that we can accommodate all timing requests and will provide requestors with the next available speaking time, in the event that their requested time is taken. Please note that the time outlined in the confirmation email received will be the scheduled speaking time. Again, depending on the flow of the day, times may fluctuate. Please note that any updates made to any aspect of the hearing will be posted online at: *https://www.epa.gov/stationary-sources-air-pollution/manufacturing-nutritional-yeast-national-emission-standards.* While the EPA expects the hearing to go forward as set forth above, we ask that you monitor our Web site or contact Aimee St. Clair at (919) 541–1063 or at *stclair.aimee@epa.gov* to determine if there are any updates to the information on the hearing. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates.

Questions concerning the rule that was published in the **Federal Register** on December 28, 2016, should be addressed to Allison Costa, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (E140), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number:(919) 541–1322; facsimile number: (919) 541–3470; email address: *costa.allison@epa.gov.*

Public hearing: The proposal for which the EPA is holding the public hearing was published in the **Federal Register** on December 28, 2016, and is available at: *https://www.epa.gov/stationary-sources-air-pollution/manufacturing-nutritional-yeast-national-emission-standards,* and also in Docket ID No. EPA–HQ–OAR–2015–0730. The public hearing will provide interested parties the opportunity to present oral comments regarding the EPA's proposed standards, including data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. The period for providing written comments to the EPA will remain open until February 24, 2017.

Commenters should notify Aimee St. Clair if they will need specific equipment or if there are other special needs related to providing comments at the public hearing. The EPA will provide equipment for commenters to make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to submit to the docket a copy of their oral testimony electronically (via email or CD) or in hard copy form.

Because the hearing will be held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Minnesota, Missouri or the State of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

The public hearing schedule, including lists of speakers, will be posted on the EPA's Web site at: *https://www.epa.gov/stationary-sources-air-pollution/manufacturing-nutritional-yeast-national-emission-standards.* Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule, ''National Emission Standards for Hazardous Air Pollutants: Nutritional Yeast Manufacturing Risk and Technology Review,'' under Docket ID No. EPA–HQ–OAR–2015–0730, available at *http://www.regulations.gov.*

Dated: January 9, 2017.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2017–00762 Filed 1–12–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[EPA–HQ–OW–2016–0376; FRL–9957–40–OW]

RIN 2040–AF67

Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a rule to implement section 425 of the Consolidated Appropriations Act of 2016, which requires EPA to work with the Great Lakes states to establish public notification requirements for combined sewer overflow (CSO) discharges to the Great Lakes. The proposed requirements address signage, notification of local public health departments and other potentially affected public entities, notification to the public, and annual notice provisions.

The proposed rules, when finalized, will protect public health by ensuring timely notification to the public and to public health departments, public drinking water facilities and other potentially affected public entities, including Indian tribes. Timely notice may allow the public to take steps to reduce their potential exposure to pathogens associated with human sewage, which can cause a wide variety of health effects, including gastrointestinal, skin, ear, respiratory, eye, neurologic, and wound infections.

DATES: Comments must be received on or before March 14, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2016–0376 to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,*

on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-s*.

FOR FURTHER INFORMATION CONTACT: Kevin Weiss, Office of Wastewater Management, Water Permits Division (MC4203), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–0742; email address: *weiss.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

A. Does this action apply to me?

Entities within the Great Lakes Basin potentially regulated by this proposed action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Federal and state government	EPA or state NPDES permit authorities	924110
Local governments	NPDES permittees with a CSO discharge to the Great Lakes Basin.	221320

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated or otherwise affected by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 122.32 title 40 of the Code of Federal Regulations, and the discussion in the preamble. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency proposing?

EPA is proposing a rule to establish public notification requirements for CSOs to the Great Lakes Basin. The proposed rule would implement Section 425 of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113) (hereafter referred to as ''Section 425''), which requires EPA to work with the Great Lake states to establish public notice requirements for CSO discharges to the Great Lakes and prescribes minimum requirements for such notice. EPA sought and considered public input during the development of the proposed rule.

This proposal includes required methods for CSO permittees in the Great Lakes Basin to provide public notification of CSO discharges and for the minimum content of such notification. The proposed requirements for methods of providing public notice of CSO discharges include signage, initial and supplemental notice to potentially affected public entities and to the public, and an annual notice that allows for analysis of trends in combined sewer system performance and the operator's plans for CSO controls. In addition, EPA proposes requirements for Great Lakes Basin CSO permittees to develop a public notification plan that reflects community-specific details (*e.g.,* proposed monitoring locations, means for disseminating information to the public) as to how the permittee would implement the proposed public notification requirements. EPA proposes that Great Lakes Basin CSO permittees would submit the public notification plan to the NPDES permitting authority (''Director'') within six months after publication of a final regulation. The public notification plan would provide a means of public engagement on the details of implementation of the notification requirements.

Under the proposal, the public notification provisions, including the requirement to develop a public notification plan, would be implemented through two regulatory mechanisms. First, EPA proposes to add

a new section to the NPDES permit regulations, to be codified at 40 CFR 122.38, establishing the public notification requirements for Great Lakes CSO permittees. The proposed requirements in § 122.38 would apply directly to Great Lakes CSO permittees until their NPDES permits are next reissued after publication of a final regulation.

EPA proposes that the requirements for developing the public notification plan and the methods of notification other than the annual notice would directly apply to CSO permittees that discharge to the Great Lakes Basin six months after publication of a final regulation. EPA proposes that the annual notice requirements would directly apply one year after publication of a final regulation to allow permittees time to collect data for a full year. Under this proposal, the Director could extend the compliance dates for notification and/or submittal of the public notification plan for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship.

Second, under this proposal, the public notification requirements for CSO discharges to the Great Lakes Basin would be implemented as a condition in NPDES permits when they are next reissued after publication of a finale regulation. EPA proposes that when the permittee's CSO NPDES permit is reissued, the permit would be required to include a permit condition addressing public notification of CSO discharges to the Great Lakes Basin. The proposed permit condition would incorporate the proposed requirements in § 122.38 for signage, methods of notification and annual notice, as well as requirements to provide specific information relevant to the permittee's implementation of the notification requirements. This two-stage implementation approach would ensure that the requirements of Section 425 will be implemented during the interim period before the permit condition is incorporated into the relevant NPDES permits, consistent with Section 425, which requires implementation by December 18, 2017.

The objectives of these proposed requirements are to:

- Ensure *timely notice to the public* of CSO discharges. This notice is intended to alert members of the public to CSO discharges which may allow them to take steps to reduce their potential exposure to pathogens associated with the discharges.
- Ensure *timely notice to local public health departments, public drinking water facilities and other potentially affected public entities, including Indian tribes,* of CSO discharges. This notice is intended to alert these entities to specific CSO discharges and support the development of appropriate responses to the discharges, such as ensuring that beach closures and advisories reflect the most accurate and up-to-date information or adjusting the intake or treatment regime of drinking water treatment facilities that have intakes from surface waters affected by CSO discharges.
- Provide the community and interested stakeholders with *effective and meaningful follow-up notification* that allows for analysis of trends in combined sewer system (CSS) performance and provides stakeholders with information on the CSS operator's plans to control CSO discharges. This information is intended to help the community understand the current performance of their collection system and how the community's ongoing investment to reduce overflows would address the impacts of CSOs.

C. What is the Agency's authority for taking this action?

The authority for this rule is Section 425 of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113) and the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including sections 1314(i), 1318, 1342 and 1361(a).

II. Background

A. Combined Sewer Overflows From Municipal Wastewater Collection Systems

Municipal wastewater collection systems collect domestic sewage and other wastewater from homes and other buildings and convey it to wastewater treatment plants for treatment and disposal. The collection and treatment of municipal sewage and wastewater is vital to the public health in our cities and towns. In the United States, municipalities historically have used two major types of sewer systems—separate sanitary sewer systems and CSSs.

Municipalities with separate sanitary sewer systems use that system solely to collect domestic sewage and convey it to a publicly owned treatment works (POTW) treatment plant for treatment. These municipalities also have separate sewer systems to collect surface drainage and stormwater, known as ''municipal separate storm sewer systems'' (MS4s). Separate sanitary sewer systems are not designed to collect large amounts of runoff from rain or snowmelt or provide widespread surface drainage, although they typically are built with some allowance for some amount of stormwater or groundwater that enters the system as a result of storm events.

The other type of sewer system, CSSs, is designed to collect both sanitary sewage and stormwater runoff in a single-pipe system. This type of sewer system provides the primary means of surface drainage by carrying rain and snowmelt away from streets, roofs, and other impervious surfaces. CSSs were among the earliest sewer systems constructed in the United States and were built until the first part of the 20th century.

Under normal, dry weather conditions, combined sewers transport all of the combined wastewater (sewage and stormwater runoff) collected to a sewage treatment plant for treatment. However, under wet weather conditions when the volume of wastewater and stormwater exceeds the capacity of the CSS or treatment plant, these systems are designed to divert some of the combined flow prior to reaching the POTW treatment plant and to discharge combined stormwater and sewage directly to nearby streams, rivers and other water bodies. These discharges of sewage from a CSS that occur prior to the POTW treatment plant are referred to as combined sewer overflows or CSOs. Depending on the CSS infrastructure design, CSO discharges may be untreated or may receive some level of treatment, such as solids settling in a retention basin and disinfection, prior to discharge.

CSO discharges contain human and industrial waste, toxic materials, and debris as well as stormwater. CSO discharges can be harmful to human health and the environment because they introduce pathogens (*e.g.,* bacteria, viruses, protozoa) and other pollutants to receiving waters, causing beach closures, water quality impairment, and contaminate drinking water supplies and shellfish beds. CSOs can also cause depleted oxygen levels which can impact fish and other aquatic populations.

CSSs serve a total population of about 40 million people nationwide. Most communities with CSSs are located in the Northeast and Great Lakes regions, particularly in Illinois, Indiana, Maine, Michigan, New York, Ohio, Pennsylvania, and West Virginia. Although large cities like Chicago, Cleveland, and Detroit have CSSs, most communities with CSSs have fewer than 10,000 people. Most CSSs have multiple CSO discharge locations or outfalls, with some larger communities with

combined sewer systems having hundreds of CSO outfalls.

B. Combined Sewer Overflows to the Great Lakes Basin

As of September 2015, 859 active NPDES permits for CSO discharges had been issued in 30 states plus the District of Columbia and Puerto Rico. Of these 859 permits, 190 permits [1] are for CSO discharges to waters located in the watershed for the Great Lakes and the Great Lakes System (''Great Lakes Basin'').[2] The 190 permits for CSO discharges to the Great Lakes Basin have been issued to 182 communities [3] or permittees. These permittees are located in the states of New York, Pennsylvania, Ohio, Michigan, Illinois, Indiana, and Wisconsin. CSO communities are scattered across the Great Lakes Basin, with the greatest concentration in Ohio, southeastern Michigan and northeastern Indiana discharging to Lake Erie, and in northern Indiana and southwestern Michigan discharging to Lake Michigan (see Figure 1). Hereafter, the owner or operator of a CSS is referred to as a ''CSO permittee.''

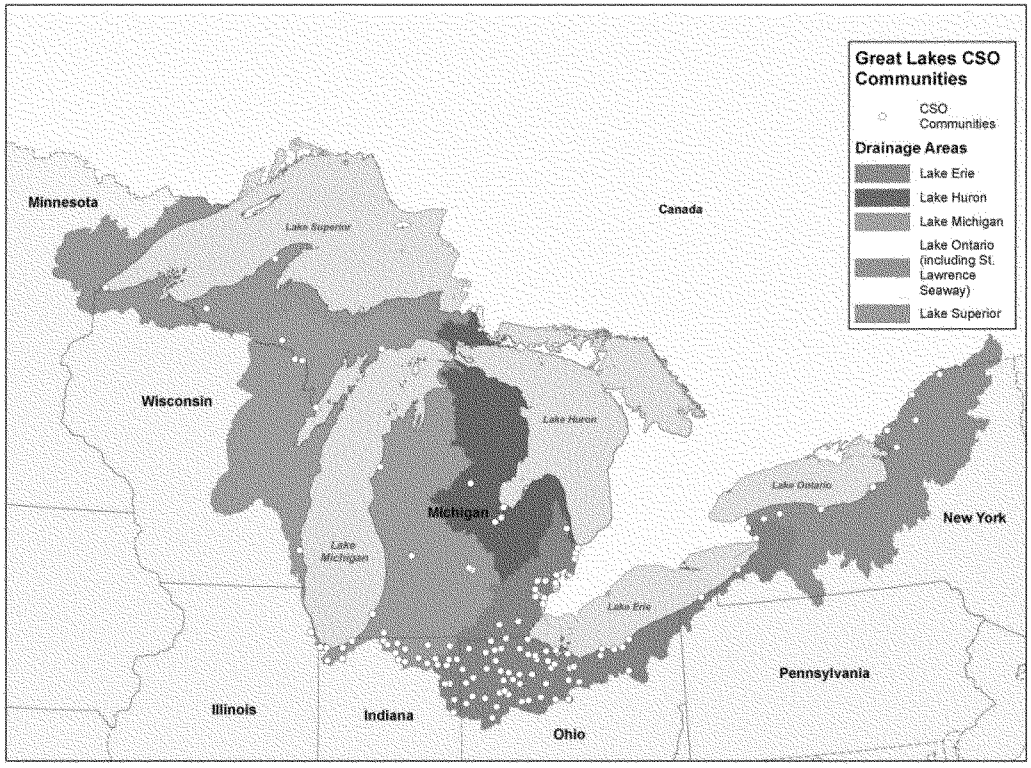

Figure 1. CSO Permittees in the Great Lakes Basin

EPA recently summarized available information on the occurrence and volume of discharges from CSOs to the Great Lakes Basin during 2014 (see Report to Congress: Combined Sewer Overflows into the Great Lakes Basin (EPA 833–R–16–006)), contained in the public docket for this rulemaking. As summarized in this report, seven states reported 1,482 events where untreated sewage was discharged from CSOs to the Great Lakes Basin in 2014 and an additional 187 CSO events where treated sewage was discharged. For the purposes of the Report, treated discharges referred to CSO discharges that received a minimum of:

- Primary clarification (removal of floatables and settleable solids may be achieved by any combination of treatment technologies or methods that are shown to be equivalent to primary clarification);
- Solids and floatable disposal; and
- Disinfection of effluent, if necessary to meet water quality standards and protect human health, including removal of harmful disinfection chemical residuals, where necessary.

[1] EPA identified 184 CSO permits in the Great Lakes Basin in the 2016 Report to Congress: Combined Sewer Overflows into the Great Lakes Basin (EPA 833–R–16–006). EPA has adjusted that estimate to reflect additional information. First, six CSO permittees identified in the Report to Congress were subtracted because their permit coverage had been terminated due to sewer separation or other reasons. Second, EPA conducted a GIS analysis and verified with States that 12 permits for CSO discharges to the Great Lakes Basin were not identified in the 2016 Great Lakes CSO Report to Congress. A list of these 18 permits is available in the docket for this rulemaking.

[2] Section 425 specifies in Section 425(a)(4) that the term ''Great Lakes'' means ''any of the waters as defined in the Section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1292).'' This, therefore, includes Section 118(a)(3)(B), which defines ''Great Lakes'' as ''Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);'' and Section 118(a)(3)(C), which defines ''Great Lakes System'' as ''all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes.'' Collectively, EPA is referring to the Great Lakes and the Great Lakes System as the ''Great Lakes Basin.''

[3] The number of CSO communities in the Great Lakes Basin is different than the number of CSO permits. Four CSO communities have more than one CSO NPDES permit. These include Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) (4 permits); Wayne County, MI (4 permits); Oakland County, MI (2 permits); and the City of Oswego, NY (2 permits). For the purposes of counting communities, communities with multiple CSO permits are counted as one CSO community.

Additional information regarding CSO discharges to the Great Lakes Basin, including the Report to Congress, is available at *https://www.epa.gov/npdes/combined-sewer-overflows-great-lakes-basin.* Table 1 provides the size distribution of the 182 CSO communities in the Great Lakes Basin.

TABLE 1—GREAT LAKES BASIN CSO COMMUNITIES BY COMMUNITY POPULATION

Community Population	Over 50,000	10,000–49,999	Under 10,000	Total
Number of CSO Communities	32	70	80	182

Permits issued to Metropolitan Water Reclamation District of Greater Chicago and Wayne County used the population for Chicago and Wayne County, respectively.

As stated above, CSOs can cause human health and environmental impacts.[4] CSOs often discharge simultaneously with other wet weather sources of water pollution, including stormwater discharges from various sources including municipal separate storm sewers, wet weather sanitary sewer overflows (SSOs) from separate sanitary sewer systems, and nonpoint sources of pollution. The cumulative effects of wet weather pollution can make it difficult to identify and assign specific cause-and-effect relationships between CSOs and observed water quality problems. The environmental impacts of CSOs are most apparent at the local level.[5]

C. The CSO Control Policy and Clean Water Act Framework for Reducing and Controlling Combined Sewer Overflows

The Clean Water Act (CWA) establishes national goals and requirements for maintaining and restoring the nation's waters. CSO discharges are point sources subject to the technology-based and water quality-based requirements of the CWA under NPDES permits. Technology-based effluent limitations for CSO discharges are based on the application of best available technology economically achievable (BAT) for toxic and nonconventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. BAT and BCT effluent limitations for CSO discharges are determined based on ''best professional judgment.'' CSO discharges are not subject to permit limits based on secondary treatment requirements that are applicable to discharges from POTWs.[6] Permits authorizing discharges from CSO outfalls must include more stringent water quality-based requirements, when necessary, to meet water quality standards (WQS).

EPA issued the CSO Control Policy on April 19, 1994 (59 FR 18688). The CSO Control Policy ''represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities, and the public engage in a comprehensive and coordinated effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives.'' (59 FR 18688). The policy assigns primary responsibility for implementation and enforcement to NPDES permitting authorities (generally referred to as the ''Director'' in the NPDES regulations) and water quality standards authorities.

The policy also established objectives for CSO permittees to: (1) Implement ''nine minimum controls'' and submit documentation on their implementation; and (2) develop and implement a long-term CSO control plan (LTCP) to ultimately result in compliance with the CWA, including water quality-based requirements. In describing NPDES permit requirements for CSO discharges, the CSO Control Policy states that the BAT/BCT technology-based effluent limitations ''at a minimum include[s] the nine minimum controls.'' (59 FR 18696) One of the nine minimum controls is ''Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts.''

In December 2000, as part of the Consolidated Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), Congress amended the CWA by adding Section 402(q). This amendment is commonly referred to as the ''Wet Weather Water Quality Act of 2000.'' It requires that each permit, order, or decree issued pursuant to the CWA after the date of enactment for a discharge from a municipal combined sewer system shall conform to the CSO Control Policy.

D. NPDES Regulations Addressing CSO Reporting

The NPDES regulations require NPDES permits to include requirements for monitoring discharges, including CSO discharges, and reporting the results, 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 (see 40 CFR 122.44(i)(2)). In addition, permits must require that permittees orally report to the NPDES permitting authority any noncompliance with NPDES permits related to CSO discharges that may endanger human health or the environment within 24 hours from the time the permittee becomes aware of the circumstances, and in writing within 5 days (see § 122.41(l)(6)). Permits must also require reporting of other noncompliance related to CSOs when their discharge monitoring reports are submitted (see § 122.41(l)(7)).

On October 22, 2015, EPA published a final rule to modernize CWA reporting for municipalities, industries, and other facilities by converting to an electronic data reporting system. Known as the NPDES Electronic Reporting Rule, or E-Reporting Rule, this final rule requires regulated entities and state and federal regulators to report electronically data required by the NPDES permit program instead of filing written paper reports. EPA is phasing in the requirements of the E-Reporting Rule over a five-year period. Starting on December 21, 2016, permittees will begin submitting their Discharge Monitoring Reports (DMRs) electronically. Starting on December 21, 2020, permittees will begin submitting electronically certain other NPDES reports, including ''Sewer Overflow/Bypass Event Reports,'' which may include information on some CSO discharges. Under the rule, Table 2 of Appendix A of Part 127 identifies data elements that are required to be reported in a DMR for CSO discharges (pursuant to § 122.41(4)(i)) after December 21, 2016, and in ''Sewage Overflow/Bypass Event Reports'' (pursuant to

[4] Report to Congress—Implementation and Enforcement of the Combined Sewer Overflow Control Policy. EPA 833–R–01–003, 2002; Report to Congress—Impacts and Control of CSOs and SSOs. EPA 833–R–04–001, 2004; Report to Congress: Combined Sewer Overflows to the Lake Michigan Basin. EPA 833–R–07–007, 2007. See *https://www.epa.gov/npdes/combined-sewer-overflows-policy-reports-and-training.*

[5] Report to Congress—Impacts and Control of CSOs and SSOs. EPA 833–R–04–001, 2004. See *https://www.epa.gov/npdes/combined-sewer-overflows-policy-reports-and-training.*

[6] *Montgomery Environmental Coalition et al.* v. *Costle,* 646 F.2d 568, 592 (D.C. Cir. 1980).

§§ 122.41(l)(6) or (7) and 122.41(m)(3)) submitted after December 21, 2020. A subset of the data elements that are required to be reported that are relevant to public notification of a CSO discharge include the following data elements:

- Sewer Overflow Cause;
- Duration of Sewer Overflow (hours);
- Sewer Overflow Discharge Volume (gallons);
- Corrective Actions Taken or Planned for Sewer Overflow; and
- Type of Potential Impact of Sewer Overflow.

In addition, starting on December 21, 2020, NPDES authorities are required to provide, and update as appropriate, information regarding the following data elements for each CSO permittee:

- Long-Term CSO Control Plan (LTCP) Permit Requirements and Compliance;
- Nine Minimum CSO Controls Developed;
- Nine Minimum CSO Controls Implemented;
- LTCP Submission and Approval Type;
- LTCP Approval Date;
- Enforceable Mechanism and Schedule to Complete LTCP and CSO Controls;
- Actual Date Completed LTCP and CSO Controls;
- Approved Post-Construction Compliance Monitoring Program; and
- Other CSO Control Measures with Compliance Schedule.

EPA is working with states to define data standards for the sewer overflow data elements in 40 CFR 127, Appendix A, and how this data can be best presented on EPA's Enforcement and Compliance History Online (ECHO) Web site.[7]

E. Section 425 of the Consolidated Appropriations Act of 2016—Requirements for Public Notification of CSO Discharges to the Great Lakes Basin

Section 425 was enacted as part of the 2016 Consolidated Appropriations Act and did not amend the CWA. Section 425(b)(1) requires EPA to work with the Great Lakes states to establish public notice requirements for CSO discharges to the Great Lakes Basin. Section 425(b)(2) provides that the notice requirements are to address the method of the notice, the contents of the notice, and requirements for public availability of the notice. Section 425(b)(3)(A) provides that at a minimum, the contents of the notice are to include the dates and times of the applicable discharge; the volume of the discharge; and a description of any public access areas impacted by the discharge. Section 425(b)(3)(B) provides that the minimum content requirements are to be consistent for all affected states.

Section 425(b)(4)(A) calls for follow-up notice requirements that provide a description of each applicable discharge; the cause of the discharge; and plans to prevent a reoccurrence of a CSO discharge to the Great Lakes Basin consistent with section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or an administrative order or consent decree under such Act. Section 425(b)(4)(B) provides for annual publication requirements that list each treatment works from which the Administrator or the affected state receive a follow-up notice.

Section 425(b)(5) requires that the notice and publication requirements described in Section 425 shall be implemented by not later than December 18, 2017. However, the Administrator of the EPA may extend the implementation deadline for individual communities if the Administrator determines the community needs additional time to comply in order to avoid undue economic hardship. Finally, Section 425(b)(6) clarifies that ''[n]othing in this subsection prohibits an affected State from establishing a State notice requirement in the event of a discharge that is more stringent than the requirements described in this subsection.''

F. Examples of Existing Local Public Notification Practices in CSO Communities

In 1995, EPA published a guidance entitled ''Combined Sewer Overflows—Guidance for Nine Minimum Controls'' [8] to assist with the implementation of the 1994 CSO Policy. As mentioned above, one of the nine minimum controls called for in that policy is ''public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts.'' The 1995 guidance recognizes that the most appropriate mechanism for public notification will probably vary with local circumstances, such as the character and size of the use area and means of public access to waters affected by CSOs. The guidance also provides examples of potential measures for notifying the public about CSO events that were available at the time, including:

- Posting at affected use areas;
- Posting at selected public places;
- Posting at CSO outfalls;
- Notices in newspapers or on radio and TV news programs;
- Letter notification to affected residents that reflect long-term restrictions; and
- Telephone hot lines.

While the general themes identified in the 1995 guidance are still useful and appropriate, the significant technology changes that have occurred since then allow for a much wider set of tools to be used in public notification. EPA's 2016 document ''National Pollutant Discharge Elimination System Compendium of Next Generation Compliance Examples [9]'' provides examples of CSO notification using current technology. This compendium describes examples of CSO public notice efforts in New York and Ohio and provides examples of CSO public notification outside the Great Lakes Basin.

In addition to those examples outlined in the Next Generation Compliance Compendium, EPA has summarized other existing public notification practices for CSO discharges both to the Great Lakes Basin and to other waters.[10]

Existing public notice practices summarized in these two resources include, but are not limited to:

- The NPDES permit for CSO discharges from the City of Seattle, Washington requires the city to implement a web-based public notification system to inform the citizens of when and where CSOs occur. Seattle and King County maintain a real-time public notification Web site that has CSO overflow information updated with available data every 10 minutes for King County sites, and every 60 minutes for Seattle sites.
- The City of Cambridge, Massachusetts and the City of Chelsea, Massachusetts post signs at all CSO structures and at public access locations and other sites identified by the Massachusetts Department of Environmental Protection. Cities notify local health agents and local watershed advocacy groups by email and issue an annual press release discussing past CSOs. Cambridge also provides the following information on its Web site:
  - General information regarding CSOs, including their potential health impacts;

[7] *https://echo.epa.gov.*

[8] *https://www.epa.gov/sites/production/files/2015-10/documents/owm0030_2.pdf.*

[9] *https://www.epa.gov/compliance/compendia-next-generation-compliance-examples-water-air-waste-and-cleanup-programs.*

[10] see ''Summary of CSO Public Notification provisions,'' Docket ID No. EPA–HQ–OW–2016–0376 at *http://www.regulations.gov.*

○ Locations of CSO discharges in the Charles River and Alewife Brook watersheds;

○ The overall status of all CSO abatement programs;

○ Web links to CSO communities and watershed advocacy groups; and

○ The most recent information on all CSO activations and volumes in both watersheds.

• The District of Columbia Water and Sewer Authority (DC Water) operates CSO Event Indicator Lights to notify river users of CSO discharges. A red light must be illuminated during a CSO occurrence and a yellow light must be illuminated for 24 hours after a CSO has stopped.

• Connecticut's two-part Public Act: ''An Act Concerning The Public's Right to Know of a Sewage Spill'' requires the Connecticut Department of Energy and Environmental Protection (DEEP) to provide a map indicating the CSOs anticipated to occur during certain storm events.

• The Vermont Department of Environmental Conservation (DEC) posts on its Web site a report of any sewage release that reaches waters of the State.

• The Allegheny County Sanitary Authority (ALCOSAN) raises orange flags signifying CSOs have occurred at eight locations along the Allegheny, Monongahela and Ohio rivers during and after CSO discharge events. ALCOSAN also provides notifications of sewer overflows via text message and/or email.

• Sanitation District No. 1 (SD1) of Northern Kentucky issues an email advisory when a rainfall of 0.25 inches or more is predicted or recorded. They also issue an advisory when the Ohio River level exceeds 38 feet. Advisories will remain in effect for 72 hours after rainfall and 72 hours after river levels have fallen below 38 feet.

• Onondaga County, New York maintains a ''Save the Rain'' Web site which serves as a notification system to alert the public of the occurrence of CSO events and as a prediction of elevated bacteria levels in Onondaga Lake and its tributaries. The discharge status of CSO outfalls are mapped on this Web page. The information on the map is updated using a model to anticipate the quantity of rainfall that will trigger each CSO.

• The Metropolitan Sewer District (MSD) of Greater Cincinnati issues a CSO advisory via a CSO hotline or email alert when a rainfall of 0.25 inches or more is predicted or recorded or when water levels in area rivers and streams are elevated and could cause a CSO to occur. Advisories will remain in place for 72 hours after a rainfall event and 72 hours after water levels in area waterways have returned to normal. Actual occurrences of CSO discharges are reported and summarized in reports that are posted on MSD's Web site.

G. Existing State-Level Public Notification Requirements for CSOs in the Great Lakes Basin

EPA worked with the Great Lake states to identify existing state-level notification requirements for CSO discharges to the Great Lakes Basin, which are summarized in the proposed rule docket, see ''Summary of State CSO Public Notification Requirements in the Great Lakes Basin'' See Docket ID No. EPA–HQ–OW–2016–0376 at *http://www.regulations.gov.* Almost all of the NPDES permits for CSO discharges to the Great Lakes Basin currently require some level of public notification to ensure citizens receive adequate information regarding CSO occurrences and CSO impacts. Permit requirements which add specificity to this requirement and additional state public notification requirements are discussed below. Table 2 summarizes some of the main components of existing Great Lakes state programs that relate to public notification of CSO discharges.

TABLE 2—SUMMARY OF STATE PROGRAM REQUIREMENTS FOR PUBLIC NOTICE REQUIREMENTS FOR CSO DISCHARGES TO THE GREAT LAKES BASIN

	NY	PA	OH	MI	IN	IL	WI
State CSO public notification regulation	X			X	X		
Requires Public Notification Plan	X		/		X	X	X
Requires CSO Outfall Signs	X	X	X	X	X	X	
Alert system (text/email)	X				/	X	X
Immediate notification of local public health department and drinking water supply	X		X	X	X		
Annual reporting on CSO discharges	X	X	/	X			

'X' indicates all CSO discharges to the Great Lakes Basin are subject to requirement.
'/' indicates that some CSO discharges to the Great Lakes Basin are subject to requirement.

Illinois

All forty Illinois CSO communities in the Great Lakes Basin are in the Metropolitan Water Reclamation District of Greater Chicago (MWRD) service area. The NPDES permits for these CSO communities provide that public notification programs may be developed in conjunction with MWRD. MWRD's NPDES permits for each of its four treatment plants require MWRD to develop a public notification plan. MWRD is implementing its plan by:

• Providing the public with the opportunity to sign up for emails and/or text messages when a confirmed CSO discharge or diversion to Lake Michigan occurs.

• Posting a map of the city's waterways showing the status of discharges at CSO outfalls.

Indiana

Indiana requires NPDES CSO permittees to:

• Post signs within the permittee's jurisdiction at access points to an affected water or to make attempts to do so when access is not on community property.

• Provide notification to the affected public, local health departments and drinking water suppliers having surface water intakes located within ten miles downstream of a discharging CSO outfall whenever information indicates that a CSO discharge is occurring or is imminent based on predicted or actual precipitation or a related event.

• Incorporate CSO notification procedures into the permittee's CSO operational plan which must be approved by the Indiana Department of Environmental Management. A member of the public may request that the department reevaluate the CSO notification procedures.

Michigan

Michigan state regulations and permits require CSO permittees to:

• Notify the Michigan Department of Environmental Quality (DEQ); local health departments; a daily newspaper

of general circulation in the county or counties in which the municipality is located; and a daily newspaper of general circulation in the county in which CSO discharges occurred immediately, but not more than 24 hours after the discharge begins.

○ Initial notification that the discharge is occurring is to be by telephone or other manner required by DEQ.

○ At the conclusion of the discharge, in writing or in another manner required by DEQ, additional notice provides more detailed information including the volume and quality of the discharge as measured pursuant to procedures and analytical methods approved by the department, reason for discharge, receiving water or land affected, date and time discharge began and ended, and compliance status.

• Contact each municipality annually whose jurisdiction contains waters that may be affected by the discharge and provide immediate notification of CSO discharges to these municipalities if requested.

• Test the affected waters for *E. coli* to assess the risk to the public health as a result of the discharge and provide the test results to the affected local county health departments and to DEQ. The testing is to be done at locations specified by each affected local county health department. This testing requirement may be waived by the affected local county health department if it is determined that such testing is not needed to assess the public health risks.

Michigan state regulations require Michigan DEQ to:

• Promptly post the notification on its Web site upon being notified of a discharge.

• Maintain and publish a list of occurrences of discharges of untreated or partially treated sewage that have been reported. The list is to be posted on the department's Web site and published annually and made available to the general public.

New York

New York state statutes, regulations, and permits require CSO permittees to:

• Install and maintain signs at all CSO outfalls owned and operated by the permittee.

• Implement a public notification program to inform citizens of the location and occurrence of CSO events.

• Notify the local public health department of CSO discharges immediately, but in no case later than two hours after discovery.

• Notify any adjoining municipality that may be affected as soon as possible, but no later than four hours from discovery of the CSO discharge.

CSO communities can report CSO discharges to a state operated electronic notification system, NY-Alert. The NY-Alert system provides public health departments, adjoining municipalities and subscribing citizens with notice of CSO discharges.

CSO permittees are required to submit an annual report to the state that describes implementation of 14 CSO best management practices. The state uses this and other information to prepare an annual report on sewer system discharges. The New York Department of Environmental Conservation's Web site includes a map of CSO outfalls in New York that provides information about CSO discharges.

Ohio

Ohio state regulations and permits require CSO permittees to:

• Install and maintain signs at all regulated outfalls, including CSOs; and

• Notify public water supply operators as soon as practicable if a spill, overflow, bypass, or upset reaches a water of the state within a set distance of a public water supply intake.

Public notification plans and annual reporting of CSO discharges are required on a case-by-case basis.

Pennsylvania

The NPDES permit for Erie, Pennsylvania (the only city with a CSS in Pennsylvania that discharges to the Great Lakes Basin) requires Erie to submit an annual CSO status report to the state, which is available to the public upon request.

Wisconsin

Of Wisconsin's two CSO permittees, one permit does not specify any public notification requirements. The other requires the permittee to have a public notification process in place and to make personal contact with affected members of the public in the event of an overflow.

H. Working With the Great Lake States and Requesting Public Input

EPA has worked with the Great Lakes states on creating proposed requirements to implement Section 425 of the 2016 Consolidated Appropriations Act. NPDES program officials in each state with CSO discharges to the Great Lakes Basin have described existing state notification requirements, shared insights on implementation issues and provided individual perspectives on what should be included in the proposed rule.

On August 1, 2016, EPA published a document in the **Federal Register** requesting stakeholder input regarding potential approaches for developing public notice requirements for CSO discharges to the Great Lakes Basin under Section 425. As part of this effort, EPA held a public ''listening session'' on September 14, 2016, which provided stakeholders and other members of the public an opportunity to share their views regarding potential new public notification requirements for CSO discharges to the Great Lakes Basin. A summary of the oral comments made at the public listening session is included in the docket for this rulemaking.[11] In addition, the Agency requested written comments. EPA received 40 unique written comments and a total of 787 written comments, all of which were submitted to the docket (see EPA–HQ–OW–2016–0376–2 through EPA–HQ–OW–2016–0376–41). These comments have informed the development of the proposed rule and are discussed throughout the preamble below.

III. Proposed Requirements

A. Overview of Proposal

The proposed requirements to implement Section 425 are based on an evaluation of current notification requirements and practices in the Great Lakes Basin and elsewhere, and input from officials in the Great Lakes states and the public, including input received in response to EPA's August 1, 2016 request. The proposal clarifies EPA's expectations for CSO permittees discharging to the Great Lakes Basin to provide public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The proposed requirements would conform to the CSO Control Policy by specifying requirements for implementation of one of the nine minimum controls for the CSO discharges addressed by Section 425.

EPA proposes requirements for public notification of CSO discharges to the Great Lakes Basin to be codified at 40 CFR 122.38. This section would apply directly to Great Lakes Basin CSO permittees six months after publication of a final rule, except for annual notice requirements which would apply one year after publication. EPA proposes to implement section 425(b)(5)(B) of the Consolidated Appropriations Act of 2016 by providing that the NPDES permitting authority (referred to in the NPDES regulations as the Director)

[11] See Docket ID No. EPA–HQ–OW–2016–0376 at *http://www.regulations.gov.*

could extend the compliance dates for notification and/or submittal of the public notification plan for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship.

The proposed requirements address signage, initial and supplemental notification of local public health departments and other potentially affected public entities (which may include neighboring municipalities, public drinking water utilities, state and county parks and recreation departments and Indian tribes) whose waters may be potentially impacted, initial and supplemental notification of the public and annual notice to the public and the Director.

EPA further proposes to require NPDES permittees authorized to discharge CSOs to the Great Lakes Basin to develop a public notification plan that would provide community-specific details (*e.g.,* proposed flow monitoring locations, means for disseminating information to the public) as to how they would implement the notification requirements. Under the proposed rule, CSO permittees in the Great Lakes Basin would be required to seek and consider input from local public health departments, any potentially affected public entities and Indian tribes whose waters may be impacted by the permittee's CSO discharges in developing the public notification plan that would be submitted to the Director. The proposal would require the plan to be made available to the public and to be submitted to the Director within six months of the date the final rule is published.

Ultimately, public notice requirements for CSO discharges in the Great Lakes Basin would be incorporated as requirements in NPDES permits when such permits are next reissued at least six months after the date the final regulation is published. (This process will follow normal permit reissuance timelines). Under both proposed §§ 122.21(j)(8)(iii) and 122.38(d), the public notification plan would be submitted to the Director as part the Great Lakes Basin CSO permittee's application for a renewed permit. The plan would provide information to the Director to inform the development of a NPDES permit condition implementing the public notification requirements. EPA proposes minimum requirements at § 122.42(f) for a permit condition for all permits issued for CSO discharges within the Great Lakes Basin. See Preamble section III.D.2. for a discussion of the proposed permit condition.

B. Types of Notification

EPA proposes to require several types of public notification, as follows:

- Signage;
- Initial and supplemental notice to local public health department and other potentially affected public entities, such as drinking water utilities, public beach and recreation agencies;
- Initial and supplemental notice to the public; and
- Annual CSO notice to the Director and the public.

The types of notification are discussed below.

1. Signage

Signage at CSO outfalls and public access areas potentially impacted by CSO discharges can raise public awareness of the potential for CSO discharges and impacts. EPA's 1995 guidance, ''Combined Sewer Overflows—Guidance for Nine Minimum Controls'' [12] provides examples of signage that can be used to notify the public of CSO discharges, such as posting at affected use areas (*e.g.,* along a beach front), selected public places (*e.g.,* public information center at a public park or beach) and posting at CSO outfalls where outfalls are visible and the affected shoreline area is accessible to the public.[13]

EPA proposes that the Great Lakes Basin CSO permittee provide adequate signage where signage is feasible at CSO outfalls and potentially impacted public access areas. The Agency proposes that signage contain at a minimum the following information:

- The name of the combined sewer system operator;
- A description of the discharge (*e.g.,* untreated human sewage, treated wastewater);
- Notice that sewage may be present in the water; and
- The permittee's contact information, including a telephone number, NPDES permit number and outfall number as identified in the NPDES permit.

EPA also proposes that the Great Lakes Basin CSO permittee conduct periodic maintenance of the sign to ensure that it is legible, visible and factually correct.

The proposal would require the permittee to provide signage at potentially affected public areas. The permittee's identification of potentially affected public areas where signage is required is to be based on a review and consideration of local conditions and circumstances of a particular community. This determination may be informed by the identification of sensitive areas in the community's long term CSO control plan (LTCP). Under today's proposal, when a Great Lakes Basin CSO permit is reissued, the NPDES authority will determine specific locations where signs are required and will identify in the permit the location of any outfall where a sign is not required because it is not feasible.

EPA requests comment on providing more specific regulatory language that would require signage at locations other than the CSO outfalls, such as potentially impacted public access areas and selected public places that CSO discharges may impact.

One commenter on the August 1, 2016 notice suggested that signs at public access areas include quick response codes that could provide a link to either a public health department's Web site or the permittees Web site. EPA requests comment on requiring quick response codes on signs. EPA also requests comment on the proposed signage requirements and on whether the proposal includes the appropriate minimum information to be included on signs.

EPA notes that several of the Great Lakes states do not require signage at every CSO outfall for various reasons, such as limited or no public access to the area or the infeasibility for the permittee to physically access the outfall point for inspections and maintenance of signs. For example, Ohio does not require signs at outfalls that are not accessible to the public by land or by recreational use of the water body.[14] Indiana allows for alternatives to signs for outfalls located on private property or that are outside the jurisdiction of the CSO discharger.[15] New York allows permittees to apply for a waiver from the requirement to install a sign under limited circumstances which are listed in the state's regulations.[16]

The Agency requests comment on specific situations where it may not be feasible to provide signage at a CSO outfall. In addition, the Agency requests comment on alternative or additional regulatory criteria to clarify or describe

[12] See ''Combined Sewer Overflow Guidance for Nine Minimum Controls'' EPA 832–B–95–003, (1995). *https://www.epa.gov/sites/production/files/2015-10/documents/owm0030_2.pdf.*

[13] The 2016 ''National Pollutant Discharge Elimination System Compendium of Next Generation Compliance Examples'' and the 2016 ''Summary of CSO Public Notification provisions'' EPA–HQ–OW–2016–0376, identify additional examples of signage used by CSO communities.

[14] Ohio Admin. Code 3745–33–08 (2011), available at *http://codes.ohio.gov/oac/3745-33-08.*

[15] See 327 IAC 5–2.1–6 (2003), available at *http://www.in.gov/legislative/iac/iac_title?iact=327.*

[16] See 6 NYCRR 750–1.12 (2003), available at *http://www.dec.ny.gov/regs/2485.html.*

where signs are not possible. The Agency also requests comment on whether it is appropriate to remove the proposed qualification that signage be feasible and instead require signage at all CSO outfalls.

EPA recognizes that the Great Lake NPDES authorities require permittees to install signs at many CSO outfalls and potentially impacted public access areas. EPA proposes that where a permittee has installed a sign at a CSO outfall or potentially impacted public access area before the effective date of this rule, the sign does not have to meet the minimum requirements specified in the proposed rule until the sign is replaced or reset. EPA requests comment on this approach. The Agency requests comment on any specific language with regard to the proposed signage requirements that may be inconsistent with existing signs, and whether the proposed language should be adjusted to provide more flexibility.

EPA does not propose to prescribe the specific circumstances under which other methods of notice such as indicator lights (as used by the District of Columbia Water and Sewer Authority) or alert flags (as used by the Allegheny County Sanitary Authority) must be used. These types of notification may not be appropriate for every CSO community in the Great Lakes Basin. Rather, such requirements may be established on a permit-by-permit basis where appropriate. Nothing in the proposed rule or Section 425 would, however, preclude any Great Lakes state from establishing such requirements.

2. Initial and Supplemental Notice to Local Public Health Officials and Other Potentially Affected Public Entities

Local public health officials play a vital role in responding to environmental risks. Local public health organizations typically have a role in water quality monitoring of waterways and public beaches and in providing swimming and beach advisories and beach closures. Timely notice of CSO discharges to local public health departments can provide information needed to determine appropriate actions such as issuing swimming or beach advisories or beach closures.

When CSOs discharge into sources of drinking water, operators of drinking water facilities that have intakes in waters impacted by the discharge can make adjustments to their intake and treatment procedures after receiving notice of the CSO discharge.

EPA proposes that the operator of a CSO outfall in the Great Lakes Basin provide initial notice of the CSO discharge as soon as possible to the local public health department (or if there is no local health department, to the state health department), any potentially affected public entity (such as the superintendent of a public drinking water supply with potentially affected intakes), and Indian tribes whose waters may be affected, but no later than four hours after becoming aware as determined by monitoring, modeling or other means of a CSO discharge. The initial notice would be required to include, at a minimum, the following information:

- The location of the discharge(s) and the water body that received the discharge(s);
- The location and a description of any public access areas that may be potentially impacted by the discharge;
- The date(s) and time(s) that the discharge commenced or the time the permittee became aware of the discharge;
- Whether, at the time of the notification, the discharge has ended or is continuing and, if the discharge(s) has ended, the approximate time that the discharge ended; and
- A point of contact for the CSO permittee.

EPA proposes that the CSO permittee describe the location of the discharge. Typically, this would be the location of the CSO outfall that is discharging. However, for larger combined sewer systems with multiple outfalls, where CSO discharges occur at multiple locations at the same time, the CSO permittee may provide a description of the area in the waterbody where discharges are occurring and does not have to identify the specific location of each discharge. This approach may be more protective in that it may provide for a better description of potentially impacted areas, and could avoid delays associated with identifying when individual discharges commenced.

EPA also proposes that Great Lakes Basin CSO permittees be required to seek and consider input from local public health departments and other potentially affected entities to develop protocols for providing notification. Under the proposal, the CSO permittee is to seek and consider input from local health departments and other potentially affected entities prior to submitting its public notification plan initially and resubmitting as part of the process for reapplying for their permit.

The Agency anticipates that the Great Lakes Basin CSO permittee will establish protocols that will address the timing of notification. This could include predictive notifications that are based on weather forecasts. Under the proposed rule, the public notification plan would help inform the development of NPDES permit requirements that would specify the timing of this notification. EPA anticipates that this approach would allow for the consideration of community-specific factors, development of programs and changes in technology.

Timely notice of CSO discharges to public health departments, drinking water facilities and other affected municipal entities and Indian tribes is critical to the effectiveness and timeliness of their response. EPA does not propose to prescribe the specific means (*e.g.,* email, phone call) for this notice. Rather, the proposed rule would allow the CSO discharger to seek and consider input from local public health departments and other potentially affected public entities to determine the most appropriate way to provide this notice.

EPA proposes that the timeframe for initial notice to local public health departments and other potentially affected public entities be as soon as possible, but no later than four hours after the Great Lakes Basin CSO permittee becomes aware of the CSO discharge as determined by monitoring, modeling or other means. EPA expects, however, that as technologies change and communities and states improve their notice protocols, communities may be able to notify public health departments and the public in less than four hours. In addition, nothing in the proposed rule would preclude the permitting authority from establishing a maximum timeframe for notification that is more stringent (shorter) than four hours. EPA anticipates that NPDES permit authorities would consider more stringent notification timeframes based on a variety of factors, including the nature of the receiving waters, technology advances and the experience and progress of the permittee. EPA notes that New York and Connecticut require CSO permittees to notify public health departments within two hours. Both states have state-run Web sites that facilitate notification. The Agency also notes that most Great Lake states currently have not established a state Web site to facilitate public notification. EPA specifically requests comment on the appropriate maximum timeframe for providing initial notification to the local public health department and other potentially affected entities. The Agency also requests comment on the minimum contents of the initial and supplemental notification to the local public health department and other potentially affected entities.

Section 425(b)(3)(A)(ii) provides that public notice requirements also must include the volume of the discharge. EPA recognizes that for a number of reasons, determining the volume of a CSO discharge within the short timeframe provided for the initial notice may not be practical. EPA therefore proposes that notification of the volume of the discharge may occur in a supplemental notice that would be required within 24 hours of the end of the CSO discharge. EPA proposes this approach because the initial notification that a CSO discharge may occur or is occurring should not be delayed by waiting until the discharge stops or volume estimates are developed. EPA is concerned that requiring the Great Lakes Basin CSO permittee to include the volume of the CSO discharge as part of the initial notification would mean that the initial notification would need to be delayed, which would in turn cause delays in responding to the overflow. In addition, requiring an estimate or calculation of the discharge volume as part of the initial notification may discourage predictive notifications. It is critical that the local public health department and other affected municipalities or tribes be notified of the occurrence of the event as soon as possible without delays associated with waiting for the discharge to end or determining the CSO volume. Accordingly, EPA proposes that the CSO permittee may either provide notification of the time the discharge ended and the volume of the CSO discharge as part of the initial notification when CSO discharges are of a short enough duration to allow for this information to be known, or as a separate supplemental notification within 24 hours of the end of the CSO discharge.

EPA requests comment on whether 24 hours from the time the permittee becomes aware that the discharge ended is the appropriate time period for completing notification. EPA also requests comment on whether the proposed minimum requirements for the 24-hour supplemental notice are sufficient and appropriate.

The proposed requirement to provide a volume estimate would not mandate monitoring or direct measurement of CSO discharges. As discussed below, EPA proposes that the operator of a CSS with CSO discharges to the Great Lakes Basin develop a public notification plan that, among other things, describes for each outfall how the volume and duration of CSO discharges would be measured or estimated. In addition, as discussed below, EPA proposes that NPDES permits for CSO discharges to the Great Lakes Basin specify the location of CSO discharges that must be monitored for volume and discharge duration and the location of CSO discharges where CSO volume and duration may be estimated rather than monitored.

In addition to seeking comment generally on the proposed requirements for notifying local health departments and other potentially affected public entities, EPA requests comment specifically on whether the initial notice to public health departments and other potentially affected entities should also be provided to the Director and/or the state public health agency.

3. Initial and Supplemental Notice to the Public

Initial notice of CSO discharges to the public via text alerts, social media, posting on a Web site, or other appropriate means can be an effective, efficient means of alerting the public to CSO discharges in a timely manner. This initial notice may allow the public to make informed decisions regarding areas where they would visit and recreate. EPA proposes requirements for the Great Lakes Basin CSO permittee to provide initial notification to the public within four hours of becoming aware as determined by monitoring, modeling or other means of the CSO discharge. Under the proposal, the Great Lakes Basin CSO permittee would be required to use electronic media, such as text, email, and social media alerts to subscribers, or posting a notice on its public access Web site, to provide members of the public with notice of CSO discharges. Other electronic media that could be used include broadcast media (radio and/or television) and newspaper Web sites. However, EPA is not proposing a specific type of electronic media to be used by all CSO communities as electronic media technologies and usage continue to change and the availability and appropriateness of different media options will vary from community to community. EPA seeks comment on whether public notice by broadcast media and/or local newspapers should be required for all CSO permittees in the Great Lakes Basin, or whether this specificity is better addressed in permits.

EPA proposes the same minimum information content requirements that it proposes for the initial notice to the local public health department, with the exception that a point of contact for the discharger is not included in the notice to the general public. EPA does not propose to require that a point of contact be provided in the notice for the public because this could generate a large number of calls or emails to the CSO permittee that could hinder the permittee's ability to respond to the CSO discharge and to communicate with public health officials and other affected municipal entities.

EPA also proposes that the Great Lakes Basin CSO permittee provide a supplemental notice specifying the time the discharge ended and the volume of the CSO discharge unless this information has already been provided in the initial notice. EPA proposes that the supplemental public notice would be required within 24 hours of the end of the CSO discharge.

As mentioned above, EPA received a number of comment in response to the August 1, 2016 **Federal Register** document, in writing and at the public listening session on September 14, 2016, regarding notification methods and timeframes for notification to the public. One commenter recommended that information on how to receive email or text alerts should be provided to the public on the permittee's Web site and in wastewater bill mailings. EPA requests comment on whether the proposed regulation should include specific requirements for the permittee to make information on how to receive alerts available to the public.

One commenter indicated that it would not be possible to estimate system-wide CSO volumes within 24 hours, given the size of their system, size of the storm, number of outfalls, number of receiving waters, and other complex factors that are considered to determine overflow locations, timing, and volumes. Another commenter recommended that the supplemental notice be required within 24 to 48 hours. Another commenter recommended that the Great Lakes Basin CSO permittee be given five days before discharge volume estimates must be provided. Other commenters advocated for real-time or faster alerts such as requiring public notification within 15 minutes, if possible. Another commenter suggested that if real time monitoring is not feasible, all discharges should be required to notify the public within two hours of the start of the CSO discharge.

Other commenters expressed concerns about the time it would take to provide detailed notification. For example, one comment said reporting in-depth on volume, length of discharge and preventative measures for each CSO event would take resources away from more critical water quality initiatives. EPA requests comment on whether the 24-hour time period is appropriate and whether the minimum information

requirements for the 24-hour notice are appropriate.

EPA requests comment on providing a longer timeframe than four hours for small communities to make the initial notification, such as eight or twelve hours as well as appropriate population thresholds (*e.g.,* under 2,000 or 1,000) for such a requirement. Some of the representatives of the Great Lakes states expressed concerns that introducing an alternative timeframe for initial reporting for small communities could create confusion in the regulated community. EPA requests comment on the appropriateness of the proposed four-hour time period and on whether all communities should be subject to the same four-hour maximum timeframe for providing initial notification.

Some commenters responding to the August 1, 2016 **Federal Register** document raised concerns that overuse of text alerts of CSO discharges to the public could be counter-productive because the public could be over saturated by the alerts and the alerts overly simplify a complex message about health risks. Another commenter raised concerns that supplemental notifications indicating that CSO discharges have ceased may send an incorrect message that the waters are safe. EPA requests comment on allowing permittees flexibility to use different mechanisms for providing initial and supplemental notice (*e.g.* text/email alerts and Web site notice for initial notification and limiting supplemental notice to posting information on the permittees Web site).

4. Annual CSO Notice

EPA proposes that all permittees authorized to discharge a CSO to the Great Lakes Basin are required to make an annual notice available to the public by the first of May each year. In addition, EPA proposes that the permittee notify the Director of the availability of the annual notice. The information in the annual notice would provide the public with a comprehensive understanding of how the permittee's CSS is performing and of the permittee's CSO control program. The Agency proposes that the annual notice would include a summary of both the prior year's discharges and upcoming implementation of CSO controls. EPA proposes that the annual notice include at a minimum:

- A description of the availability of the permittee's public notification plan and a summary of significant modifications to the plan that were made in the past year;
- A description of the location, treatment provided, and receiving water of each CSO outfall;
- The date, location, duration, and volume of each wet weather CSO discharge that occurred during the past calendar year;
- The date, location, duration, and volume of each dry weather CSO discharge that occurred during the past calendar year;
- A summary of available monitoring data from the past calendar year;
- A description of any public access areas impacted by the discharge;
- Representative rain gauge data in total inches to the nearest 0.1 inch that resulted in each CSO discharge;
- A point of contact; and
- A concise summary of implementation of the nine minimum controls and the status of implementation of the long-term CSO control plan (or other plans to reduce or prevent CSO discharges), including:
  - A description of key milestones remaining to complete implementation of the plan; and
  - A description of the average annual number of CSO discharges anticipated after implementation of the long-term control plan (or other plan relevant to reduction of CSO overflows) is completed.

The proposed elements of the annual notice summarize the information provided in the initial and supplemental notifications to the public and provide additional follow-up information required in Section 425(b)(4)(A). Section 425(b)(4)(A) requires inclusion of follow-up notice requirements that provide a description of ''(i) each applicable discharge; (ii) the cause of the discharge; and (iii) plans to prevent a reoccurrence of a combined sewer overflow discharge to the Great Lakes Basin consistent with section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or an administrative order or consent decree under such Act.''

EPA proposes an annual notice requirement that would address the information required by Section 425(b)(4)(A)(ii) and (iii) by requiring a summary of how the CSO permittee is implementing the nine minimum controls and their LTCP. The summary would include a description of key milestones remaining to complete implementation of the LTCP and a description of the anticipated average annual number of CSO discharges after the LTCP is completed.

As described in section II.C of this preamble, Section 402(q) of the CWA (33 U.S.C. 1342(q)), provides that NPDES permits and enforcement orders for discharges from combined sewer systems ''shall conform'' to the 1994 CSO Control Policy. By requiring the annual report to summarize how the permittee is implementing the nine minimum controls and LTCP, the proposed rule would result in a description of the permittee's plans under their permit, administrative order or consent decree, ''consistent with section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or an administrative order or consent decree under such Act'' as required by Section 425(b)(4)(A)(iii). This information is intended to provide the public with a description of the current performance of their system as well as progress on CSO reduction. This notice can serve to increase public awareness, and enable the public to better understand the community's current and future investments into collection system infrastructure. This can promote stronger public support for actions necessary to reduce CSOs. EPA requests comment on the proposed elements of the annual notice.

EPA anticipates that any community that already generates an annual CSO report would ensure that the required elements of the proposed rule are addressed in that report and then use that annual CSO report to comply with the annual notice requirements proposed today, rather than generating a separate report solely to meet these new requirements. Communities choosing this approach under the proposed rule would need to ensure that the annual report is published to their Web site by the date specified in the proposed rule (May 1 of each calendar year).

EPA requests comment on requiring permittees to supplement the annual notice by providing quarterly notice of a description of each CSO discharge, the cause of the discharge, and plans to prevent a reoccurrence of the CSO discharge. This approach may assist interested members of the public in following the status of CSO remediation efforts in their communities in a more up-to-date timeframe. EPA requests comment on this approach or other means of updating the public more frequently than annually.

C. Public Notification Plans

EPA proposes requirements for public notification plans at § 122.38(d). The Agency proposes that Great Lakes Basin CSO permittees be required to develop and submit to the Director a public notification plan within six months after publication of a final rule and then as part of the permittee's application for permit renewal. In addition, EPA proposes at § 122.38(e) that, prior to

submitting the proposed public notification plan, CSO permittees must seek and consider input from the local public health department (or if there is no local health department, the state health department) and potentially affected public entities and Indian tribes whose waters may be affected by CSO discharges.

The public notification plans are intended to provide system-specific detail (*e.g.,* proposed monitoring locations, means for disseminating information to the public) describing the discharger's public notification efforts. The plan will enhance communication with public health departments and other potentially affected public entities and Indian tribes whose waters may be affected by the CSO discharge. The plan would also assist NPDES permit writers in establishing public notification permit conditions. In addition, the plan would provide the public with a better understanding of the permittee's public notification efforts.

Under the proposal, the plan would describe:

- The permittee's signage program;
- The identification of municipal entities that may be affected by the permittee's CSO discharges;
- Input from the health department and other potentially affected entities;
- Protocols for the initial and supplemental notice of the public, public health departments and other public entities;
- How the volume and duration of CSO discharges would be determined; and
- Protocols for making the annual notice available to the public.

Regarding signage, the plan would describe what information is in the message on the signs and identify any CSO outfall where a sign under § 122.38(a)(1) is not and will not be provided, explain why a sign at that location is not feasible. The plan would also describe the maintenance protocols for signage, such as inspection intervals and replacement schedule.

Section 425(b)(3)(A)(iii) of the 2016 Consolidated Appropriations Act provides that public notice for CSO discharges is to include a description of any public access areas impacted by the discharge. EPA proposes to lay the groundwork for this provision by requiring that public notification plans identify which municipalities and other public entities may be affected by the permittee's CSO discharges. Potentially affected public entities whose waters may be affected by the CSO discharge could include adjoining municipalities, public drinking water utilities, state and county parks and recreation departments. Such areas may have already been identified in the CSO permittee's LTCP, which should identify CSO discharges to sensitive areas.[17] In deciding which public entities and Indian tribes are ''potentially impacted'' and should be contacted for their input, the Great Lakes Basin CSO permittee should evaluate:

- The location of the CSO discharge point and what users of that waterbody may exist in the surrounding region;
- The direction of flow in the receiving water and uses of that waterbody, or connected waterbodies, downstream of the CSO discharge point;
- The presence of public access areas near, or downstream of, the discharge point;
- The presence of drinking water supply systems near, or downstream of, the discharge point; and
- The presence of municipal entities, Indian tribes, and/or parks and recreation department lands near, or downstream of, the discharge point.

EPA proposes that the plan would identify any municipality and Indian tribe that was contacted for input on public notification protocols. In addition, the plan would provide a summary of the comments and any recommendations from these entities, as well as a summary of the significant comments and recommendations provided by the local public health department(s).

Local public health departments, public entities, and Indian tribes whose waters may be affected by a CSO discharge are in a unique position to recommend the timing, means and content of the public notification requirements addressed in this proposal. Seeking input from these entities would allow the permittee to reflect in the public notification plan the needs and preferences of these entities with regard to notice of CSO discharges. Also, these groups can help inform decisions regarding what is the most appropriate means of communicating information to the public, taking into consideration specific populations in the community and their access to various electronic communication methods and social media. For example, if there is a segment of the population without access to cell phones or computers, or who would incur costs by receiving text notifications, the consulted entities may suggest other communications means that would be more appropriate to reach these groups (*e.g.,* radio broadcast, postings in public places, announcements through community flyers).

The plan would also be required to describe how the volume and duration of CSO discharges would be either measured or estimated. If the Great Lakes Basin CSO permittee intends to use a model to estimate discharge volumes and durations, the plan would be required to summarize the model and describe how the model was or would be calibrated. CSO permittees that are a municipality or sewer district with a population of 75,000 or more must calibrate their model at least once every 5 years.

EPA requests comment on the minimum elements of a plan listed in § 122.38(c) and whether additional minimum requirements may be appropriate. Other such elements could include: A description of outreach that would be conducted to alert the public of the notification system and how to subscribe or otherwise gain access to the information, and information on how the public notification plan would be made available to the public. In addition, EPA seeks comment on requiring Great Lakes Basin CSO permittees to seek and consider input from public health departments and other potentially affected entities in developing their public notification plans. EPA also requests comment on whether the final rule should specifically require that the permittee provide an opportunity for members of the public to review and comment on the public notification plan, as was suggested by one commenter responding to the August 1, 2016 **Federal Register** document.

EPA proposes that the Great Lakes Basin CSO permittee make its public notification plan available to the public on the permittee's Web site (if it has a Web site) and periodically provide information in bill mailings and by other appropriate means on how to view the notification plan. The EPA seeks comment on whether there should be specific requirements for requiring notice of the plan and if so, how the plan should be made available. In addition, EPA seeks comment on whether there should be specific requirements for requiring notice of when significant modifications are made to the plan.

[17] The CSO Policy clarifies EPA's expectation that a permittee's LTCP give the highest priority to controlling overflows to sensitive areas. The Policy provides that sensitive areas, as determined by the NPDES authority in coordination with State and Federal agencies, as appropriate, include designated Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds. (59 FR 18692).

D. Implementation

EPA proposes to implement the public notification provisions as a stand-alone regulatory requirement until the proposed required condition is incorporated into the NPDES permit of the Great Lakes Basin CSO permittee. Section 425(b)(5) of the 2016 Consolidated Appropriations Act provides that the notice and publication requirements described in the Act are to be implemented by ''not later than'' December 18, 2017. The Act also provides that the Administrator of the EPA may extend the implementation deadline for individual communities if the Administrator determines the community needs additional time to comply in order to avoid undue economic hardship. The Agency recognizes that if NPDES permits were the only means of implementing these requirements, permits would have to be reissued with these requirements before they would take effect. Given the current status of CSO permits in the Great Lakes Basin, it would take over five years for the proposed public notification requirements to be incorporated into all permits. Implementing the public notification requirements by regulation would result in all Great Lakes Basin CSO permittees establishing their public notification system within the same timeframe, and is more consistent with the implementation deadline in Section 425(b)(5)(A).

In addition to Section 425 of the Consolidated Appropriations Act of 2016, EPA's authority for these public notification requirements includes Sections 304(i) and 308 of the CWA, which provide broad authority to issue procedural requirements for reporting (including procedures to make information available to the public) and to require point source owners and operators to establish and maintain records, make reports, monitor, and provide other ''reasonably required'' information.

The requirements of § 122.38(a) (signage and notification requirements), § 122.38(b) (annual notice), § 122.38(c) (reporting) would be enforceable under the CWA prior to incorporation into a permit as requirements of CWA section 308. With respect to the public notification plan, the requirement to develop a public notification plan consistent with § 122.38(d) and (e) would also be enforceable under the CWA as a requirement of CWA section 308. Once public notification requirements are incorporated into an NPDES permit, they would enforceable as a condition of permit issued under CWA section 402.

The details and content of the public notification plan, however, would not be enforceable under § 122.38(d) or as effluent limitations of the permit, unless the document or the specific details with the plan were specifically incorporated into the permit. Under the proposed approach, the contents of the public notification plan would instead provide a road map for how the permittee would comply with the requirements of the permit (or with the requirements of § 122.38(a)–(c) prior to inclusion in the permit as a permit condition). Once the public notification requirements are incorporated into the permit as a permit condition, the plan could be changed based on adaptions made during the course of the permit term, thereby allowing the permittee to react to new technologies, circumstance and experience gained and to make adjustments to its program to provide better public notification and better comply with the permit. This approach would allow the CSO permittee to modify and continually improve its approach during the course of the permit term without requiring the permitting authority to review each change as a permit modification.

1. Section 122.38 Requirements

As discussed in detail above, a new § 122.38 would set forth requirements that would apply to all permittees with CSO discharges to the Great Lakes Basin. Under the proposed rule, Great Lakes Basin CSO permittees would be required to develop a public notification plan, after seeking and considering input from public health departments and other potentially affect public entities. EPA proposes that the plan must be submitted to the Director and made available to the public within six months of publication of the final rule. Proposed § 122.38 would also require implementation of the signage and notice to affected public entities and the public within six months of publication of the final rule. Thus, a Great Lakes Basin CSO permittee would be required to develop its plan and implement it within six months of the final rule.

EPA has considered how much time it should take to implement public notification requirements. EPA also recognizes that every Great Lakes Basin CSO permittee already provides some public notification, in order to implement one of the nine minimum control measures in the 1994 CSO Control Policy. However, small communities in particular may not provide public notification to the extent that would be required under the proposed rule. Therefore, EPA seeks comment on whether six months is adequate for implementing the proposed public notification requirements, including development of a public notification plan. In particular, EPA seeks comment on whether some (*e.g.,* small) communities should have more time than others to implement public notification requirements and/or whether there should be additional time to implement the signage or notification requirements after the public notification plan is developed, submitted to the Director, and made available to the public, and if so, how much additional time should be allowed. For example, should municipal permittees with a population of less than 10,000, or in the case of sewerage districts, a service population of less than 10,000, be required to submit a public notification plan to the Director within nine or 12 months after the publication of the final rule, rather than six months?

2. Required Permit Condition

EPA's long-term objective is to use NPDES permits to implement public notice requirements for CSO discharges in the Great Lakes Basin. To that end, EPA proposes to revise both the permit application regulation requirements in § 122.21(j) and to add a required permit condition for NPDES permits issued for these discharges. EPA proposes to add § 122.21(j)(8)(iii) to require the CSO permittees in the Great Lakes Basin to submit a public notification plan to the Director with its permit application (and any updates to its plan that may have occurred since the last plan submission). EPA also proposes to add a new condition at § 122.42(f) that would apply to permits for CSO discharges to the Great Lakes Basin. The proposed provision would ensure that CSO public notice requirements are incorporated into the NPDES permit where they can be updated as appropriate with each permit cycle. Public notification plans, submitted with subsequent permit applications, would reflect changes in collection systems and technology, as well as public notice practices. By requiring the Great Lakes Basin CSO permittee to include its updated public notice plan with its permit application, the Director would have the information that would be needed for including requirements for public notification in the permit when it is reissued.

The proposed required permit condition would provide flexibility in a number of areas to allow NPDES permit writers to address in their plans the particular circumstances of each

community (*e.g.,* size of community, differences in public access areas potentially impacted by a CSO discharge). This provision would not preclude the Great Lake states from modifying the condition to establish more stringent public notification requirements (see Section 425(b)(6) of the 2016 Consolidated Appropriations Act).

As outlined in § 122.42(f) of the proposed rule, permits for CSO discharges within the Great Lakes Basin would, at a minimum:

- Require implementation of the public notification requirements in § 122.38(a);
- Specify the information that must be included on outfall signage;
- Specify outfalls and public access areas where signs are required;
- Specify the timing and minimum information for providing initial notification to local public health departments and other potentially affected entities and the public;
- Specify the location of CSO discharges that must be monitored for volume and discharge duration and the location of CSO discharges where CSO volume and duration may be estimated;
- Require submittal of an annual notice;
- Specify protocols for making the annual notice available to the public; and
- Require all CSO discharges be reported electronically either in a discharge monitoring report or as a non-compliance event.

Section 402(q) of the CWA requires NPDES permits for discharges from combined sewers to ''conform'' to the 1994 CSO Control Policy. One of the ''Nine Minimum Controls'' identified in the Policy is that NPDES permits for CSO discharges require public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The proposed required permit condition would conform to the 1994 CSO Control Policy's minimum control to provide the public with ''adequate notification'' and would further provide specificity to better implement the public notification provision identified in the Policy. Including this provision in permits would give the Great Lakes states an opportunity to update and fine-tune public notice requirements to reflect continued development of the permittee's public notice effort, ensure consistency with state legislative and regulatory requirements for public notification, reflect new technologies and be informed by public input. In addition, by including public notification requirements as a condition in permits, the public would have a formalized opportunity to comment on the proposed permit conditions.

E. Additional Considerations

1. Definitions

EPA proposes to add three definitions to the NPDES regulations, ''Combined Sewer System,'' ''Combined Sewer Overflows,'' and ''Great Lakes Basin.'' The proposed definition of *combined sewer system* is based on the description of combined sewer system found in the 1994 CSO Policy. The Policy provides that ''A combined sewer system (CSS) is a wastewater collection system owned by a state or municipality (as defined by § 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant (as defined in § 403.3(p)).'' The proposed definition of *combined sewer overflow* also conforms to the description of CSO in the CSO Policy which provides that a ''CSO is the discharge from a CSS at a point prior to the POTW Treatment Plant.''

The 2016 Consolidated Appropriations Act specifies in Section 425(a)(4) that the term ''Great Lakes'' means ''any of the waters as defined in the § 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1292).'' This, therefore, includes § 118(a)(3)(B), which defines ''Great Lakes'' as ''Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);'' and § 118(a)(3)(C), which defines ''Great Lakes System'' as ''all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes.'' Collectively, EPA is referring to the Great Lakes and the Great Lakes System as the ''Great Lakes Basin.''

2. List of Treatment Works

Section 425(b)(4)(B) provides that EPA shall work with the Great Lakes states to establish annual publication requirements that list each treatment works from which the Administrator or the affected state receive a follow-up notice. EPA has developed a Web page that identifies the communities in the Great Lakes Basin with CSO discharges.[18] In the future, EPA will update this Web page with information on how to access the annual notices of these communities.

3. Adjusting Deadlines To Avoid Economic Hardship

Section 425(b)(5)(A) of the 2016 Appropriations Act provides that the notice and publication requirements of the provision must be implemented by not later than December 17, 2017, unless the EPA Administrator determines the community needs additional time to comply in order to avoid undue economic hardship. All of the Great Lakes states are authorized to administer the NPDES program. Because EPA proposes to implement Section 425 as part of the NPDES permit program, under proposed § 122.38(f), this determination would be made by the Director. As the NPDES authority, the state is in a better position to evaluate the economic conditions and financial capability of the permittee as they have worked with individual communities to ensure implementation of their LTCPs.

EPA proposes that the Great Lakes Basin CSO permittee must submit a public notification plan to the Director of the NPDES program not later than six months after publication of a final rule. The Great Lakes Basin CSO permittee would be required to comply with the public notice requirements of § 122.38 by six months for initial and supplemental notifications and 12 months in the case of annual notification, after publication of a final rule, unless the Director specifies a later date to avoid economic hardship. Under the proposed rule at § 122.38(e), the Director may extend the compliance dates for public notification under § 122.38(a), annual notice under § 122.38(b), and/or public notification plan submittal under § 122.38(c) for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship. The proposed rule would require the Director to notify the Regional Administrator of the extension and the reason for the extension. In addition, the Director would be required to post on its Web site a notice that includes the name of the community and the new compliance date(s). EPA also proposes to amend 40 CFR 123.25, which sets forth the requirements of an approved state NPDES program, to include a requirement for Great Lakes States to have the authority to implement the public notification requirements in § 122.38. No revision to § 123.25 would be needed with respect to proposed revisions to § 122.21(j) and § 122.42, as both of those sections are already included in § 123.25. As noted above in

[18] *https://www.epa.gov/npdes/combined-sewer-overflows-great-lakes-basin.*

section II.G of today's preamble, all of the Great Lakes States already have some form of public notification requirements, therefore EPA does not anticipate that any Great Lakes state would need to revise its regulations or seek additional authority from the legislature to implement proposed § 122.38 or revised § 122.21(j) and § 122.42.

EPA requests comment on this proposed implementation of Section 425(b)(5)(B).

4. Notification of CSO volumes

Most NPDES permits for CSO discharges to the Great Lakes Basin require the permittee to report CSO volumes in DMRs. In addition, CSO discharge volume information is typically needed to implement the nine minimum controls and LTCPs under the CSO Policy. One of the nine minimum controls identified in the CSO Control Policy addresses monitoring to effectively characterize CSO impacts and the efficacy of CSO controls. Similarly, one of the minimum elements of a LTCP is characterization monitoring and modeling of the CSS. In addition, the post-construction compliance monitoring program in the CSO Policy calls for effluent and ambient monitoring. EPA has issued technical guidance on monitoring and modeling of CSO discharges.[19] EPA has also identified examples of where CSO monitoring technologies have also been used by regulators and communities to better identify significant pollution and noncompliance problems in the ''NPDES Compendium of Next Generation Compliance Examples.'' [20]

Typically, CSO permittees use a combination of monitoring and modeling to estimate CSO volume. This approach is reflected in many CSO permits that require monitoring of CSO discharges from some outfalls, and for other outfalls allows for estimating CSO discharge volumes by modeling or some other means. For larger collection systems with multiple outfalls, the permit may require monitoring the volume discharged at the most active outfalls with the largest discharge volumes. CSO permits may provide that for less active CSO outfalls, the permittee report volume in the DMR based on estimates. In some cases, volume estimates for DMR reporting purposes are based on models which were developed to characterize flows in the collection system as part of developing and implementing a LTCP. These models can vary in complexity, and may be calibrated by periodic flow measurements or other data from various locations in the collection system.

The Agency recognizes that for many CSO permittees, CSO monitoring efforts have tended to become more robust as monitoring technology has evolved and continues to evolve. In general, EPA encourages CSO permittees to consider using monitoring to determine CSO discharge durations and volume. Traditionally, the cost of installing and maintaining monitoring sensors has been high when compared to modeling. However, the cost of monitoring technologies has decreased and is expected to continue to do so. In addition, new tools are being developed to communicate, analyze and display data collected by these monitoring technologies. One example of a CSO community with a more comprehensive monitoring program is the City of Seattle, WA. The NPDES permit for CSO discharges in Seattle (WA0031682) requires the permittee to use automatic flow monitoring equipment to monitor the discharge volume, discharge duration, storm duration and precipitation at all 86 CSO outfalls from the CSS. In another example, the Capital Region Water (CRW) in Harrisburg, PA is conducting a pilot study to evaluate the potential use of CSO activation monitoring equipment.[21] CRW will use the results of this pilot study to determine which technology to implement to send an alert each time a monitored CSO outfall begins discharging.

Some of the public comments received in response to EPA's August 1, 2016 **Federal Register** document discussed several challenges associated with volume measurement and reporting. Some commenters suggested that wastewater monitoring devices may be placed in a harsh environment and require active maintenance. One commenter suggested that the configuration of a CSO outfall may present unique and challenging circumstances which make monitoring difficult. For example, discharges from the outfall may include contributions from separate storm sewers or wastewater flows may be influenced by currents and tides in the receiving water.

Many commenters discussed the importance of flexibility for Great Lakes Basin CSO permittees to determine the data collection method that works best for their community. A commenter also recommended that CSO discharge volume be noticed in a simplified way that is easier to understand for the public, such as small, medium, or large discharges. Another commenter indicated that installing, operating, and maintaining meters at each of their 52 CSO locations would be cost prohibitive.

The proposed rule would require the Great Lakes Basin CSO permittee to provide an estimate of CSO discharges volumes as part of the supplemental notice to the initial notification to the local public health department and other potentially affected public entities and the supplemental notification to the public. The proposal would require this information within 24-hours of becoming aware that the CSO discharge has ended. In addition, the proposal would require the CSO discharger to provide the volume of each CSO discharge that occurred during the past calendar year in the annual notice. EPA anticipates that the information in the annual notice may reflect refinements in the volume and duration estimates provided at the time of the supplemental notification, and therefore these numbers may not be the same. EPA requests comment on the adequacy of a 24-hour reporting window for reporting CSO discharge volume and duration data. EPA also requests comment on whether these data should be required to be reported for each outfall, or whether it would be appropriate to allow for reporting aggregated data at the water body or stream or river segment level.

Under the proposed approach, where a CSO permittee has CSO discharges occurring at multiple locations at the same time, the CSO permittee would not have to estimate the volume discharged for each outfall, but would be allowed to make an estimate of the cumulative volume of CSOs discharged to a given waterbody. This approach would simplify the information provided to the public and focus on individual watersheds. This is consistent with the proposed notification requirements for outfalls, which would not require identification of individual outfalls in all cases. EPA requests comment on this approach.

Under the proposed approach, the Great Lake states would determine

[19] See ''Combined Sewer Overflows—Guidance for Monitoring and Modeling'' EPA–832–B–99–022, 1999 and ''CSO Post Construction Compliance Monitoring Guidance'', EPA–833–K–11–001, 2012). *https://www.epa.gov/npdes/combined-sewer-overflows-csos.*

[20] See *https://www.epa.gov/compliance/compendia-next-generation-compliance-examples-water-air-waste-and-cleanup-programs.*

[21] See the Consent Decree between Harrisburg, PA, Capital Region Water (CRW), the Pennsylvania Department of Environmental Protection and EPA (U.S. District Court for the Middle District of Pennsylvania, Civil Action No. 1:15–cv–00291–WWC). (*https://www.epa.gov/sites/production/files/2015-02/documents/cityofharrisburg-cd.pdf.*)

which outfalls must be monitored and where volume estimates are appropriate for the purpose of public notification when reissuing CSO permits. This approach would provide flexibility for adapting volume reporting requirements that would be consistent with and build on ongoing compliance and implementation monitoring and could respond to technology advancements that occur in the future. The flexibility would also allow states and permittees to focus on system specific priorities (*e.g.,* highest priority outfalls, predictive modeling).

5. Treated Discharges

Section 425(b)(1) of the 2016 Consolidated Appropriations Act requires EPA to work with the Great Lake states to establish public notice requirements for CSO discharges. The Agency recognizes that some CSO discharges receive treatment, including solids removal and disinfection, such that the end-of-pipe discharge may meet state water quality standards, including standards for bacteria indicators designed to protect recreational uses. Under the proposal and consistent with Section 425(b)(1), permittees would be required to provide public notice for all CSO discharges, regardless of the level or type of treatment a CSO received, if any, prior to discharge. However, nothing in the proposed rule would preclude permittees from also describing the level of treatment that various CSO discharges receive.

EPA received comments at the listening session on September 14, 2016 in response to EPA's August 1, 2016 **Federal Register** document that indicate that some municipalities with engineered treatment systems for CSO discharges do not believe primary treated and disinfected CSO discharges should be subject to the same public notification requirements as untreated discharges. In addition, some state workgroup members have also made this recommendation, including those from Michigan and Indiana.

The Agency requests comment on whether it would be appropriate to establish alternative public notice requirements for CSO discharges that are treated to a specified level (*e.g.,* primary treatment plus disinfection). EPA requests comment on whether the final regulations should provide additional flexibility for Great Lakes Basin CSO permittees to recommend in their public notification plan different public notification procedures for treated CSO discharges as compared to untreated CSO discharges. One approach would be to provide the NPDES authority with flexibility to not require initial notification requirements in the permit for treated CSO discharges. Another approach would be to only establish initial notification requirements in proposed § 122.38 for CSO discharges that are not in compliance with permit limits or that do not receive at least primary treatment and disinfection. EPA requests comment on this flexibility. The existing practices in the state of Indiana allow such flexibility.[22] Other states, such as New York, require public notification for all CSO discharges, including treated discharges.[23] Still another approach is to limit initial notification of treated CSO discharges to public health officials and other impacted communities. However, EPA notes that traditional bacteria indicators that are used in state water quality standards may not be the best indicators of viral and other pathogens associated with fecal contamination.[24] CSO discharges that only receive primary treatment prior to disinfection and that meet water quality standards based on indicator bacteria may have levels of viruses and other pathogens that are higher than discharges of wastewater that are treated by secondary treatment processes prior to disinfection. This is because bacteria respond to water treatment processes and environmental degradation processes differently than viruses. In addition, particles in wastewater may shield pathogens from disinfection.[25] CSO discharges that only receive primary treatment prior to disinfection may also have higher levels of trihalomethanes and other disinfection byproducts due to the higher concentration of chlorine needed to disinfect and potential interactions with particles in the wastewater.

Some of the entities from whom input is sought in the plan development may prefer to receive notice of all CSO discharges, regardless of treatment status, because of the potential risks posed by elevated pathogen levels (*e.g.,* drinking water facilities may want notification because of concerns about elevated levels of viruses or other pathogens in the source water).

6. More Stringent State Requirements

Consistent with Section 425(b)(6) of the 2016 Consolidated Appropriations Act, nothing in the proposal would prohibit a Great Lakes state from establishing notice requirements for Great Lakes Basin CSO permittees in that state that are more stringent than the requirements proposed today. The NPDES regulations specifically allow for state NPDES permit authorities to establish permit requirements that are more stringent than the permit conditions specified at § 122.42 (see § 123.25(a)).

7. Reporting

Most NPDES permits for CSO discharges to the Great Lakes Basin require all CSO discharges be reported in a DMR at a frequency specified in the permit or within 24 hours pursuant to § 122.41(l)(6). As discussed in section II.D of today's preamble, the NPDES electronic reporting rule requires that these reports be made electronically. EPA proposes that all NPDES permits for CSO discharges to the Great Lakes Basin require that all CSO discharges are reported electronically. In addition, the Agency proposes a provision in § 122.43(f) that would require Great Lakes Basin CSO permittees to electronically report any CSO discharge that occurred during the past calendar year that has not been previously reported pursuant to a permit requirement by May 1 of the following calendar year.

These proposed provisions are intended to ensure that the NPDES electronic database has complete information on CSO discharges to the Great Lakes Basin and to minimize any potential discrepancies between a permittee's annual notice and the NPDES electronic database.

8. Ambient Monitoring

One municipality has suggested that a targeted approach to public notification

[22] Indiana's interpretation is based on the stated purposes in 327 IAC 5–2.1–1, and the definitions of ''Affected Public'' and ''Affected Waters'' in 327 IAC 5–2.1–3(1) & (2). These provisions signify the intent of the notification rule is to properly warn citizens of possible health impacts from exposure to waterborne pathogens/E. coli related to CSO events. Notifications to health departments and drinking water suppliers are also related primarily to waterborne pathogen concerns. Any ''treated'' CSOs in Indiana must meet the minimum treatment requirements of the Federal CSO Policy (which includes disinfection). ''Treated'' CSO discharges are regulated in Indiana's NPDES permits with appropriate effluent sampling and numeric limitations for E. coli applied during the defined recreational season. As these ''treated'' CSO discharges must comply with E. coli limitations which are protective of full body contact recreational uses, such discharges are not considered to be imminent risks to human health (in regards to waterborne pathogens), any more than are discharges from wastewater treatment plant outfalls which disinfect and discharge continuously. Therefore, public notification for ''treated'' CSO discharges is not required in Indiana.

[23] New York Environmental Conservation Law § 17–0826–a requires public notification for all CSO discharges.

[24] ''Review of Coliphages as Possible Indicators of Fecal Contamination for Ambient Water Quality,'' EPA, 820–R–15–098, April 17, 2015.

[25] ''Impact of Wet-Weather Peak Flow Blending on Disinfection and Treatment: A Case Study at Three Wastewater Treatment Plants,'' Interstate Environmental Commission, March, 2008.

that prioritizes high-use recreational areas may reduce health risks more than an overly broad, general notification requirement. They suggested a targeted public notification approach could include monitoring the water quality of recreational areas for *E. coli* and cyanobacteria, public notification, posting water quality advisories, predictive modeling and source tracking. They suggested posting information from predictive models and the previous day *E. coli* sampling results on multiple Web sites and working with local television stations, newspapers, and radio stations to provide public notice.

The proposed rule would not mandate ambient monitoring for all CSO permittees as part of a public notification program. However, the proposal would provide flexibility for such approaches to be incorporated into an NPDES permit. EPA requests comment on when ambient monitoring and predictive monitoring of ambient water conditions should be incorporated as a requirement for the public notification program.

IV. Incremental Costs of Proposed Rule

The economic analysis estimates the incremental costs of requiring operators of a CSO discharge to the Great Lakes Basin to provide public notification of CSO discharges. Table 3 summarizes the estimated incremental costs for the proposed rule.

TABLE 3—ANNUAL INCREMENTAL COSTS BY RESPONDENT CATEGORY

[Average of first three years]

	Respondents	Labor costs	Capital/ start-up/ O&M costs	Total
CSO permittees with a population of less than 10,000	80	$102,114	$55,251	$157,365
CSO permittees with a population of between 10,000 and 50,000	70	118,894	1,296	120,190
CSO permittees with a population of more than 50,000	32	86,720	3,456	90,176
States	7	17,526	0	17,526
Totals		325,254	60,003	385,257

The average incremental cost per CSO permittee is about $2,000 per CSO permittee per year. These estimates are all below the threshold level established by statute and various executive orders for determining that a rule has a significant or substantial impact on affected entities. See further discussion in Section V of this document.

The Economic Analysis assumes that costs will be borne by Great Lakes Basin CSO permittees in the form of one-time implementation activities that would occur within one to two years, once per year activities including an annual notice, and ongoing activities that would occur during and after CSO discharges. The Economic Analysis also assumes costs for state agencies, mainly in the review of CSO permittee plans and reports.

V. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and therefore this proposal was not submitted to the Office of Management and Budget (OMB) for review. The final rule may be submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2562.01. The ICR is summarized here; a complete copy can be found in the docket.

As discussed in section II.C of today's notice, NPDES permits for CSO discharges to the Great Lakes Basin should require permittees to provide public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The information burden associated with this provision is approved in ''Information Collection Request for NPDES Program (Renewal)'', OMB Control No. 2040–0004, EPA ICR No. 0229.21. EPA has developed an additional analysis to provide a better, updated estimate of the public notification requirements proposed today. The analysis used to develop these estimates is described in ''ICR Supporting Statement, Information Collection Request: Public Notification Requirements for CSOs in the Great Lakes Basin,'' EPA ICR number 2562.01. Key estimates and assumptions in the analysis include:

- 93% percent of existing outfalls for all CSO permittees have installed signs and that they are being maintained;
- Approximately half of the CSO permittees already have a system for developing estimates of the occurrence and volume of discharges from CSO outfalls;
- Each Great Lakes Basin CSO permittee already operates a Web site that can be modified to provide the public with notification of an CSO event;
- Larger CSO communities may have access to listserv technology;
- Electronic technology significantly reduces the burden of providing initial and supplemental notification to the public and to local public health departments and other affected public entities;
- Much of the effort in developing public notification plan are included in burden estimates for the individual public notification components in the proposal. The activities attributed to the burden for the public notification plan include preparation of the document describing the public notification activities.
- The burdens on NPDES authority are applied to one-fifth of all Great Lakes Basin CSO permits within each state beginning in year 2 of the ICR to account for the five year permit term.

The public notification requirements in this proposed rule are designed to alert the public and public health departments, and other potentially affected entities of CSO discharges in a more wide-spread and timely manner than is currently practiced. The notification requirements which involve distribution of CSO discharge related information (*e.g.,* CSO discharge location, receiving waterbody, time started, time ended, volume) to the

public and affected local governmental agencies would enable potentially affected parties to take action that may help prevent serious health effects that may otherwise occur if they were to remain unaware of the occurrence of CSO discharges.

Respondents/affected entities: The ICR covers information that must be provided by operators of combined sewer systems (Great Lakes Basin CSO permittees) that discharge within the watershed of the Great Lakes Basin. In addition, the ICR covers information burdens of the seven NPDES authorized States that are implementing the program.

Respondent's obligation to respond: Compliance with the notification requirements would be mandatory. Requirements for public notification of CSO discharge are part of the ''nine minimum controls'' established as part of EPA's CSO Control Policy. Section 425 of the consolidated Appropriations Act of 2016 (Pub. L. 114–113) requires EPA to work with the Great Lakes states to establish these public notice requirements.

Estimated number of respondents: EPA has identified 182 CSO communities that discharge to the Great Lakes Basin and seven state NPDES permitting authorities.

Frequency of response: Responses include one-time implementation activities, such as signage, activities that occur once per year, such as providing annual notice, and ongoing activities that would occur during and after CSO discharge events.

Total estimated burden: EPA estimates that the burden of implementing the rule would be 8,641 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: EPA estimates that the rule would cost $385,257 per year during the three year ICR period. This is the total annual incremental cost for all 182 Great Lakes Basin CSO permittees. The average incremental cost per CSO permittee is about $2,000 per year and the average incremental cost per state NPDES authority is about $2,500.

EPA 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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA *submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than February 13, 2017. The EPA will respond to any ICR-related comment in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small governmental jurisdictions. The Agency has determined that 152 (83%) of the 182 communities discharging CSOs to the Great Lakes Basin are governmental jurisdictions with a population of less than 50,000 and thus can be classified as small entities and may experience an impact of between 0% and 0.75% of annual revenue. Details of this analysis are presented in the Economic Analysis for the proposed rule (see ''Economic Analysis for the Proposed Public Notification of CSOs to the Great Lakes Rule,'' EPA, 2016).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538. EPA has conducted an economic analysis examining the potential burden to state, tribal and local governments. Details of this analysis are presented in the economic analysis for the proposed rule (see ''Economic Analysis for the Proposed Public Notification of CSOs in the Great Lakes Rule,'' EPA, 2016). EPA estimates that the costs of rule to states, tribes and local governments will be well below $100 million per year. In addition, EPA compared the estimated annualized cost of the rule and revenue estimates for small local governments using four estimates of revenue data. The annualized compliance cost as a percentage of annual government revenues were all well below 1% for all four revenue estimate methods. EPA concludes that the impact of the rule is very unlikely to reach or exceed 1% of small local government revenue.

EPA has provided small local governments an opportunity to share their views regarding potential new public notification requirements for CSO discharges in the Great Lakes Basin as part of the September 14, 2016 listening session and August 1, 2016 request for stakeholder input discussed in Section I.K of this notice. EPA is also encouraging the Great Lake states to notify small local governments affected by this rule about the opportunity to review and comment on this proposal.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

The rule proposes a requirement for CSO permittees to notify the public of CSO discharges. This requirement includes the development of a public notification plan and the release of an annual notice that includes monitoring data. The incremental impact to state permitting authorities is estimated to be $2,503.71 annually per state. The incremental impact to local permittees may range from a total of $1,000 to $3,000 annually per CSO permittee, depending on the number of CSO events and preparation time for the annual notice. Details of this analysis are presented in ''Economic Analysis for the Public Notification Requirements for Combined Sewer Overflow discharges within the Great Lakes Basin,'' which is available in the docket for the proposed rule (Docket ID No. EPA–HQ–OW–2016–0376 *http://www.regulations.gov*).

Keeping with the spirit of E.O. 13132 and consistent with EPA's policy to promote communications between EPA and state and local governments, EPA met with state and local officials throughout the process of developing the proposed rule and received feedback on how potential new regulatory requirements would affect them. EPA engaged in extensive outreach via conference calls to affected states to enable officials of affected state to have meaningful and timely input into the development of the proposed rule. EPA also held a public listening session and solicited written comments from the public and impacted stakeholder groups, including affected municipalities, to inform the development of the public notice proposed requirements. See Docket ID No. EPA–HQ–OW–2016–0376 to the *Federal eRulemaking Portal: http://www.regulations.gov*.

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

This action does not have tribal implications as specified in Executive Order 13175 since it does not have a direct substantial impact on one or more federally recognized tribes. No tribal governments are authorized NPDES permitting authorities and none of the combined sewer systems subject to this rule are located on Indian nation lands.

The proposed rule would address the way in which municipalities share information with the public, public health departments, and potentially impacted communities (including Indian tribes) about CSOs in the Great Lakes Basin. EPA therefore evaluated the proximity of CSSs that would be subject to the proposed rule in relation to Indian lands. EPA identified six CSO permittees with the potential to affect waters near four Indian nations in New York State:

- *Seneca Nation of Indians (SNI):* The Dunkirk WWTP is located south of the Cattaraugus Reservation. The Buffalo Sewer Authority and Niagara Falls WWTP are located close to SNI lands within the city of Niagara Falls, NY and Buffalo, NY (where the Seneca casinos are located).
- *Tuscarora Nation (TN):* The Tuscarora Nation lands are located directly between the Niagara Falls WWTP and Lockport WWTP but not on the Niagara River or Eighteen Mile Creek.
- *Tonawanda Seneca Nation (TSN):* The Medina WWTP is located 10 miles north of the Tonawanda Seneca Nation lands.
- *St. Regis Mohawk Tribe (SRMT):* Any of the three WWTP plants along the St. Lawrence River would be of concern to the Mohawks at Akwesasne. SRMT is directly impacted by the Massena WWTP as the St. Lawrence River goes directly thru the heart of Akwesasne, the St. Regis Mohawk Tribe's reservation lands.

Consistent with the EPA Policy on *Consultation and Coordination with Indian Tribes,*[26] EPA conducted outreach to tribal officials during the development of this action. EPA contacted the above mentioned tribes through outreach conducted by EPA's Office of Environmental Justice to ensure they were aware of the public listening session held regarding this rulemaking, and the associated opportunity to provide written comments to the Agency. In addition, the proposed rule would require Great Lakes Basin CSO permittees to consult with potentially affected Indian Tribes whose waters may be affected by a CSO discharge prior to submitting the public notification plan. This requirement would ensure that needs of tribes using potentially affected waters are considered in terms of timing of notification, the type of information that is provided, and the means by which public notification is communicated.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule would, in some cases, increase public awareness of CSO discharges to the Great Lakes Basin, including information about public use areas such as beaches that may be impacted by contaminated CSO discharges, and by doing so could decrease health risks for children, infants, and adults.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it does not significantly affect energy supply, distribution or use.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA determined that the human health or environmental risk addressed by this action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This action affects the way in which Great Lakes Basin CSO permittees communicate information regarding CSO discharges to the public. It does not change any current human health or environmental risk standards.

However, because the proposed rule would address the way in which information about CSO discharges is communicated to the public, EPA did reach out to environmental justice organizations to specifically solicit input on what may be the best approaches to reaching environmental justice communities with this information. Prior to the public listening session on September 14, 2016, EPA contacted over 800 environmental justice stakeholders through the Office of Environmental Justice Listserv, to ensure they were aware of the listening session and the opportunity to provide written input to the Agency through the public docket.

In addition, the proposed rule would require the Great Lakes Basin CSO permittee to consult with local public health departments and potentially affected public entities when developing the public notification plan. These consultations may alert the Great Lakes Basin CSO permittee to specific environmental justice community considerations regarding the best ways to effectively communicate this information. EPA requests comment on this requirement and whether it is expected to sufficiently account for the needs of environmental justice communities that may utilize waters that could be affect by a CSO discharge to the Great Lakes Basin.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Combined sewer overflow, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control, Water pollution, public notification, reporting.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Combined sewer overflow, Hazardous substances, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water pollution, public notification, reporting.

Dated: December 16, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 122 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.*

[26] *https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf.*

■ 2. Amend § 122.2 by adding the definitions for ''Combined sewer overflow,'' ''Combined sewer system,'' and ''Great Lakes Basin'' in alphabetical order to read as follows:

§ 122.2 Definitions.

* * * * *

Combined sewer overflow (CSO) means a discharge from a combined sewer system (CSS) at a point prior to the Publicly Owned Treatment Works (POTW) Treatment Plant (defined at § 403.3(r) of this chapter).

Combined sewer system (CSS) means a wastewater collection system owned by a State or municipality (as defined by section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant (as defined at § 403.3(r) of this chapter).

* * * * *

Great Lakes Basin means the waters defined as ''Great Lakes'' and ''Great Lakes System'' as those terms are defined in § section 132.2 of this chapter.

* * * * *

■ 3. Amend § 122.21 by adding paragraph (j)(8)(iii).

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(j) * * *

(8) * * *

(iii) *Public Notification Plan for CSO discharges to the Great Lakes Basin.* Each applicant that discharges a combined sewer overflow to the Great Lakes Basin as defined in § 122.2 must submit a public notification plan developed in accordance with § 122.38 as part of its permit application. The public notification plan shall describe any significant updates to the plan that may have occurred since the last plan submission.

* * * * *

■ 4. Add § 122.38 to read as follows:

§ 122.38 Public Notification requirements for CSO discharges to the Great Lakes Basin.

(a) All permittees authorized to discharge a combined sewer overflow (CSO) to the Great Lakes Basin (''Great Lakes Basin CSO permittee'') must provide public notification of CSO discharges as described in this paragraph after [date 6 months after publication of final rule]. Public notification shall consist of:

(1) *Signage.* (i) The Great Lakes Basin CSO permittee shall ensure that there is adequate signage where signage is feasible at CSO outfalls and potentially impacted public access areas. At a minimum, signs shall include:

(A) The name of the Great Lakes Basin CSO permittee,

(B) A description of the discharge (*e.g.,* untreated human sewage, treated wastewater) and notice that sewage may be present in the water, and

(C) The Great Lakes Basin CSO permittee contact information, including a telephone number, NPDES permit number and outfall number as identified in the NPDES permit.

(ii) The Great Lakes Basin CSO permittee shall perform periodic maintenance of signs to ensure that they are legible, visible and factually correct.

(iii) Where a permittee has before [date 6 months after publication of final rule] installed a sign at a CSO outfall or potentially impacted public access area that is consistent with state requirements, the sign is not required to meet the minimum requirements specified in paragraph (a)(1)(i) of this section until the sign is replaced or reset.

(2) *Notification of Local Public Health Department and other potentially affected public entities.* (i) As soon as possible, but no later than four (4) hours after becoming aware by monitoring, modeling or other means that a CSO discharge has occurred, the Great Lakes Basin CSO permittee shall provide initial notice of the CSO discharge to the local public health department (or if there is no local health department, to the state health department), any potentially affected public entities (such as municipalities, public drinking water utilities, state and county parks and recreation departments), and Indian Tribes whose waters may be affected. Such initial notice shall, at a minimum, include the following information:

(A) The water body that received the discharge(s);

(B) The location of the discharge(s). Where CSO discharges from the same system occur at multiple locations at the same time, the Great Lakes Basin CSO permittee may provide a description of the area in the waterbody where discharges are occurring and identification of the public access areas potentially impacted by the discharge, and the permittee is not required to identify the specific location of each discharge;

(C) The date(s) and time(s) that the discharge(s) commenced or the time the permittee became aware of the discharge(s) or when discharges are expected to occur;

(D) Whether, at the time of the notification, the discharge(s) is continuing or has ended. If the discharge(s) has ended, the approximate time that the discharge ended; and

(E) A point of contact for the CSO permittee.

(ii) Within twenty-four (24) hours after becoming aware by monitoring, modeling or other means that the CSO discharge(s) has ended, the Great Lakes Basin CSO permittee shall provide the following supplemental information to the public health department and affected public entities and Indian Tribes receiving the initial notice under paragraph (a)(2)(i) of this section unless the information had been provided in an earlier notice:

(A) The measured or estimated volume of the discharge(s). Where CSO discharges from the same system occur at multiple locations at the same time, the Great Lakes Basin CSO permittee may provide an estimate of the cumulative volume discharged to a given waterbody; and

(B) The approximate time that the discharge(s) ended.

(3) *Notification of the Public.* (i) As soon as possible, but no later than four (4) hours after becoming aware by monitoring, modeling or other means that a CSO discharge has occurred, the Great Lakes Basin CSO permittee shall provide public notification of CSO discharges. The Great Lakes Basin CSO permittee shall provide public notification of CSO discharges electronically, such as by text, email, social media alerts to subscribers or by posting a notice on its public access Web site, and by other appropriate means (*e.g.* newspaper, radio, television).

(ii) At a minimum, the notice shall include:

(A) The water body that received the discharge(s);

(B) The location of the discharge(s). Where CSO discharges from the same system occur at multiple locations at the same time, the Great Lakes Basin CSO permittee may provide a description of the area in the waterbody where discharges are occurring and identification of the public access areas potentially impacted by the discharge, and the permittee is not required to identify the specific location of each discharge;

(C) The date(s) and time(s) that the discharge(s) commenced or the time the permittee became aware of the discharge(s); and

(D) Whether, at the time of the notification, the discharge(s) is continuing or has ended. If the discharge(s) has ended, the approximate time that the discharge(s) ended.

(iii) Within twenty-four (24) hours after becoming aware by monitoring,

modeling or other means that the CSO discharge(s) has ended, the Great Lakes Basin CSO permittee shall update the electronic notice with the following information unless the information had been provided in an earlier notice:

(A) The measured or estimated volume of the discharge(s). Where CSO discharges from the same system occur at multiple locations at the same time, the Great Lakes Basin CSO permittee may provide an estimate of the cumulative volume discharged to a given waterbody; and

(B) The approximate time that the discharge(s) ended, unless this information was provided in an earlier notice.

(b) *Annual Notice.* By May 1 of each calendar year (or an earlier date specified by the Director), all permittees authorized to discharge a CSO to the Great Lakes Basin shall make available to the public an annual notice describing the CSO discharges from its outfall(s) that occurred in the previous calendar year and shall provide the Director with notice of how the annual notice is available. Permittees that are owners or operators of a satellite collection system with one or more CSO outfalls shall provide the annual notice to the public and a copy of the annual notice to the operator of the POTW treatment plant providing treatment for its wastewater. At a minimum, the annual notice shall include:

(1) Information on the availability of the permittee's public notification plan and a summary of significant modifications to the plan that were made in the past year;

(2) A description of the location, treatment provided and receiving water for each CSO outfall;

(3) The date, location, duration, and volume of each wet weather CSO discharge that occurred during the past calendar year. Where CSO discharges from the same system occur at multiple locations at the same time, the Great Lakes Basin CSO permittee may provide an estimate of the cumulative volume discharged to a given waterbody;

(4) The date, location, duration, and volume of each dry weather CSO discharge that occurred during the past calendar year;

(5) A summary of available monitoring data for CSO discharges from the past calendar year;

(6) A description of any public access areas impacted by each CSO discharge;

(7) Representative rain gauge data in total inches to the nearest 0.1 inch that resulted in a CSO discharge;

(8) A point of contact; and

(9) A concise summary of implementation of the nine minimum controls and the status of implementation of the long-term CSO control plan (or other plans to reduce or prevent CSO discharges), including:

(i) A description of key milestones remaining to complete implementation of the plan; and

(ii) A description of the average annual number of CSO discharges anticipated after implementation of the long-term control plan (or other plan relevant to reduction of CSO overflows) is completed.

(c) *Reporting.* By May 1 of each calendar year (or an earlier date specified by the Director), all permittees authorized to discharge a CSO to the Great Lakes Basin shall electronically report any CSO discharge that occurred during the past calendar year that has not been previously reported pursuant to a permit requirement. to the initial recipient, as defined in 40 CFR 127.2(b), in compliance with 40 CFR 127 using the discharge monitoring report (NPDES Data Group 3, Appendix A to 40 CFR 127) or the Sewer Overflow Event Report (NPDES Data Group 9, Appendix A to 40 CFR 127).

(d) *Public Notification Plan.* The Great Lakes Basin CSO permittee shall develop a public notification plan that describes how the Great Lakes Basin CSO permittee will ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The Great Lakes Basin CSO permittee must provide notice of the availability of the plan on the permittee's Web site (if it has a Web site), and periodically provide information in bill mailings and by other appropriate means on how to view the notification plan. The Great Lakes Basin CSO permittee must submit its public notification plan to the Director by [date 6 months after publication of a final rule] and as part of a permit application under § 122.21(j)(8)(iii). The plan must:

(1) Identify the location of signs required under paragraph (a)(1) of this section and the location of any CSO outfall where a sign is not feasible. Where a sign has not been provided at an outfall, the plan shall explain why a sign at that location is not feasible.

(2) Describe the message used on signs required under paragraph (a)(1) of this section;

(3) Describe protocols for maintaining signage (*e.g.,* inspections at set intervals);

(4) Identify (with points of contact) the municipalities, public drinking water supplies, public parks with water access, Indian Tribe(s), and describe other sensitive area(s) identified in the permittee's long-term CSO control plan, that may be affected by the permittee's CSO discharges;

(5) Summarize significant comments and recommendations raised by the local public health department under paragraph (e) of this section;

(6) Identify other affected public entities and Indian Tribes whose waters may be affected by a CSO discharge that were contacted under paragraph (e) of this section and provide a summary of their significant comments and recommendations;

(7) Describe protocols for the initial and supplemental notice to public health departments and other public entities;

(8) Describe protocols for the initial and supplemental notice to the public;

(9) Describe, for each outfall, how the volume and duration of CSO discharges shall be either measured or estimated for the purposes of complying with paragraphs (a)(2)(B)(i), (a)(3)(C)(i), (b)(2), and (b)(3) of this section. If the Great Lakes Basin CSO permittee intends to use a model to estimate discharge volumes and durations, the plan must summarize the model and describe how the model was or will be calibrated. CSO permittees that are a municipality or sewer district with a population of 75,000 or more must calibrate their model at least once every 5 years; and

(10) Describe protocols for making the annual notice described in paragraph (b) of this section available to the public and to the Director.

(e) Prior to submitting the public notification plan, or resubmitting under § 122.21(j)(8)(iii), the Great Lakes Basin CSO permittee must:

(1) Seek input from the local public health department (or if there is no local health department, the state health department), to:

(i) Develop recommended protocols for providing notification of CSO discharges to the public health department. The protocols will specify which CSO discharges are subject to notification, the means of notification, timing of notification and other relevant factors; and

(ii) Develop recommendations for providing notice to the general public of CSO discharges electronically and by other appropriate means.

(2) Seek input from other potentially affected public entities and Indian Tribes whose waters may be affected by a CSO discharge.

(3) Consider the recommendations of the public health department and other potentially affected entities in developing protocols in its public notification plan for providing notification of CSO discharges to the public health department and

potentially affected public entities and Indian Tribes.

(f) The Director may extend the compliance dates in paragraphs (a), (b), and (d) of this section for individual communities if the Director determines the community needs additional time to comply in order to avoid undue economic hardship. Where the Director extends the compliance date of any of these requirements for a community, the Director shall notify the Regional Administrator of the extension and the reason for the extension. The Director shall post on its Web site a notice that includes the name of the community and the new compliance date(s). The notice shall remain on the Director's Web site until the new compliance date.

■ 5. Amend § 122.42 by adding paragraph (f) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(f) *Public Notification requirements for CSO discharges to the Great Lakes Basin.* Any permit issued for combined sewer overflow (CSO) discharges to the Great Lakes Basin must:

(1) Require implementation of the public notification requirements in § 122.38(a);

(2) Specify the information that must be included on outfall signage, which, at a minimum, must include those elements in § 122.38(a)(1)(i);

(3) Specify outfalls and public access areas where signs are required pursuant to § 122.38(a)(1)(i);

(4) Specify the timing and minimum information required for providing initial and supplemental notification to:

(i) Local public health department and other potentially affected entities under § 122.38(a)(2); and

(ii) The public under § 122.38(a)(3).

(5) Specify the location of CSO discharges that must be monitored for volume and discharge duration and the location of CSO discharges where CSO volume and duration may be estimated;

(6) Require submittal of an annual notice in accordance with § 122.38(b);

(7) Specify protocols for making the annual notice under § 122.38(b) available to the public; and

(8) Require all CSO discharges be electronically reported in a discharge monitoring report or a sewer overflow event report pursuant to 40 CFR 122.41(l)(6) or (7).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

■ 6. The authority for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 7. Amend § 123.25 by revising paragraph (a)(46) and adding paragraph (a)(47) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(46) For states that wish to receive electronic documents, 40 CFR part 3—(Electronic Reporting); and

(47) For a Great Lakes State, § 122.38.

* * * * *

[FR Doc. 2016–31745 Filed 1–12–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2016–0426; FRL–9956–28]

RIN 2070–AK24

TSCA Inventory Notification (Active-Inactive) Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The recent amendments to the Toxic Substances Control Act (TSCA) require EPA to designate chemical substances on the TSCA Chemical Substance Inventory as either ''active'' or ''inactive'' in U.S. commerce. To accomplish that, EPA is proposing to require a retrospective electronic notification of chemical substances on the TSCA Inventory that were manufactured (including imported) for non-exempt commercial purposes during the ten-year time period ending on June 21, 2016. EPA would also accept such notices for chemical substances that were processed. EPA would use these notifications to distinguish active substances from inactive substances. EPA would include the active and inactive designations on the TSCA Inventory and as part of its regular publications of the Inventory. EPA is also proposing to establish procedures for forward-looking electronic notification of chemical substances on the TSCA Inventory that are designated as inactive, if and when the manufacturing or processing of such chemical substances for non-exempt commercial purposes is expected to resume. Upon receipt of a valid notice, EPA would change the designation of the pertinent chemical substance on the TSCA Inventory from inactive to active. EPA is proposing the procedures regarding the manner in which such retrospective and forward-looking activity notifications must be submitted, the details of the notification requirements, exemptions from such requirements, and procedures for handling claims of confidentiality.

DATES: Comments must be received on or before March 14, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0426, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Myrta R. Christian, Chemistry, Economics, and Sustainable Strategies Division (Mailcode 7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8498; email address: *christian.myrta@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you domestically manufactured, imported, or processed chemical substances listed on the TSCA Chemical Substance Inventory for nonexempt commercial purposes during the ten-year time period ending on June 21,