimum CSO Controls Developed.	All combined sewer system NPDES permittees are required to implement the nine minimum controls outlined in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder developed the nine minimum controls in compliance with permit language.	CWA 402(q)(1)	1,2.
Nine Minimum CSO Controls Implemented.	All combined sewer system NPDES permittees are required to implement the nine minimum controls outlined in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder implemented the nine minimum controls in compliance with permit language.	CWA 402(q)(1)	1,2.
Enforcement Mechanism for the LTCP.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies the type of enforcement mechanism used to require the development and implementation of a LTCP.	CWA 402(q)(1)	1,2.
LTCP Submitted	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder submitted the LTCP for approval by the permitting authority.	CWA 402(q)(1)	1,2.
LTCP Approved	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the LTCP submitted by the permit holder was approved by the permitting authority.	CWA 402(q)(1)	1,2.
LTCP Approval Date	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies the date when the permitting authority approved the LTCP. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 402(q)(1)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Actual Date Completed LTCP and CSO Controls.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies the date by which the permit holder completed all required LTCP and CSO controls. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 402(q)(1)	1,2.
Enforceable Schedule to Complete LTCP and CSO Controls.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder is on an enforceable schedule to complete all required LTCP and CSO controls.	CWA 402(q)(1)	1,2.
Other CSO Control Measures with Compliance Schedule.	This data element identifies whether the permit holder has other CSO control measures specified in a compliance schedule, beyond those identified in the nine minimum controls, LTCP, or a plan for sewer system separation.	CWA 402(q)(1)	1,2.
Approved Post-Construction Compliance Monitoring Program.	This data element indicates whether the permit holder is currently operating under an approved post-construction compliance monitoring program.	CWA 402(q)(1)	1,2.
Pretreatment Information on NPDES Permit Application, Notice of Intent, (or Pretreatment Compliance Audit or Inspection) (this includes permit application data required for all new and existing POTWs (40 CFR 122.21(j)(6))			
Pretreatment Program Required Indicator.	The code/description indicating if the permitted municipality is required to develop a pretreatment program.	122.21(j)(6), 122.44(j)	1,2.
Pretreatment Program Approved Date.	The date the pretreatment program was approved. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.44(j), 403.8(a)	1,2.
Approval Authority Name	The name of the agency that is the designated approval authority.	122.44(j), 403.8(a)	1,2.
Program Modification Date for Required Pretreatment Streamlining Changes.	EPA's Pretreatment Streamlining Rule (14 October 2005; 70 FEDERAL REGISTER 60134–60198) revised several provisions of the General Pretreatment Regulations (40 CFR part 403). In particular, the Pretreatment Streamlining Rule made 13 more stringent changes to the General Pretreatment provisions (40 CFR part 403). The rule requires that EPA and state NPDES permitting authorities revise NPDES permits and approved pretreatment program authorizations to require implementation of these 13 more stringent changes. This is the date when the Control Authority adopted the required 13 changes from the Pretreatment Streamlining Rule. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.7(h); 403.8(f)(1)(iii)(B)(6); 403.8(f)(2)(vi); 403.8(f)(2)(viii)(A–C); 403.12(b), (e), (h); 403.8(f)(1)(iii)(B)(3); 403.12(o); 403.12(g)(2); 403.12(g)(3), (4), (6); 403.12(g)(3); 403.12(j); 403.12(m).	1,2.
Program Modification Date for Optional Pretreatment Streamlining Changes.	EPA's Pretreatment Streamlining Rule (14 October 2005; 70 FEDERAL REGISTER 60134–60198) revised several provisions of the General Pretreatment Regulations (40 CFR part 403). In particular, the Pretreatment Streamlining Rule made 7 changes to the General Pretreatment provisions (40 CFR part 403) that provide more flexibility. The rule give EPA and state NPDES permitting authorities the option to revise NPDES permits and approved pretreatment program authorizations for these 7 changes. This is the date when the Control Authority adopted the optional 7 changes from the Pretreatment Streamlining Rule. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.8(f)(2)(v) and 403.12(e)(2); 403.8(f)(1)(iii)(A); 403.3(e), 403.5(c)(4), 403.8(f), 403.12(b), (e), and (h); 40 CFR 403.3(v)(2), 403.8(f)(2)(v)(B), 403.8(f)(6), 403.12(e)(1), 403.12(g), (i), and (q); 40 CFR 403.8(f)(2)(v)(C), 403.12(e)(3), and 403.12(i); 403.6(c)(6); 403.6(c)(5).	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Program Modification Type for Optional Pretreatment Streamlining Changes.	EPA's Pretreatment Streamlining Rule (14 October 2005; 70 FEDERAL REGISTER 60134–60198) revised several provisions of the General Pretreatment Regulations (40 CFR part 403). In particular, the Pretreatment Streamlining Rule made 7 changes to the General Pretreatment provisions (40 CFR part 403) that provide more flexibility. This data element identifies which of the 7 optional provisions from the Pretreatment Streamlining Rule were adopted by the Control Authority.	Same as preceding data element.	1,2.
Significant Industrial User Name.	The name of each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Address.	The mailing address of each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User City.	The name of the city, town, village, or other locality, when identifiable, within whose boundaries (the majority of) for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User State.	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Zip Code.	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Subject to Local Limits.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW whether the SIU is subject to local limits.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Subject to Local Limits More Stringent Than Categorical Standards.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW whether the SIU is subject to local limits that are more stringent than the applicable categorical standards.	122.21(j)(6), 122.44(j)	1,2.
Industrial User Subject to Categorical Standards.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW whether the SIU is subject to categorical standards.	122.21(j)(6), 122.44(j)	1,2.
Applicable Categorical Standards.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the applicable categorical standards.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Process Wastewater Flow Rate.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the process wastewater flow rate (in gallons per day).	122.21(j)(6), 122.44(j)	1,2.
Type of Significant Industrial User Process Wastewater Flow.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the type of process wastewater flow (continuous or intermittent).	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Non-Process Wastewater Flow Rate.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the non-process wastewater flow rate (in gallons per day).	122.21(j)(6), 122.44(j)	1,2.
Type of Significant Industrial User Non-Process Wastewater Flow.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the type of non-process wastewater flow (continuous or intermittent).	122.21(j)(6), 122.44(j)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Industrial User Causing Problems at POTW.	This data element will identify for each Significant Industrial User (SIU) whether it caused or contributed to any problems (including upset, bypass, interference, pass-through) at this POTW within the past four and one-half years. EPA regulations require the Control Authority to develop and enforce local limits when the discharge from an IU causes or contributes to any problems (including upset, interference, bypass) at the receiving POTW's effluent discharge or biosolids.	122.21(j)(6), 122.44(j)(2)(ii), 403.5(c)	1,2.
Receiving RCRA Waste	This data element will identify whether the POTW has received RCRA hazardous waste by truck, rail, or dedicated pipe within the last three years.	122.21(j)(7), 122.44(j)	1,2.
Receiving Remediation Waste.	This data element will identify whether the POTW has received RCRA or CERLCA waste from off-site remedial activities within the last three years.	122.21(j)(7), 122.44(j)	1,2.
Control Authority Name	The name of the Control Authority for the Significant Industrial User discharging to this POTW. This will be the name of the State or EPA Region when they are the Control Authority. This field may also come from the pretreatment compliance audit or inspection.	122.44(j)	1,2.
Control Authority NPDES Permit Number.	The NPDES permit number of the Control Authority for the Significant Industrial User discharging to this POTW. This field may also come from the pretreatment compliance audit or inspection.	122.44(j)	1,2.
Cooling Water Intake Information on NPDES Permit Application or Notice of Intent			
Type of Facility	The unique code/description that identifies the type of facility based on regulations, 1 = New Facility under 40 CFR part 125, Subpart I, 2 = New Offshore Oil & gas Facility under 40 CFR part 125, Subpart N, 3 = Existing Facility under 40 CFR part 125, Subpart J, 4 = BPJ Facility over 2 MGD under 40 CFR 125.90(b), 401.14.	CWA 316(b), 122.21(r), 125 Subpart I, J, and N, 401.14.	1,2.
Number of Cooling Water Intake Structures (CWISs).	The number of cooling water intake structures (CWISs) at the facility.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Design Intake Flow for Cooling Water Intake Structure.	The design intake flow (DIF), in units of MGD, is the total designed amount of flow for each permitted cooling water intake structure. This value is based on maximum design flow capacities.	CWA 316(b), 122.21(r),125.80, 125.86, 125.90(b), 125.131, 125.136, 401.14.	1,2.
Actual Intake Flow for Cooling Water Intake Structure.	This actual flow value, in units of MGD, is intended to represent on-the-ground intake flow capacities in the preceding year, as opposed to the DIF, which is based on maximum design flow capacities.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Average Reported Intake Flow for Cooling Water Intake Structure.	This average flow value, in units of MGD, is intended to represent on-the-ground intake flow capacities in the preceding year, as opposed to the DIF, which is based on maximum design flow capacities.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Percentage of Intake for Cooling Purposes.	This is the percentage of water intake that is used for cooling purposes for each permitted cooling water intake structure.	CWA 316(b), 122.21(r), 125.81, 125.90(b), 125.131, 401.14.	1,2.
Location Type for Cooling Water Intake Structure.	The unique code/description that identifies the location and description for each intake. These values are 1=shoreline intake description (flushed, recessed), 2=intake canal, 3=embayment, bank, or cove, 4=submerged offshore intake, 5=near-shore submerged intake, 6=shoreline submerged intake.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Distance Offshore for Submerged Cooling Water Intake Structure.	The distance (in feet) from shore for each CWIS	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Maximum Through-Screen Velocity.	This is the maximum velocity (in feet/second) of the water intake through the screen for each permitted cooling water intake structure.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Average Through-Screen Velocity.	This is the average through-screen velocity (in feet/second) of the water intake through the screen for each permitted cooling water intake structure.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Percentage of Mean Annual Flow Withdrawn—Fresh Water Facilities.	The percentage of the source water annual mean flow withdrawn as compared to the total design intake flow from all cooling water intake structures located in a freshwater river or stream at the permitted facility.	CWA 316(b), 125.84, 125.90(b), 401.14	1,2.
Percentage of Design Intake Flow over Tidal Cycle—Tidal River or Estuary Facilities.	The percentage of the volume of the water column within the area centered about the opening of the intake in a tidal river or estuary with a diameter defined by the distance of one tidal excursion at the mean low water level as compared to the facility's total design intake flow over one tidal cycle of ebb and flow.	CWA 316(b), 125.84, 125.90(b), 401.14	1,2.
Waterbody Type	The unique code/description that describes the impingement control technologies for each CWIS. A value of 1 = Ocean, 2 = Estuary, 3 = Great Lake, 4 = Fresh River, 5 = Lake/Reservoir.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Canal/Fish Return Length ...	This is the length for any fish return system at the permitted facility.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Significant Navigation or Waterbody Use Type Near The Intake Entrance.	The unique code/description for the type of navigation or waterbody use near each CWIS. A value of 1 (one) indicates the intake is located where boat/barge navigation near the intake is a consideration when making any potential modifications to the intake. A value of 0 (zero) indicates navigation does not occur in the vicinity of the intake. Navigational considerations affect which impingement and entrainment technologies may be used by intakes located in embayments, banks, or coves.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Mean Intake Water Depth ...	This is the mean depth (in feet) for each CWIS. This value is used for the estimation of total existing screen width.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Intake Well Depth	The intake well depth (in feet) is the distance from the intake deck to the bottom of the screen well for each CWIS, and includes both water depth and distance from the water surface to the deck. The intake well depth is used to select the depth of the required screen.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Debris Loading	The unique code/description that describes the amount of debris near each CWIS. A value of 1 (one) indicates high levels of debris and trash near the intake. A value of 0 (zero) indicates debris is low or negligible. A facility that uses a trash rack is likely to have a high debris loading.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Impingement Control Technology In-Place.	The unique code/description that describes the impingement control technologies for each CWIS. A value of 1= Modified Traveling Screens, 2= Passive Intake (Velocity Cap, Coarse Wedgewire Screens, Porous Dam, Leaky Dike, etc.), 3= Barrier net, and 4 = Fish Diversion or Avoidance (Louvers, Acoustics, etc.), 5 = Other technology. A value of zero means no controls.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Entrainment Control Technology in-Place.	The unique code/description that describes the entrainment control technologies for each CWIS. A value of 1 = Traveling Screens w/Fine Mesh, 2 = Far Offshore Intake, and 3 = Passive Screens w/Fine Mesh, 4 = Closed-Cycle Recirculating System, 5 = Other Technology. A value of zero means no controls.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Track II Comprehensive Demonstration Study Submission Date.	The date of any submission of any Track II Comprehensive Demonstration Study. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.86(c)(2), 125.136(c)(2)	1,2.
Design and Construction Technology Plan Submission Date.	The submission date of any Design and Construction Technology Plan. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.80(a) and (b), 125.86(b)(4), 125.131(c) and (d).	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Source Water Biological Study Submission Date.	The submission date of any Source Water Biological Study. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.86(c), 125.136(c)	1,2.
Verification Monitoring Plan Submission Date.	The submission date of any Verification Monitoring Plan. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.86(c), 125.136(c)	1,2.
Source Water Physical Data Submission Date.	The submission date of any Source Water Physical Data. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 122.21(r), 125 Subpart I and N.	1,2.
Cooling Water Intake Structure Data Submission Date.	The submission date of any Cooling Water Intake Structure Data. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 122.21(r), 125 Subpart I and N.	1,2.
Source Water Baseline Biological Characterization Data Submission Date.	The submission date of any Source Water Baseline Biological Characterization Data. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 122.21(r), 125 Subpart I and N.	1,2.
New Facilities—Alternative Requirements Provision Request Approval Date.	The approval date of any request under the Alternative Requirements provision as defined under 40 CFR 125.85 or 40 CFR 125.135. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.85, 125.135	1,2.
CWA Section 316(a) Thermal Variance Information on NPDES Permit Application or Notice of Intent			
Thermal Variance Unit	This is the unit of measure (e.g., °F or °C of discharged effluent, °F or °C different between discharged effluent and receiving waterbody, °F or °C different between discharged effluent and inlet water source) associated with numeric value of the alternative effluent limitation granted.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Granted	This is a flag indicating whether the permitting authority has granted the permittee a CWA 316(a) variance for the controlling NPDES permit.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Value	This is the numeric value of the alternative effluent limitation granted.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Date	This is the date when the permitting authority granted the permittee a CWA 316(a) variance for the controlling NPDES permit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Study Date.	This is the date when the facility submitted new studies/data based on actual operation experience to support the continuation of the variance. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(a), 125 Subpart H	1,2.
Compliance Monitoring Activity			
Permitted Feature Identifier	The unique identifier for the permitted feature number entered by the user for the inspected permitted feature. This data element will provide a linkage to location data from the NPDES permit application.	123.26	1.
Compliance Monitoring Activity Actual End Date.	The actual date on which the compliance monitoring activity ended. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 308	1.
Compliance Monitoring Activity Planned End Date.	The planned date for the compliance monitoring activity to end. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 308	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Compliance Monitoring State.	The US Postal Service abbreviation that represents that state or state equivalent for the U.S. in which the compliance monitoring activity occurred.	none	1.
Compliance Activity	The unique code/description that identifies a type of compliance event or enforcement action. For example, there are codes for inspection, investigation, information request, and offsite records review.	CWA 308	1.
Compliance Monitoring Type.	The code/description indicating the type of compliance monitoring activity taken by a regulatory Agency. Each compliance monitoring activity has a variety of different types, such as audit, sampling, case development, follow-up, reconnaissance without sampling, etc.	CWA 308	1.
Biomonitoring Inspection Method.	The unique code that identifies the type of biomonitoring inspection method. This data element supplements the Compliance Monitoring Category and Compliance Monitoring Type Inspection Type recorded for all inspections.	CWA 308	1.
Compliance Monitoring Category.	The unique code/description identifying the compliance monitoring or inspection category code/description.	CWA 308	1.
Compliance Monitoring Action Reason.	The unique code that identifies the purpose of an activity.	CWA 308	1.
Was this a State, Federal or Joint (State/Federal) Inspection?.	The flag indicating if the inspection is a joint inspection by federal, state, tribal, or territorial personnel.	CWA 308	1.
Compliance Monitoring Agency Type.	An indicator whether the compliance monitoring activity was designated as an EPA or state activity/inspection.	CWA 308	1.
Law Sections Evaluated	The unique identifier for the section(s) of law evaluated in or pertinent to the activity.	CWA 308	1.
Compliance Monitoring Activity (Biosolids Inspections)			
Deficiencies Identified Through the Biosolids Inspection.	This field will identify the deficiency or deficiencies identified in that facility's biosolids implementation for each biosolids inspection. These deficiencies will allow users to distinguish between Category I and Category 2 violations for determining significant noncompliance (SNC).	CWA 308	1.
Compliance Monitoring Activity (AFO/CAFO Inspections)			
Animal Type	The unique code/description that identifies the operation's applicable animal sector(s) on the site.	122.23	1.
Total Number of Animals	The total number of each type of livestock at the facility.	122.23	1.
Total Number of Animals in Open Confinement.	The total number of each type of livestock at the facility in open confinement.	122.23	1.
Animal Maximum Capacity	The maximum number of each type of livestock at the facility.	122.23	1.
Containment Type	The unique code/description for each type of containment used by the operation.	122.23	1.
Containment Total Capacity	The total capacity, in gallons, of the containment structure.	122.23	1.
CAFO Designation Date	The date on which the facility is designated as a Concentrated Animal Feeding Operation (CAFO). The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.23	1.
Designation Reason	If the facility was designated, indicate the reason that the facility was designated, such as the amount of waste reaching waters, location, slope, rainfall, etc.	122.23	1.
Is the Animal Facility Type a CAFO?.	The flag to indicate if the facility is classified as a CAFO or not.	122.23	1.
Did Facility Make a No Discharge Certification?.	A code identifying whether the facility made a certification of no discharge to the EPA or State NPDES permitting authority.	122.23	1.
Is an NMP Being Implemented?.	A code identifying whether the facility is implementing a Nutrient Management Plan (NMP).	122.23	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Is an NMP Being Updated Annually?.	A code identifying whether the facility is annually updating its Nutrient Management Plan (NMP).	122.23	1.
Land Application BMP Type	The unique code/description for each type of best management practice used in conjunction with land application.	122.23	1.
Mortality Disposal Method	The unique code/description for each type of animal mortality disposal.	122.23	1.
Monitoring Well Data Availability.	A code identifying whether there is monitoring well data available for the facility.	122.23	1.
Storage Type	The unique code/description that describes the type of manure, litter, and process wastewater storage used by the operation.	122.23	1.
Storage Total Capacity	The total capacity, in tons, of the manure, litter, and process wastewater storage structure.	122.23	1.
Compliance Monitoring Activity (Sewer Overflows Inspections and Audits)			
Sewer Overflow Longitude	This data element is required for sewer overflow inspections without a permitted feature identifier. The measure of the angular distance on a meridian east or west of the prime meridian for the sewer overflow. Entered in either decimal degrees or in degrees minutes seconds; stored in decimal degrees. This data element will enable users to compare this inspection to a sewer overflow incident report. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	123.26	1.
Sewer Overflow Latitude	This data element is required for sewer overflow inspections without a permitted feature identifier. The measure of the angular distance on a meridian north or south of the equator for the sewer overflow. Entered in either decimal degrees or in degrees minutes seconds; stored in decimal degrees. This data element will enable users to compare this inspection to a sewer overflow incident report. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	123.26	1.
Type of Sewer Overflow	A code identifying the type of sewer overflow (including CSO, SSO, Bypass, Other Discharge from the Collection System or Treatment Works).	123.26	1.
Sewer Overflow Cause	The likely cause of the overflow event (e.g., broken pipe, fats/oil/grease, mechanical failure, pump station electrical failure, etc.).	123.26	1.
Duration of Sewer Overflow event (hours).	Duration of the sewer overflow event (in hours). If the discharge has not been corrected, the best professional judgment from the compliance inspector of the time the sewer overflow is expected to continue.	123.26	1.
Sewer Overflow Discharge Volume.	Best professional judgment from the compliance inspector on the estimated number of gallons of sewer overflow.	123.26	1.
Failure to Submit Sewer Overflow Incident Report.	This data element would indicate whether the POTW has failed to provide 24-hr. notification of sewer overflows or failed to submit sewer overflow incident follow-up reports within the required five days.	122.41(l)(6) and (7)	1.
Compliance Monitoring Activity (Pretreatment Inspections and Audits)			
Legal Authority Status and Deficiencies.	This data element would identify if legal authority to implement the pretreatment program was sufficient or if the pretreatment compliance audit or inspection identified particular deficiencies, identified in a drop-down list. This data element is consistent with the "FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements", from EPA, 27 September 1989.	See Data Description.	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Failure of the Control Authority to Enforce Against Pass-Through or Interference.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to enforce against pass-through or interference. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority to Submit Required Reports Within 30 Days.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to submit required pretreatment reports within thirty days of the due date. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority To Meet Compliance Schedule Milestone Dates Within 90 Days.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to meet compliance schedule milestone dates within 90 days of the due date. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority to Issue or Reissue Control Mechanisms.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to issue or reissue control mechanisms. If at least 90% of the significant industrial users have valid control mechanisms in the past six-month period, then this would not be identified as a deficiency. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority To Inspect or Sample.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to inspect or sample. If at least 80% of the significant industrial users have been inspected or sampled in the past twelve months, then this would not be identified as a deficiency. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority to Enforce Pretreatment Standards and Reporting Requirements.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to inspect or sample. If less than 15% of the significant industrial users have been in significant noncompliance in the past twelve months, then this would not be identified as a deficiency. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Compliance Monitoring Activity (Discharge Monitoring Report, and Pretreatment SIU Periodic Compliance Reports in Municipalities without an Approved Pretreatment Program)			
Permitted Feature	The identifier assigned for each location at which conditions are being applied.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Limit Set	The unique identifier tying the DMR form to its Limit Set record.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Parameter Code	The unique code/description identifying the parameter reported on the DMR.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Monitoring Location	The code/description of the monitoring location at which the sampling occurred for a DMR parameter.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Monitoring Period End Date	The date that the monitoring period for the values covered by this DMR form ends. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
NODI	The unique code/description that indicates the reason that ''No Discharge'' or ''No Data'' was reported in place of the DMR value.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Value	The DMR value number reported on the DMR form	122.41(l)(4)(i)/CWA 301(d), 304(b), and 304(m).	1,2,3,6,8.
Concentration Units/Quantity Units.	The code/description representing the unit of measure applicable to quantity or concentration limits and measurements as entered by the user on the DMR form.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Value Received Date	The date the DMR value was received by the regulatory authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.		1.
Value Type	The unique code/description identifying a DMR value type (i.e. Quantity 1, Quantity 2, Concentration 1, Concentration 2, Concentration 3).	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Qualifier	The unique code identifying the limit value operator (e.g., <, =, >).		1,2,3,6,8.
Compliance Monitoring Activity (Periodic Program Reports)			
Date Report Received	The date the report was received. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
Start Date of Reporting Period.	The start date of the reporting period. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
End Date of Reporting Period.	The end date of the reporting period. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
Federal Regulatory Section(s) Requiring the Program Report.	The Federal regulatory section(s) that are the underlying legal basis for requiring the program report to be submitted.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
Compliance Monitoring Activity (Data Elements Specific to Biosolids Annual Program Reports)			
Treatment Processes	This data element identifies the biosolids treatment processes at the facility. For example, this may indicate whether primary, secondary, and tertiary treatment is being used, and the type of the sewage sludge treatment process or processes used, including drying processes.	503.18, 503.28, 503.48	4.
Biosolids Class	This data element will identify the class or classes (e.g., Class A, Class A EQ, Class B) of biosolids generated by the facility.	503.18, 503.28, 503.48	4.
Management Practice	This data element will identify the type of biosolids management practice or practices (e.g., land application, surface disposal, incineration) for biosolids generated by the facility.	503.18, 503.28, 503.48	4.
Sampling and analytical methods.	Describe the representative sampling processes for compliance with 40 CFR part 503, 40 CFR part 136, or an issued NPDES permit including analytical methods used to analyze for enteric viruses, fecal coliforms, *helminth ova, Salmonella sp.,* and regulated metals, as well as the reporting limit.	503.18, 503.28, 503.48	4.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Biosolids Volume Amount	This is the amount (in dry metric tons) of biosolids. If there is more than one biosolids class, then the facility will separately report a biosolids volume amount for each biosolids class and management practice.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Name.	This is the name of the off-site facility receiving biosolids from this facility. If the biosolids generator sends biosolids to more than one receiving facility, then the biosolids generator will report each site name for each biosolids class code and management practice code.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Street Address.	This is the street address, if applicable, of the Biosolids Receiving Site.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site City.	This is the city name of the Biosolids Receiving Site, if applicable.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site State.	This is the state code of the Biosolids Receiving Site, if applicable.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Zip Code.	This is the zip code of the Biosolids Receiving Site, if applicable.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Latitude.	The measure of the angular distance on a meridian north or south of the equator for the Biosolids Receiving Site. If this is a field, the measurement should be made at the center of the field. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Longitude.	The measure of the angular distance on a meridian east or west of the prime meridian for the Biosolids Receiving Site. If this is a field, the measurement should be made at the center of the field. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	503.18, 503.28, 503.48	4.
Biosolids Monitored Parameter.	This is the monitored parameter for each biosolids class code and each management practice. If the biosolids generator produces more than one biosolids class, then the biosolids generator will separately report each monitored parameter for each biosolids class and management practice.	503.18, 503.28, 503.48	4.
Biosolids Monitored Parameter Concentration.	This is the concentration value of the Biosolids Monitored Parameter.	503.18, 503.28, 503.48	4.
Biosolids Monitored Parameter Units.	This is the measurement unit (e.g., mg/l) associated with the Biosolids Monitored Parameter Concentration.	503.18, 503.28, 503.48	4.
Actual Measured Cumulative Pollutant Loading Rate.	This is the measured cumulative amount of a pollutant (on a dry weight basis) that has been applied to an area of land (Biosolids Receiving Site) as specified in the regulations at 40 CFR part 503. The list of pollutants to be measured is at 40 CFR 503.13, Table 2. This value is the total mass of a particular pollutant (on a dry weight basis) that has been applied to a unit area of land during the entire life of the application site. When the Actual Measured Cumulative Pollutant Loading Rate exceeds the Cumulative Pollutant Loading Rate (CPLR) limit for any pollutant, as identified at 40 CFR 503.13, Table 2, no additional bulk biosolids subject to CPLR limits may be applied to the site.	503.13	4.
Actual Measured Annual Application Rate.	This is the measured annual application rate (on a dry weight basis) that has been applied to an area of land (Biosolids Receiving Site). This value is compared against the Annual Pollutant Loading Rate (see 40 CFR 503.13, Table 4) to determine compliance for each Biosolids Receiving Site for each year.	503.13	4.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Disposition of Incinerator Ash.	This provides information regarding the method of disposal of incinerator ash (e.g., in surface disposal units, use in cement kilns, or other practice).		4.
Compliance Monitoring Activity (Data Elements Specific to CAFO Annual Program Reports)			
Animal Types	The unique code/description that identifies the permittee's applicable animal sector(s) in the previous 12 months. This includes (but not limited to) beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, and turkeys.	122.42(e)(4)(i)	5.
Total Number	The total number of each type of livestock at the facility in the previous 12 months.	122.42(e)(4)(i)	5.
Total Number of Animals in Open Confinement.	The total number of each type of livestock at the facility in open confinement in the previous 12 months.	122.42(e)(4)(i)	5.
CAFO Waste Type	The type of CAFO waste described (i.e., manure, litter, process wastewater).	122.42(e)(4)(ii)	5.
Amount of CAFO Waste	The amount of CAFO waste described, in gallons, as a total for the previous 12 months.	122.42(e)(4)(ii)	5.
Status of the CAFO Waste	The status of the CAFO waste described (i.e., generated, generated and transferred, or applied onsite).	122.42(e)(4)(ii)	5.
Total Number of Acres for Land Application Covered by the Nutrient Management Plan.	Total number of acres (to the nearest quarter acre) for land application covered by the nutrient management plan in the previous 12 months.	122.42(e)(4)(iv)	5.
Total Number of Acres Used for Land Application.	The total number of acres (to the nearest quarter acre) under control of the CAFO used for land application in past 12 months.	122.42(e)(4)(v)	5.
Discharges During Year from Production Area.	The flag indicating if there is any discharge from the production area in the previous 12 months.	122.42(e)(4)(vi)	5.
Discovery Dates of Discharges from Production Area.	The date of each discharge from the permittee's production area in the previous 12 months. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.42(e)(4)(vi)	5.
Duration of Discharge from Production Area.	The duration (in hours) of each discharge from the permittee's production area in the previous 12 months. If the discharge is continual, the best professional judgment from the permitted facility of the time the discharge from the permittee's production area is expected to continue.	122.42(e)(4)(vi)	5.
Approximate Volume of Discharges from Production Area.	Best professional judgment from the permittee on the estimated number of gallons for each discharge from the permittee's production area in the previous 12 months.	122.42(e)(4)(vi)	5.
Whether NMP Approved or Developed by Certified Planner.	A flag indicating whether the NMP was approved or developed by a certified nutrient management planner.	122.42(e)(4)(vii)	5.
Actual Crop(s) Planted for Each Field.	Actual crop(s) planted for each field	122.42(e)(4)(viii)	5.
Actual Crop Yield(s) for Each Field.	Actual crop yield(s) for each field (amount of production that was grown on each field, e.g., 300 bushels per acre).	122.42(e)(4)(viii)	5.
Concentration Units/Quantity Units.	The code/description representing the unit of measure applicable to quantity or concentration limits and measurements as entered by the permittee. The same units must be used across all sampling data for manure, litter, process wastewater, and fertilizer as well as the maximum calculation methods specified in the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Nitrogen Content of the CAFO Waste Type.	Results of sampling and analysis of a particular CAFO waste type (i.e., manure, litter, or process wastewater). The same form of nitrogen must be used across all sampling data for manure, litter, process wastewater, and fertilizer as well as the maximum calculation methods specified in the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.
Phosphorus Content of the CAFO Waste Type.	Results of sampling and analysis of a particular CAFO waste type (i.e., manure, litter, or process wastewater). The same form of phosphorus must be used across all sampling data for manure, litter, process wastewater, and fertilizer as well as the maximum calculation methods specified in the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.
Method for Calculating Maximum Amounts of Manure, Litter, and Process Wastewater.	Flag identifying for each field whether the CAFO used the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.
Field Identification Number	A unique field number to which CAFO waste was or will be applied. This data element will be used whether the term ''for each field'' is used in the CAFO Annual Program Report.	122.42(e)(4)(viii)	5.
Calculated Maximum Amount of That CAFO Waste to Be Land Applied to that Field.	The maximum amount of manure, litter, or process wastewater (in gallons) that can be applied to each field in the previous 12 months in accordance with procedures in the Linear Approach [40 CFR 122.42(e)(5)(i)(B)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)(D)].	122.42(e)(4)(viii)	5.
Actual Amount of That CAFO Waste Applied to that Field.	The actual amount of a particular CAFO waste (i.e., manure, litter, or process wastewater) applied to a particular filed in the previous 12 months.	122.42(e)(4)(viii)	5.
CAFO Waste Type Applied to That Field.	The type of CAFO waste (i.e., manure, litter, or process wastewater) applied to that particular field.	122.42(e)(4)(viii)	5.
Pollutant Parameter Measured in the Soil Test, under the Narrative Rate Approach.	The pollutant parameter (i.e., nitrogen or phosphorus) of the CAFO waste measured, in accordance with procedures in the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)(D)].	122.42(e)(4)(viii)	5.
Nitrogen Amount of Any Supplemental Fertilizer Applied.	For CAFOs using the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)] the nitrogen amount of supplemental fertilizer (in pounds or gallons) that was applied to each field in the previous 12 months.	122.42(e)(4)(viii)	5.
Phosphorus Amount of Any Supplemental Fertilizer Applied.	For CAFOs using the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)] the phosphorous amount of supplemental fertilizer (in pounds or gallons) that was applied to each field in the previous 12 months.	122.42(e)(4)(viii)	5.
Compliance Monitoring Activity (Data Elements Specific to Municipal Separate Storm Sewer System Program Reports)			
MS4 Reliance on Other Government Entities.	Names of all municipalities that are included in the permit coverage..	122.34(g)(v)	6.
Unique Number for Each Municipality Covered Under MS4 Permit.	Unique number for each municipality covered under MS4 permit. This will allow greater geographic resolution for the MS4 components being tracked and ensure consistency from year to year. The number would essentially be similar to an outfall number, for distinguishing compliance at various locations.	122.34(g)(3) and 122.42(c)	6.
Listing of MS4 Permit Components.	This code/description will identify for each municipality all of the permitted components that are included in the MS4 permit. The groupings of these MS4 components will include public education and outreach on stormwater impacts; public involvement/participation; illicit discharge detection and elimination; construction site stormwater runoff; post-construction stormwater management in new development and redevelopment; and pollution prevention/good housekeeping for municipal operations.	122.34(g)(3) and 122.42(c)	6.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Identified Measurable Goal for Each MS4 Permit Component.	Identified measurable goal for each MS4 permit component for each municipality.	122.34(g)(3) and 122.42(c)	6.
Status and Assessment of Implementing MS4 Components in Permit.	Status and assessment of each MS4 permit component for each municipality.	122.34(g)(3) and 122.42(c)	6.
Number of Notice of Violations.	For each municipality covered under the MS4 permit, identify the number notice of violations. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Administrative Fines.	For each municipality covered under the MS4 permit, identify the number of administrative fines. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Stop Work Orders.	For each municipality covered under the MS4 permit, identify the number of stop work orders. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Civil Penalties	For each municipality covered under the MS4 permit, identify the number of civil penalties. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Criminal Actions	For each municipality covered under the MS4 permit, identify the number of criminal actions. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Administrative Orders.	For each municipality covered under the MS4 permit, identify the number of administrative orders. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Compliance Monitoring Activity (Data Elements Specific to Pretreatment Program Annual Reports and SIU Periodic Compliance Reports in Municipalities without an Approved Pretreatment Program)			
SNC Published in Newspaper Flag.	An indication as to which Significant Industrial Users (SIUs) and Non-Significant Categorical Industrial Users (NSCIUs) in SNC were published in the newspapers.	403.12(i)(2), 403.8(f)(2)(viii)	7.
SNC with Pretreatment Schedule Flag.	An indication as to which Significant Industrial Users (SIU) and Non-Significant Categorical Industrial Users (NSCIU) were in SNC with pretreatment schedules.	403.12(i)(2), 403.8(f)(2)(viii)	7.
Date of Most Recent Adoption of Technically Based Local Limits.	The date on which the Control Authority has technically evaluated the need for local limits. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.5(c), 403.12(i)(4), 403.8(f)(4)	7.
Date of Most Recent Technical Evaluation & or Local Limits.	The date on which the Control Authority adopted local limits for pollutants. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.5(c), 403.12(i)(4), 403.8(f)(4)	7.
Local Limits Pollutants	This is the list of the pollutants for which the Control Authority derived, which is calculated using data from the headworks of the POTW.	403.5(c), 403.12(i)(4)	7.
POTW Discharge Contamination Indicator (Program Report).	The flag indicating if there have been any problems (including upset, bypass, interference, pass-through) with the receiving POTW's effluent discharge within the previous 12 months.	403.8(f), 403.12(i)	7.
POTW Biosolids Contamination Indicator (Program Report).	The flag indicating if there have been any problems (including upset, bypass, interference, pass-through) with the receiving POTW's biosolids within the previous 12 months.	403.8(f), 403.12(i)	7.
Removal Credits Application Status.	The status of the POTW's application for administering removal credits.	403.12(i), 403.7	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Date of Most Recent Removal Credits Approval.	This is the date the POTW's application for removal credits was approved by the Approval Authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.12(i)(4), 403.7	7.
Removal Credits Pollutants	This field contains a list of pollutants for which the Approval Authority granted the POTW authorization to administer removal credits.	403.12(i)(4)	7.
Industrial User Name (Program Report).	The name of each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User Address (Program Report).	The mailing address of each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User City (Program Report).	The name of the city, town, village, or other locality, when identifiable, within whose boundaries (the majority of) for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User State (Program Report).	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User Zip Code (Program Report).	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User SIU Flag	This code/description will identify whether the Industrial User is a Significant Industrial Users (SIU).	403.8(f), 403.12(i)	7.
Industrial User Control Mechanism Flag.	This code/description will identify whether the Industrial User has a Control Mechanism.	403.8(f), 403.12(i)	7.
Industrial User Control Mechanism Expiration Date.	The date when the Control Mechanism for the Industrial User will expire. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.8(f), 403.12(i)	7.
Industrial User Subject to Categorical Standards and Type (Program Report).	This code/description will identify whether the Industrial User is a Categorical Industrial Users (CIU) and its type (including Standard CIU, Non-Significant Categorical Industrial User (NSCIU), and Middle Tier Categorical Industrial User).	403.8(f), 403.12(i)	7.
Applicable Categorical Standards (Program Report).	This data element will identify for each Categorical Industrial User (CIU) that is discharging (including truck transportation) to this POTW the applicable categorical pretreatment standards.	403.8(f), 403.12(i)	7.
Industrial User Subject to Local Limits (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU is subject to local limits.	403.8(f), 403.12(i)	7.
Industrial User Subject to Local Limits More Stringent Than Categorical Standards (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU is subject to local limits that are more stringent than the applicable categorical standards.	403.8(f), 403.12(i)	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
SNC with Pretreatment Standards (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU was in Significant Non-Compliance (SNC) with discharge requirements (including effluent limit violations) in the previous 12 months.	403.8(f), 403.12(i)	7.
SNC with Reporting Requirements (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU was in Significant Non-Compliance (SNC) with reporting requirements (including baseline monitoring reports, notice of potential problems, periodic self monitoring reports, notice of change in Industrial User discharge, hazardous waste notification and BMP certification) in the previous 12 months.	403.8(f), 403.12(i)	7.
SNC with Other Control Mechanism Requirements (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU was in Significant Non-Compliance (SNC) with any other control mechanism requirements in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Quarters in SNC	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the number of yearly quarters the IU is in SNC in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Industrial User Inspections.	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of inspections conducted by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Industrial User Sampling Events.	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of sampling events conducted by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Industrial User Violation Notices.	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of formal notices of violation or equivalent actions issued by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Administrative Orders Issued to IUs (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of administrative orders issued by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Civil Suits Filed Against IUs (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of civil suits filed by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Criminal Suits Filed Against IUs (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of criminal suits filed by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Industrial User Cash Civil Penalty Amount Assessed.	For civil judicial Enforcement Actions, the dollar amount of the penalty assessed against each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) in the previous 12 months as specified in the final entered Consent Decree or Court Order. For Administrative Enforcement Actions, it is the dollar amount of the penalty assessed in the Consent/Final Order.	CWA Section 309	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Industrial User Cash Civil Penalty Amount Collected.	For civil judicial Enforcement Actions, the dollar amount of the penalty collected from each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) in the previous 12 months. For Administrative Enforcement Actions, it is the dollar amount collected of the penalty assessed in the Consent/Final Order.	CWA Section 309	7.
Industrial User POTW Discharge Contamination Indicator (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the Industrial User caused or contributed to any problems with the receiving POTW's effluent discharge in the previous reporting period. EPA regulations require the Control Authority to develop and enforce local limits when the discharge from an IU causes or contributes to any problems (including upset, bypass, interference, pass-through) at the receiving POTW.	403.5(c), 403.8(f), 403.12(i)	7.
Industrial User Biosolids Contamination Indicator (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the Industrial User caused or contributed to any problems with the receiving POTW's biosolids in the previous reporting period. EPA regulations require the Control Authority to develop and enforce local limits when the discharge from an IU causes or contributes to any problems (including upset, bypass, interference, pass-through) at the receiving POTW.	403.5(c), 403.8(f), 403.12(i)	7.
Industrial User Process Wastewater Flow Rate (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the process wastewater flow rate (in gallons per day).	403.8(f), 403.12(i)	7, 8.
Type of Significant Industrial User Process Wastewater Flow (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the type of process wastewater flow (continuous or intermittent).	403.8(f), 403.12(i)	7, 8.
Significant Industrial User Non-Process Wastewater Flow Rate (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the non-process wastewater flow rate (in gallons per day).	403.8(f), 403.12(i)	7, 8.
Type of Significant Industrial User Non-Process Wastewater Flow (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the type of non-process wastewater flow (continuous or intermittent).	403.8(f), 403.12(i)	7, 8.
Industrial User Removal Credits Flag.	This code/description will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the POTW has granted the IU removal credits.	403.7, 403.12(i)	7.
Industrial User Removal Credits Pollutants.	This code/description will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the list of pollutants for which POTW has granted the IU removal credits.	403.12(i)(4)	7.
Industrial User Reduced Reporting Flag.	This code/description will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the Control Authority has granted reduced reporting requirements [403.12(e)(3)].	403.12(e)(3), 403.12(i)(2)	7.
Non-Significant Categorical Industrial User (NSCIU) Certification to Control Authority.	This code/description will identify for each Non-Significant Categorical Industrial User (NSCIU) whether it has given its annual compliance certification.	403.12(i)(2), 403.12(q)	7, 8.
Control Authority Budget Resources.	Annual pretreatment implementation budget	403.12(i)(4)	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Compliance Monitoring Activity (Data Elements Specific to Sewer Overflow Event Reports)			
Sewer Overflow Longitude (Sewer Overflow Event Report).	This data element is required for sewer overflows that do not have a permitted feature identifier, which is reported on the NPDES permit application or Notice of Intent for NPDES permit coverage. The measure of the angular distance on a meridian east or west of the prime meridian for the sewer overflow. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.41(l)(6) and (7)	9.
Sewer Overflow Latitude (Sewer Overflow Event Report).	This data element is required for sewer overflows that do not have a permitted feature identifier, which is reported on the NPDES permit application or Notice of Intent for NPDES permit coverage. The measure of the angular distance on a meridian north or south of the equator for the sewer overflow. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.41(l)(6) and (7)	9.
Type of Sewer Overflow (Sewer Overflow Event Report).	A code identifying the type of sewer overflow (including CSO, SSO, Bypass, Other Discharge from the Collection System or Treatment Works).	122.41(l)(6) and (7)	9.
Sewer Overflow Cause	The likely cause of the overflow event (e.g., broken pipe, fats/oil/grease, mechanical failure, pump station electrical failure, inadequate sewer system capacity, etc.).	122.41(l)(6) and (7)	9.
Date of Sewer Overflow Discovery (Sewer Overflow Event Report).	Date when the sewer overflow is discovered by EPA or the delegated NPDES program authority, the permitted facility, or when the sewer overflow is reported by the public to the permitted facility. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.41(l)(6) and (7)	9.
Duration of Sewer Overflow event (hours) (Sewer Overflow Event Report).	Duration of the sewer overflow event (in hours). If the discharge has not been corrected, the best professional judgment from the permitted facility of the time the sewer overflow is expected to continue.	122.41(l)(6) and (7)	9.
Sewer Overflow Discharge Volume (Sewer Overflow Event Report).	Best professional judgment from the permitted facility on the estimated number of gallons of sewer overflow.	122.41(l)(6) and (7)	9.
Receiving Waterbody Name for Permitted Feature (Sewer Overflow Event Report).	This data element is required for sewer overflow inspections without a permitted feature identifier. Best professional judgment from the permitted facility of the name of the waterbody that is or will likely receive the discharge from each sewer overflow.	122.41(l)(6) and (7)	9.
Dry or Wet Weather Occurrence for Sewer Overflow.	Best professional judgment from the permitted facility on whether the sewer overflow event occurred during dry or wet weather.	122.41(l)(6) and (7)	9.
Corrective Actions Taken or Planned for Sewer Overflows (Sewer Overflow Event Report).	The unique code/description that describes the steps taken or planned to reduce, eliminate, and prevent reoccurrence of future sewer overflows.	122.41(l)(6) and (7)	9.
Type of Potential Impact of Sewer Overflow Event (Sewer Overflow Event Report).	This describes the type of potential human health or environmental impact(s) of the sewer overflow event (e.g., beach closure). Under 40 CFR 122.41(l)(6), "the permittee shall report any noncompliance which may endanger health or the environment." This data element would provide information regarding the nature of such potential endangerment.	122.41(l)(6) and (7)	9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Violation			
Violation Code	The code/description identifying which type of Violation has occurred. The code may a single event violation (SEV) code; some violation codes can be automatically generated in ICIS–NPDES based upon DMRs, schedules, etc.	123.45	1.
Agency Identifying the Single Event Violation (SEV).	The code/description identifying the agency that identified the Single Event Violation (SEV).	123.45	1.
Single Event Start Date	If the single event violation (SEV) occurred over multiple days, the date the occurrence began. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
Single Event End Date	If the single event violation (SEV) occurred over multiple days, the date the occurrence ended. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
RNC Detection Code	The type of RNC detected. It can be entered automatically by the system or it can be entered manually.	123.45	1.
RNC Detection Date	The date that RNC was detected. It can be entered manually or automatically. In cases in which RNC is detected by ICIS–NPDES, the detection date entered will vary according to the type of violation detected. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
RNC Resolution Code	The RNC status (i.e., noncompliant, resolved pending, waiting resolution, resolved) of the violation. It can be entered manually or automatically by the system.	123.45	1.
RNC Resolution Date	The date RNC was marked to its current resolution status. It can be entered manually or automatically. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
Enforcement Action			
Enforcement Action Identifier.	The number of the Enforcement Action; for a judicial action, the number as referred to by the Court where the action was filed.	CWA Section 309	1.
Enforcement Action Name	The name associated with this enforcement action	CWA Section 309	1.
Enforcement Action Type	A code/description that uniquely identifies the type of formal or informal enforcement action. This code identifies, for example, whether the enforcement action is a civil judicial referral, a notice of violation, an administrative penalty order, administrative order, etc.	CWA Section 309	1.
Law Sections Violated	The primary law sections that were violated by the facility.	CWA Section 309	1.
Programs Violated	The code that identifies the program (e.g., pretreatment) associated with the enforcement activity.	CWA Section 309	1.
Violation Code	The code/description identifying which type of violation has occurred and is being addressed by this enforcement action.	CWA Section 309	1.
Violation Date	If there is a Single Event Violation, use Single Event Violation Date; if DMR reporting violation, use DMR Due Date; if DMR measurement violation, use Monitoring Period End Date; if Permit Schedule violation, use Permit Schedule Date; if a Compliance Schedule violation, use Compliance Schedule Date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Final Orders			
Final Order Type	A code/description that uniquely identifies the regulatory instrument used by the EPA to settle the Enforcement Action. This code identifies, for example, whether the final order is an administrative compliance order, an administrative penalty order, Federal Facility agreement, etc.	CWA Section 309	1.
Violation Code	The code/description identifying which type of Violation has occurred (e.g., D80 = Required Monitoring DMR Value Non-Receipt, E90 = Effluent Violation, C20 = Schedule Event Achieved Late).	CWA Section 309	1.
Violation Date	If there is a Single Event Violation, use Single Event Violation Date; if DMR reporting violation, use DMR Due Date; if DMR measurement violation, use Monitoring Period End Date; if Permit Schedule violation, use Permit Schedule Date; if a Compliance Schedule violation, use Compliance Schedule Date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Final Order Issued/Entered Date.	The civil case date the Final Order is signed by the presiding Judge and entered by the Clerk of the Court; it is the date the Clerk stamps on the document. For an Administrative Formal EA, this is the Final Order Issued Date; for a Judicial EA, this is the Final Order Entered Date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Penalty			
Civil Penalty Amount Assessed.	For civil judicial Enforcement Actions, the dollar amount of the penalty assessed against the defendant(s) as specified in the final entered Consent Decree or Court Order. For Administrative Enforcement Actions, it is the dollar amount of the penalty assessed in the Consent/Final Order.	CWA Section 309	1 through 9.
Civil Penalty Amount Collected.	For civil judicial Enforcement Actions, the dollar amount of the penalty collected from the defendant(s). For Administrative Enforcement Actions, it is the dollar amount collected of the penalty assessed in the Consent/Final Order.	CWA Section 309	1 through 9.
Compliance Schedule			
Compliance Schedule Number.	A two-digit number which in combination with the Schedule Type and NPDES ID uniquely identifies a Compliance Schedule.	CWA Section 309	1.
Schedule Descriptor	The code/description indicating the type of Narrative Condition applies for the schedule.	CWA Section 309	1.
Schedule (Start) Date	The date the event is scheduled to be completed (i.e., the due date). The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Actual Date	The actual date on which the Compliance Schedule event was completed/achieved. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Report Received Date	The date the regulatory agency received the Compliance Schedule report. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Schedule Event	The unique code/description that identifies the Compliance Schedule event.	CWA Section 309	1.
Milestones/Sub-activities	The unique code/description that identifies the milestones/sub-activities.	CWA Section 309	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Sub Activity Type	A code/description that uniquely identifies a type of sub activities and/or Enforcement Action milestones.	CWA Section 309	1.
Actual Date	The date on which the milestone was achieved/sub activity was conducted. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

■ 23. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 24. Amend § 403.10 by adding paragraph (f)(2)(viii) to read as follows:

§ 403.10 Development and submission of NPDES State pretreatment programs.

* * * * *

(f) * * *

(2) * * *

(viii) Regularly notify all Control Authorities of electronic submission requirements of 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127.

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■ 25. Amend § 403.12 by revising paragraphs (e)(1), (h), and (i) introductory text to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(e) * * *

(1) Any Industrial User subject to a categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in § 403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, all reports covered under this paragraph and submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127] shall be submitted electronically by the owner, operator, or their designated representative in compliance with 40 CFR parts 3 and 127 and § 403.12(l) and with any additional requirements imposed by the Control Authority.

* * * * *

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, all reports submitted after [INSERT TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative in compliance with 40 CFR parts 3 and 127 and § 403.12(l) and with any additional requirements imposed by the Control Authority.

(i) *Annual POTW reports.* POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the applicable required data in Appendix A to 40 CFR part 127. The report required by this section shall also include a summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority and any other relevant information requested by the Approval Authority. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Approval Authority or the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR parts 3 and 127 and § 403.12(l), and with any additional requirements imposed by the Approval Authority.

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PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

■ 26. The authority citation for part 501 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 27. Revise § 501.21 to read as follows:

§ 501.21 Program reporting to EPA.

State sludge management programs shall comply with 40 CFR parts 3 and 127 (including the applicable required data elements in Appendix A to 40 CFR part 127).

PART 503—STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

■ 28. The authority citation for part 503 continues to read as follows:

Authority: Sections 405(d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, sec. 54(d), 91 Stat. 1591 (33 U.S.C. 1345(d) and (e)); and Pub. L. 100–4, title IV, sec. 406(a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 *et seq.*).

■ 29. Revise § 503.18 to read as follows:

§ 503.18 Reporting.

(a) Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Director or applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127 and with any additional requirements imposed by the Director.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 2040–0157)

■ 30. Revise § 503.28 to read as follows:

§ 503.28 Reporting.

Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Director or applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127 and any additional requirements imposed by the Director.

■ 31. Revise § 503.48 to read as follows:

§ 503.48 Reporting.

Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater shall submit a report on February 19 of each year. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Director or applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127 and any additional requirements imposed by the Director.

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