

Clean Water Act Metrics Plain Language Guide

State Review Framework Round 4

This Plain Language Guide describes the elements and metrics EPA uses during a State Review Framework (SRF) review of CWA compliance and enforcement programs and provides instructions on how to use the metrics to make appropriate findings and recommendations. SRF reviews are based on information from EPA data systems and file reviews. Reviewers should refer to the CWA file review checklist and spreadsheet when developing review findings on performance.

Data used in SRF reviews fall into two primary categories — data metrics and file review metrics. These metrics provide the basis for determining agency performance.

1. Data metrics are derived from frozen, verified data in ICIS-NPDES. Reviewers download data metrics from the Enforcement and Compliance History Online (ECHO) to get an initial overview of a state or local agency's performance. All data metrics fall into one of the following subcategories:

- **Goal metrics** evaluate performance against a specific numeric goal and are used to develop findings. The ECHO data also provides the national average for these metrics expressed as a percentage. **EPA evaluates agencies against goals, not national averages.** These metrics include averages only to provide a sense of where an agency falls relative to others.
- **Review Indicator metrics** use national averages to indicate when agencies diverge from national norms. Review indicators are not used to develop findings. They are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the average, EPA should ensure that it pulls a sufficient sample of files to evaluate the issue during the file review (see the *File Selection Protocol* for additional guidance). EPA and the state or local agency should discuss the issue to determine if a problem exists. Indicators can also provide narrative context for findings from file reviews.
- **Compliance Monitoring Strategy (CMS) metrics** are only required to be included in the review when an agency has an alternative compliance monitoring strategy (CMS) that includes one or more inspection commitments that differ from traditional commitments in the national CMS. Typically, under an alternative CMS an agency will substitute a certain number of inspections at larger facilities for some at smaller facilities. If a state does not have a CMS plan for a given CMS inspection area, regions will evaluate the state against the national inspection coverage goals for all sectors (majors and non-majors) set forth in the 2014 NPDES compliance monitoring strategy under metrics 4a1 – 4a10.

2. File review metrics are evaluated during the review of facility files (including information such as inspection reports, evaluations, enforcement responses and actions, and penalty documentation). File reviews provide a greater understanding of an agency's performance than data metrics alone. All file review metrics have national goals; however, unlike data metrics with goals, file metrics will not have a national average.

Guidance References and Acronyms

The [SRF Documentation Page](#) on ECHO provides a full list of links to SRF guidance and policies.

Year reviewed refers to the federal fiscal year of activities reviewed, not the year in which the review is conducted. The year reviewed should generally be the year preceding the year the SRF review is conducted. **Agency** refers to the state, local or federal agency which has the lead for compliance monitoring and enforcement within the state or other jurisdiction undergoing the SRF review.

A list of acronyms is provided as an attachment to this Plain Language Guide.

CWA SRF Review Process

1. Annual data verification
2. Annual data metric analysis
3. File Selection
4. Local agency or state district office inclusion (if applicable)
5. Discussion with HQ on review process (or discussion on a step-by-step basis, as chosen by the Region)
6. Entrance conference
7. File Review
8. Exit conference
9. Draft Report Submitted for internal agency review
10. State Comment Period
11. Revised report sent to agency for review and internet posting
12. Final report and recommendations published on a SRF web site
13. Track implementation status of Area for Improvement Recommendations in the SRF Manager database on a periodic basis

Using Metrics to Determine Findings

Goal metrics always have numeric goals and stand alone as sufficient basis for a finding. For example, the goal for CWA metric 1b5 is 95% of completion of permit limit data entry requirements. To analyze performance under this metric, reviewers compare the percentage of permit limit data entered by the state to the 95% goal.

Based on this analysis, the reviewer would make a finding. All findings fall under one of these categories:

Meets or Exceeds Expectations: The SRF was established to assess the base level or floor of enforcement program performance. This rating describes a situation where the base level is met, and no performance deficiency is identified, or a state performs above base program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make suggestions to improve performance, but it will not monitor these suggestions for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: EPA will develop a finding of Area for State Improvement whenever an activity, process, or policy that one or more SRF metrics under a specific element show as a significant problem that the agency is required to address. A finding for improvement should be developed regardless of other metric values pertaining to that element. Recommended activities to correct the issues should be included in the report. Recommendations must have well-defined timelines and milestones for completion, and, if possible, should address root causes. EPA will monitor recommendations for completion between SRF reviews in the SRF Manager database. The status of recommendations will be publicly available on EPA's SRF web site.

The National Strategy for Improving Oversight of State Enforcement Performance is a key reference in identifying recommendations for Areas for Improvement. Where a performance problem cannot be readily addressed, or where there is a significant or recurring performance issues, there are steps EPA can and should take to actively promote improved state performance. For additional information: <https://www.epa.gov/sites/production/files/2014-06/documents/state-oversight-strategy.pdf>.

Using Other Metrics

When metrics other than Goal metrics indicate problems, EPA should conduct the additional research necessary to determine the nature of the issue. These metrics provide additional information that is useful during file selection, and for gauging program health when compared to other metrics.

For example, CWA metric 8a3 is a Review Indicator metric that covers the percentage of major facilities in significant noncompliance (SNC) and non-major facilities in Category I noncompliance. It is only with knowledge of the CWA universe information, deviations from a known national average, knowledge of the accuracy of SNC and Category I determinations, and/or other contextual information that a reviewer is able to judge whether the percent of facilities in SNC or Category I noncompliance presents a performance issue.

Use of State Guidance and Regional-State Agreements as Basis for Findings in SRF Reviews

The State Review Framework evaluates enforcement program performance against established OECA national program guidance. State program guidance or regional-state agreements are applicable to the SRF review process under the following circumstances.

1. It is acceptable to use the state's own guidance to evaluate state program performance if:
 - 1) the region can demonstrate that the state's standard(s) is(are) equivalent to or more stringent than OECA guidance, and; 2) and the state agrees to being evaluated against that standard(s). In these cases, regions should inform OECA/OC in advance of the review that they intend to use state guidance and should include a statement in the SRF report indicating that the state guidance was determined to be equivalent or more stringent than the applicable OECA policy and was used as the basis for the review.
2. For certain metrics, clearly specified in this Plain Language Guide, it will be necessary to refer to state policies or guidance, or to EPA-state agreements. For example:
 - a. If the state has an Alternative CMS, EPA will use these state-specific commitments as the basis to evaluate compliance monitoring coverage.

- b. The national guidance may require only that a state establish a standard but not actually provide the standard. In such cases, the reviewer will need to ensure that the state has developed the required standard, and once it has been reviewed and approved by the region, use that standard to evaluate state performance.
3. Where national guidance has been modified or updated, it is important to review the corresponding state program implementation guidance to assess whether it has become out of date or inaccurate. In such cases, the reviewer should make appropriate recommendations for revision of the state guidance, review the revised version, and approve it, if appropriate.
4. Where state program guidance or regional-state agreements establish practices or standards that are not consistent with or at least equivalent to national program guidance, this may be an allowable flexibility under section A4 of the *Revised Policy Framework for State/EPA Enforcement Agreements* (Barnes, August 1986, as revised). If so, the region should inform OECA/OC prior to the review and note this flexibility in the explanation of the SRF report. If the differences between the state guidance or regional-state agreements and the national guidance is significant, or if it is unclear whether flexibility from OECA policy is appropriate, the region should elevate the issue to OECA for resolution (per *Interim Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States* (Bodine, 2018) prior to developing findings or a draft report.

Element and Metric Definitions

Element 1 — Data

EPA uses Element 1 to evaluate data accuracy and completeness. Review of this element is conducted in the following two ways:

- **File review:** EPA evaluates accuracy and completeness primarily through metric 2b, a file review metric that compares data in the ECHO Detailed Facility Report or ICIS-NPDES to information in facility files.
- **Evaluating data metrics:** As the reviewer has discussions with the state/local agency and conducts data metric analysis and the file reviews, he or she may find the value for a data metric to be inaccurate or incomplete to a significant degree. In this case, the finding in the report should be an Area for Improvement and should cite both the reported and, when possible, the actual values for the relevant metric.

To provide an example, data metric 5a shows that State X inspected 5 of its 20 major facilities. EPA believes that the state actually inspected all 20 but failed to enter the inspections into ICIS. EPA will need to confirm this during the entrance conference and file reviews. If the state inspected all 20 but failed to enter the inspections into ICIS, that would be an Area for State Improvement under Element 1 (Data). If the metric is accurate and the state only inspected 5 of 20, that would be an Area for State Improvement under Element 2 (Inspections).

Refer to [NPDES Electronic Reporting E-rule \(NPDES E-rule\)](#) for minimum data requirements.

Key metrics: 2b, 1b5, and 1b6. Also consider data entry and/or accuracy issues pertaining to metrics 5a1, 5b1, 5b2, 7j1, 7k1, 8a3, and 10a1, if applicable. For example, if a reviewer finds that a state has adequate inspection coverage of majors under metric 5a1, but some or all of those inspections are not in EPA data systems, this should be noted as an Area of Attention or Area for State Improvement under Element 1. Conversely, if a state is not meeting minimum expectations for inspection coverage and state performance is well below the national goal, this should be noted in the report as an area for improvement under the Element 2 on inspections, not the Element 1 data element. The same guidance applies for data entry issues pertaining to metrics 7j1, 7k1, 8a3, and 10a1.

Metric 2b — Files reviewed where data are accurately reflected in the national data system

Metric type: File, Goal

Goal: 100% of data are complete and accurate

What it measures: Percentage of files reviewed where mandatory data are accurately reflected in the national data system. The numerator = number of files that accurately reflect mandatory data, denominator = number of files reviewed.

Guidance: Reviewers should compare data in the ECHO Detailed Facility Report (DFR) or ICIS-NPDES with information in the facility files to check that they accurately reflect activities such as inspection dates, inspection types, single event violations, significant noncompliance (SNC) status, and enforcement responses. The detailed facility report lists the facility site name, rather than the permittee name. If a reviewer questions the accuracy of the permittee name in ICIS-NPDES (the database of record for SRF reviews of NPDES data), the permittee name should be reviewed in the organizational formal name field in ICIS-NPDES. See the CWA File Review Facility Checklist, Part II for complete instructions. The following are examples of data to examine for accuracy and completeness under Metric 2b:

1. **Inspections:** Compare the inspection date listed in the inspection report with information in the DFR under “Compliance Monitoring History.”
2. **Violations:** Compare the information in the file to the facility’s significant noncompliance status, DMR violations, single event violations, permit schedule violations, and compliance schedule violations in the “Compliance Summary Data” and “Three Year Compliance Summary Data” sections of the DFR
3. **Informal Enforcement Action:** Check to ensure that all informal enforcement actions found in the file for the review year are in the DFR and compare date(s) in the file with information in the “Notice of Violation or Informal Enforcement” section of the DFR
4. **Formal Enforcement Action:** Check to ensure that all formal enforcement actions found in the file for the review year are in the DFR and compare date(s) in the file with information under the “Formal Enforcement Actions (05 Year History)” section of the DFR
5. **Penalties:** Compare any penalty amounts in the file with information in the DFR under “Formal Enforcement Actions.”

If information in the files is missing from, or inaccurately entered into, the national database ICIS-NPDES, the data for that file is not complete or accurate.

Reviewers should also consider their knowledge of the agency's program when conducting this analysis. For example, if the reviewer notices multiple compliance evaluation inspections identified in the DFR for a facility within one week's time, it is unlikely that the agency has conducted multiple CEIs in this timeframe. It is more likely that the later ones are follow-up inspections. In addition, reviewers have the flexibility to differentiate between non-recurring, clerical errors with little consequence to overall program implementation and management versus those more significant errors or omissions, particularly those inaccuracies that recur across multiple reviewed files. For example, a typo in zip code in one or two files is a much less significant issue than unreported single event violations at most facilities reviewed.

Per 40 CFR 127.16, general permit reports [Notices of Intent to discharge (NOIs); Notices of Termination (NOTs); No Exposure Certifications (NOEs); Low Erosivity Waivers (LEWs) and other Waivers] are not required to be submitted until December 21, 2020. In addition, per the information in Section F on non-major facility inspection single event violation data, an authorized NPDES program is only required to share with EPA SEV data from a construction stormwater inspection when the authorized NPDES program also issues a formal enforcement action against the inspected construction site.

Applicable EPA policy/guidance: [Permit Compliance System \(PCS\) Policy Statement](#), August 31, 1985, as amended in 2000; [ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement](#) from Michael M. Stahl, Director, Office of Compliance and James A. Hanlon, Director, Office of Wastewater Management, December 28, 2007 and the [ICIS Addendum Data Elements Attachment](#); [PCS Quality Assurance Guidance Manual](#), August 28, 1992; [Final Single Event Violation Data Entry Guide for the Permit Compliance System \(ICIS-NPDES\)](#), May 22, 2006; [National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule](#), October 22, 2015.

Metrics 1b5 and 1b6 — Completeness of data entry on major and non-major permit limits and discharge monitoring reports (DMRs)

Metric type: Data, Goal

Goal: ≥95%

What it measures: Completeness of information entered into the ICIS-NPDES database on permit limits and discharge monitoring reports.

- **1b5:** Permit limit data entry rates for major and non-major facilities
- **1b6:** DMR data entry rate for major and non-major facilities

Guidance: The NPDES Electronic Reporting Rule states that for the purposes of requirements regarding timeliness, accuracy, completeness, and national consistency, data are complete when 95% or more of the submissions required for each NPDES data group are available in EPA's national NPDES data system.

Applicable EPA policy/guidance: The Code of Federal Regulations including [40CFR 123.26\(e\)\(1\) and 40 CFR 123.26\(e\)\(4\)](#); [The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)](#), 1989; [ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement](#) from Michael M. Stahl, Director, Office of Compliance

and James A. Hanlon, Director, Office of Wastewater Management, December 28, 2007 and the [ICIS Addendum Data Elements Attachment](#). [PCS Quality Assurance Guidance Manual](#), August 28, 1992; [National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule](#), October 22, 2015.

Element 2 — Inspections

Element 2 evaluates:

- Inspection coverage compared to CMS commitments
- Inspection report completeness and quality
- Inspection report timeliness

at major and non-major facilities.

For the Clean Water Act, *Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy (NPDES CMS*, July 21, 2014) provides inspection frequency goals for the core NPDES program and for wet weather sources and available flexibilities that EPA and states may use in negotiating inspection commitments. Under the NPDES CMS, major facilities are generally to be inspected biennially. The CMS provides for triennial inspections if the site/facility is consistently in compliance and not contributing to impairments. For most sources other than majors, the CMS provides flexibility in how the goals are achieved (i.e., inspection type and selection of facilities), and generally calls for inspections every five years, with some source types even less frequently.

The NPDES CMS provides flexibility to regions and state agencies to address unique mixes of regulated entities and environmental conditions and to identify and document state-specific NPDES inspection frequency goals that differ from the frequencies recommended in the CMS. SRF reviews consider all of the flexibility and trade-offs built into the NPDES CMS plans for each state to provide a clear and accurate picture of the broad set of inspections completed by states.

Inspection coverage at major facilities is tracked under data metric 5a1. Non-major inspection coverage at individually permitted facilities is analyzed under data metric 5b1, and non-major general permit inspection coverage is reviewed under data metric 5b2. Metrics 5a1, 5b1 and 5b2 are evaluated against state commitments in their CMS plans. State progress in meeting inspection commitments in CMS plans is also available under file metrics 4a1-4a10; these metrics primarily track non-major pretreatment, significant industrial user, and wet weather facilities.

During the exit interview following the file review, regions should evaluate progress toward the annual CMS commitments, along with other findings, and discuss the state's strategy for meeting multi-year commitments. This should, in turn, inform annual planning discussions with states to ensure CMS goals for all sources, including pretreatment and wet weather, are appropriately considered in a manner that will lead states on a path to meet multi-year goals. Regional offices have the flexibility to share copies of detailed facility reports with states before, during or after file reviews.

Key metrics: 4a1, 4a2, 4a4, 4a5, 4a7, 4a8, 4a9, 4a10, 4a11, 5a, 5b1, 5b2, 6a, and 6b.

Applying the Appendix C Inspection Coverage Table Facility Data to the SRF Review

Data for the Inspection Coverage Table that appears in the Conducting a SRF Review guidance document and in Appendix C at the end of this guide is part of the data metric analysis (DMA) process (see the guidance on Conducting a SRF Review for additional details). Regions should review information available from ICIS-NPDES and contact their state to obtain complete information for the CMS Commitments Table. This information should be used to develop the explanation narrative and finding level selected under SRF Element 2 on inspections, and, where relevant, finding levels selected for Element 3 on violations, Element 4 on enforcement actions, and Element 5 on penalties.

SRF reviewers will rely on the inspection coverage data at several stages during the review process, including file selection, review of Element 2, and review of Elements 3-5. Review of the Non-major facility metrics, metrics 4a1-4a11, may also be relevant to the exit interview.

File Selection

EPA evaluates inspection and enforcement files where activity occurs during the review year as part of the State Review Framework evaluation process. As part of the file review preparation process, regions use the [ECHO File Selection Tool](#) available on the ECHO web site to randomly select a small set of files representative of a broad spectrum of the state's compliance monitoring and enforcement work during the review year. The SRF file review guidance describes the necessary steps including selecting an appropriate number of files with compliance monitoring and enforcement activity, ensuring geographic distribution across the state.

Ensuring that the file selection list is representative of commitments made in the state's NPDES CMS plan is a key consideration for SRF CWA file reviews. Regions should review some files in the inspection commitment categories negotiated in the state specific CMS Plan. If the initial file selection list provided by the ECHO File Selection Tool does not generate file selection representative of priorities indicated in the state's CMS plan for wet weather and pretreatment universe facilities in the initial file selection download, add or substitute supplemental files to ensure adequate coverage of pretreatment, CSOs, SSOs, stormwater and CAFO facilities using the established file selection protocol to randomly select files for on-site review. The Inspection Coverage Data Table completed by reviewers for each state can be used to facilitate this process.

Metric 4a — Percentage of planned inspections completed

Metric type: Compliance Monitoring Strategy Metrics

Goal: 100% of state specific CMS Plan commitments

What it measures:

- 4a1: Number of pretreatment compliance inspections and audits at approved local pretreatment programs (Target: EPA's CMS goal is two pretreatment compliance inspections that include ≥ 2 oversight inspections of industrial users (IUs) and one audit

at each approved local pretreatment program within five years. Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan for the review year, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for pretreatment facilities.)

- 4a2: EPA or state Significant Industrial User inspections for SIUs discharging to non-Authorized POTWs (Target: EPA's CMS goal is one sampling inspection at each SIU annually. Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan for the review year, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for SIU facilities.)
- 4a4: Number of CSO inspections (Target: EPA's CMS goal is one inspection of each major and non-major CSO every five years for states with combined sewer systems. Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan for the review year, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for CSO facilities)
- 4a5: Number of SSO inspections. (Target: EPA's CMS goal is to inspect 5% of the universe of permitted POTWs with SSS annually. Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan for the review year, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for SSO facilities.)
- 4a7: Number of Phase I and II MS4 audits or inspections (Target: EPA's CMS goal is one audit, on-site inspection, or off-site desk audit* of each Phase I MS4 every five years and one inspection or on-site audit of each Phase II MS4 every seven years.) Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan for the review year, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for Phase I and II MS4 facilities.

* Off-site desk audits include but are not limited to review of facility reports and records, review of agency-gathered testing, sampling and ambient monitoring data, evaluation of responses to CWA section 308 information requests, review of compliance deliverables submitted pursuant to permits or enforcement actions, and analysis of aerial or satellite images. An off-site desk audit conducted pursuant to a CMS plan will include the appropriate combination of these activities to allow the region or the state to make a facility-level or program level compliance determination. In order for an off-site desk audit or focused inspection to count toward CMS implementation for the results in this table, the region or state must report the activity into ICIS-NPDES (either through direct data entry or via the CDX National Environmental Information Exchange Network). See Part 3 of the CWA NPDES CMS for additional details on focused inspections and off-site desk audits.

- 4a8: Number of industrial stormwater inspections (Target: EPA's CMS goal is 10% of the state universe each year. (includes inspections of unpermitted facilities and those with and without "no exposure certification.") Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for industrial stormwater facilities.
- 4a9: Number of Phase I and Phase II construction stormwater inspections (Target: EPA's

CMS goal is 10% of the state Phase I and II universe each year including inspections of unpermitted sites.) Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for Phase I and II construction stormwater facilities.

- 4a10: Number of comprehensive inspections of large and medium NPDES-permitted concentrated animal feeding operations (CAFOs). (Target: EPA's CMS goal is one comprehensive inspection of each large and medium NPDES-permitted CAFO every five years) Reviewers should compare the number of state inspections to the commitment in the state specific CMS Plan, or against the goal in the NPDES CMS policy if there is no state specific CMS plan for large and medium CAFO facilities.
- 4a11: Number of sludge/biosolids inspections at each major POTW. (Target: EPA's CMS goal is one inspection every 5 years for each major POTW in a state with biosolids program authorization. Biosolids use and disposal operations, including incineration and surface application, should receive at least one sludge/biosolids inspection every 5 years.)*

*States may substitute an off-site desk audit for sludge/biosolids generation, use, and disposal sites that meet the following criteria: (1) are not currently subject to enforcement actions or compliance schedules that are the result of concluded enforcement actions; (2) have not been reported in Significant Noncompliance (SNC) within the previous four quarters; (3) have no unresolved single event violation(s) identified in prior inspection(s); (4) do not discharge to CWA section 303(d) listed waters for pollutant(s) contributing to the listing; and (5) have no known potential to impact drinking water supplies. A CMS plan that utilizes this approach for conducting off-site desk audits in lieu of sludge/biosolids inspections is still considered a *traditional CMS plan*. In states where EPA is the permitting authority for biosolids, compliance monitoring activities for biosolids facilities will be conducted in accordance with plans and protocols established by the EPA Biosolids Center for Excellence.

Guidance: Metrics 4a1-4a11 track progress in meeting inspection commitments per the negotiated state-specific Compliance Monitoring Strategy Plan (CMS Plan) in the review year based on the [NPDES Compliance Monitoring Strategy](#) (NPDES CMS, July 21, 2014). The numerator = number of inspections completed; denominator = number of inspections planned based on information in the state CMS Plan.

The information in the completed NPDES CMS metrics table will form the basis for determining whether the state meets, exceeds, or falls short of meeting commitments. Use the Inspection Coverage Data Table in Appendix C to calculate these metrics. EPA will evaluate the percentage of inspection commitments met based on the commitments in the state's CMS plan for the review year. For each metric with an annual compliance monitoring goal, EPA review teams will compare the number of inspections or audits committed to in the state's CMS plan against information that appears in EPA data systems regarding inspections or audits conducted. Where inspections covered by the CMS do not have data entered in ICIS- NPDES, reviewers should gather and assess information from the state agency to review performance against the applicable CMS commitments. (If the state fails to enter system required inspection data in ICIS-NPDES, the reviewer should note this as a problem under Element 1 with a finding of Area for State Attention or Improvement.) For commitments that span more than one year, regions should consider whether the state met the commitment set forth in its CMS plan and how well this prepares the state to meet the cumulative, or multi-year, commitment. If a state does not have a state-specific CMS plan for a given CMS inspection area, regions will evaluate the state against

the national inspection coverage goals set forth in the 2014 NPDES compliance monitoring strategy under metrics 4a1 – 4a11.

The SRF review will then evaluate the violations identified through those inspections, enforcement actions, and associated penalties in areas where states commit to conduct pretreatment, SIU, and wet weather inspections as part of the file review process to ensure that states take action to address violations found at non-major facilities covered under the NPDES CMS policy. EPA selected these 9 metrics in order to look beyond major facilities and assess performance in inspection frequency for pretreatment, SIU, and wet weather sources.

Metric 5a1 — Inspection coverage of NPDES majors

Metric type: Goal Metric

Goal: 100% of state specific CMS Plan commitment

What it measures: Percentage of major NPDES facilities inspected. The numerator = the number of major NPDES facilities inspected; the denominator = the number of major NPDES facilities scheduled for inspection in the state specific CMS Plan for the review year. **Reviewers are to compare the number of state inspections of major NPDES facilities listed in the data metric analysis to the commitment in the state specific CMS Plan for the review year; the denominator that automatically populates in the data metric analysis for Metric 5a1 is not likely to reflect the state’s annual inspection commitment that varies from year to year. The denominator for this metric is the state’s inspection commitment listed in the state specific CMS plan for the review year. It is also helpful to examine state end of year reports on inspection results to assess inspection coverage and to determine whether all inspections are reported in the ICIS database.**

Guidance: EPA’s CMS goal for inspections of major NPDES permittees is a minimum of at least one comprehensive inspection every two years. Where OECA’s Inspection Targeting Model is used to assist in screening and identifying inspection targets, the inspection frequency can be adjusted to one comprehensive inspection every three years for major NPDES facilities in compliance and not contributing to CWA §303(d) listings or §305(b) reporting unless there is an alternative CMS commitment. A state may have approval for an alternative CMS plan that has different frequencies than those listed above for that year. Reviewers should examine inspection coverage holistically in the Inspection Coverage Data Table to determine findings on inspection coverage in SRF reports.

Applicable EPA policy/guidance: Memo, [Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy](#) July 21, 2014; [OECA National Program Manager Guidance](#);

Metric 5b1 — Inspections coverage of NPDES *non-majors* with individual permits

Metric type: Goal Metric

Goal: 100% of the state specific CMS Plan commitment

What it measures: The percentage of NPDES individual non-major permittees inspected in review year. The numerator = the number of non-major individual permittees inspected; the

denominator = the number of non-major individual permittees scheduled for inspection in the state specific CMS Plan for the review year. **Reviewers are to compare the number of state inspections of non-major individually permitted NPDES facilities against the commitment in the state specific CMS Plan for the review year; the denominator that automatically populates in the data metric analysis for Metric 5b1 is not likely to reflect the state's annual inspection commitment that varies from year to year. The denominator for this metric is the state's inspection commitment listed in the state specific CMS plan for the review year. It is also helpful to examine state end of year reports on inspection results to assess inspection coverage and to determine whether all inspections are reported in the ICIS database.**

Guidance: EPA's CMS goal for inspections of non-major facilities with individual NPDES permittees (traditional minor permittees) is an inspection at least once in each five-year permit term.

Applicable EPA policy/guidance: Memo, [Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy](#) July 21, 2014; [OECA National Program Manager Guidance](#); [Clean Water Act Action Plan](#) (Prior to February 22, 2010 known as the Clean Water Act Enforcement Action Plan), October 15, 2009.

Metric 5b2 — Inspections coverage of NPDES *non-majors* with general permits

Metric type: Goal Metric

Goal: 100% of the state specific CMS Plan commitment

What it measures: Percentage of non-major NPDES facilities with general permits. The numerator = the number of non-major facilities with general permits inspected; the denominator = the number of facilities with non-major general permits in the state specific CMS Plan for the review year. **Reviewers are to compare the number of state inspections of non-major general permit NPDES facilities against the commitment in the state specific CMS Plan for the review year; the denominator that automatically populates in the data metric analysis for Metric 5b2 is not likely to reflect the state's annual inspection commitment that varies from year to year. The denominator for this metric is the state's inspection commitment listed in the state specific CMS plan for the review year. It is also helpful to examine state end of year reports on inspection results to assess inspection coverage and to determine whether all inspections are reported in the ICIS database.**

Guidance: This metric is evaluated in the same manner as metric 5b1. The difference between the two is that the universe for 5b2 applies to permittees covered by a general permit

Applicable EPA policy/guidance: Memorandum, [Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy](#) July 21, 2014; [OECA National Program Manager Guidance](#); [Clean Water Act Action Plan](#) (Prior to February 22, 2010 known as the Clean Water Act Enforcement Action Plan), October 15, 2009.

Metric 6a — Inspection reports complete and sufficient to determine compliance at the facility**Metric type:** File, Goal**Goal:** 100%

What it measures: Percentage of inspection reports reviewed that provide sufficient documentation to determine compliance. This metric describes the quality of inspection reports. Numerator = number of inspection reports with sufficient documentation to determine compliance; denominator = total number of inspection reports reviewed.

Guidance: Inspection reports should be reviewed to see if they provide the information requested in the NPDES Compliance Inspection Manual, Chapter 2. Basic information that should be collected in inspection reports is discussed in the NPDES Compliance Inspection Manual including:

- linking permit and/or regulatory requirements to observations made by the inspector regarding noncompliance,
- narrative describing the facility and its procedures,
- documentation such as reports, records, photographs, maps, conditions observed, statements by facility personnel, checklists.

See the CWA File Review Facility Checklist for additional details on inspection report quality and completeness. For each inspection report found in reviewed files, reviewers should complete CWA Inspection Report Checklist in the “CWA Facility Checklist” on p.3.

All essential report components should be present and properly documented. If certain components are routinely missing, these should be mentioned in the SRF report. Reviewers have the flexibility to consider a wide range of information sources beyond the inspection report, including state web sites and permits.

Agencies will have their own methods for completing inspection reports. EPA should discuss this with the agency at the beginning of the review to determine which parts of the agency’s inspection report (particularly for Compliance Evaluation Inspections (CEIs)) are consistent with EPA expectations. EPA reviews the quality of the written inspection reports only under this metric; this metric is not an evaluation of the quality of field inspections.

Applicable EPA Policy/Guidance: [NPDES Compliance Inspection Manual](#), EPA Report # 305-K-17-001, Interim Revised Version, January 2017.

Metric 6b — Timeliness of inspection report completion**Metric type:** File, Goal**Goal:** 100%

What it measures: Percentage of inspection reports reviewed that are timely. The numerator =

number of inspection reports completed within recommended timeframe; denominator = total number of inspection reports reviewed.

Guidance: Reviewers should evaluate timeliness of state inspection reports against timeliness goals in state inspection procedures. In the absence of state guidelines, reviewers should evaluate timeliness against EPA guidelines. The [National Pollutant Discharge Elimination System Enforcement Management System](#), Chapter 5, Section A provides guidance on timeliness of inspection reports. Specifically, timely inspection reports are completed within 45 days of the date of inspection for sampling inspections and completed within 30 days for non-sampling types of inspections. The federal 30 and 45-day inspection report completion standard applies if state standards are more stringent than the timeframes listed in the NPDES EMS.

EPA reviews the timeliness of the written inspection reports only under this metric; this metric is not an evaluation of the quality of field inspection reports (see metric 6a). The number of inspection reports reviewed is dependent upon the size of the regulated universe of facilities in the state; see the File Selection Protocol for details on selecting the appropriate number of files to evaluate under this metric.

Reviewers should record the length of time it took to complete each report in the File Review Checklist so they can compute average timeframes.

If an agency does not have a timeliness standard, EPA should use the SRF as an opportunity to encourage the Agency to adopt one, particularly if it is not consistently completing reports in less than 30 to 45 days, and especially if this creates delays in other aspects of the program, such as violation determination or enforcement.

Applicable EPA policy/guidance: [The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)](#); [Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy](#) July 21, 2014; [Clean Water Act Action Plan](#) (Prior to February 22, 2010 known as the Clean Water Act Enforcement Action Plan), October 15, 2009; [NPDES Compliance Inspection Manual](#), EPA Report # 305-K-17-001, Interim Revised Version, January 2017; [Clean Water Act Inspector Training](#).

Element 3 — Violations

Under this element, EPA evaluates the accuracy of the agency's violation and compliance determinations, and the accuracy and timeliness of its significant non-compliance determinations.

Reviewers will evaluate data metrics 7j1, 7k1, and 8a3 during the data metric analysis. If the reviewer finds that violation or SNC rates are lower than the national average, he or she may want to include additional inspections or violations in the file selection process in order to determine the accuracy of violation and SNC determination.

File metric 7e covers the accuracy of compliance determinations made from inspections. These metrics will generally form the basis for findings under this element.

Key metrics: 7e, 7j1, 7k1, 8a3

Reports should factor in findings from the Inspection Coverage Data table listed in Appendix C that affect violation identification in enforcement programs. Reviewers should request from the

state or local agency information on violations identified as a result of inspections of non-major facilities when this information is not available through ICIS-NPDES. States are required to provide to EPA any information requested on NPDES program implementation per 40 CFR 123.45. If the state or local agency does not provide this information, reviewers should note the missing information as an issue that could not be fully evaluated in the final report, and that needs to be addressed.

File Reviews

The SRF considers inspections, violations, enforcement actions; the timeliness and appropriateness of enforcement action; and documentation of penalty calculation, assessment and collection (see SRF Elements 3-5). As part of file reviews for Elements 3-5, regions should review files for wet weather and pretreatment facilities that the state inspected in accordance with its NPDES CMS plan to ensure that inspections and enforcement activities at these facilities are well implemented. For non-major permittees, Category 1 violations should be considered requiring enforcement follow-up. Specific metrics and calculation methodology for measures for major facilities utilized under Elements 3-5 are described in detail in this Clean Water Act Plain Language Guidance and accompanying file review spreadsheets on the following [ECHO web site](#). As part of the review of regional files selection lists, EPA will review the representativeness of files selected to ensure NPDES CMS commitments are adequately factored into the review process.

Metric 7e —Accuracy of compliance determinations

Metric type: File, Goal

Goal: 100%

What it measures: Percentage of inspection reports reviewed with sufficient documentation leading to an accurate compliance determination. The numerator = number of files containing inspection reports reviewed with sufficient documentation leading to an accurate compliance determination; denominator = total number of inspection reports reviewed.

Guidance: This metric assesses whether violations — either significant noncompliance or single event violations — were accurately identified based on the documentation contained in facility files. For example, violations identified in the enforcement action should be documented in facility files as observations noted while on-site at the facility. This information may be in the inspection report narrative or in the single event violation (SEV) section of state's inspection report form. Note that if the compliance determination is not made in the inspection report, then it should be documented elsewhere in the file including: SEV data in ICIS or a state data system, informal or formal actions taken in response to deficiencies found during the inspection that clearly reference the inspection, tracking systems that document violations discovered and actions taken in response, and unsatisfactory ratings on inspection checklists. Reviewers should examine inspection conclusion data sheet (ICDS) information in ICIS to determine whether compliance determinations on deficiencies found are noted in ICIS and discuss with the state how the state tracks violations.

Agencies will have their own methods for completing inspection reports. EPA should discuss this with the agency at the beginning of the review to determine if the agency's inspection reports, particularly for Compliance Evaluation Inspections (CEIs)), are consistent with EPA expectations.

Applicable EPA policy/guidance: [The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)](#), 1989; Memorandum. [Clarification of NPDES](#)

[*EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations*](#) from Mark Pollins, Director, Water Enforcement Division, and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008. [*Data Entry Guide for the Permit Compliance System \(ICIS-NPDES\); NPDES Compliance Inspection Manual*](#), EPA Report # 305-K-17-001, Interim Revised Version, January 2017.

Metric 7j1 — Number of major and non-major NPDES facilities with single-event violations reported in the review year

Metric type: Review Indicator

What it measures: Assesses whether single-event violations (SEVs) determined by means other than automated discharge-to-limits comparisons are reported and tracked in ICIS-NPDES.

- **7j1:** Number of major and non-major NPDES facilities with single-event violations in the review year

Guidance: Reviewers should carefully compare SEVs found during the on-site file review in inspection reports, enforcement actions, SSO notifications, and other correspondence to drilldown data for metric 7j1. This metric is limited to SEVs that start within the federal fiscal year reviewed under SRF; SEVs that begin in prior years and continue in the review year are not reported under this metric. Facilities with unreported SEVs not listed in drilldown data for this metric should be noted along with any other unreported data accuracy issues under Element 1 to group all data related recommendations under the same element. SEVs are minimum data requirements for both major and non-major facilities as of December 21, 2016 under the NPDES Rule, excluding SEVs without formal enforcement at stormwater construction sites.

Applicable EPA policy/guidance: [*The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)*](#), 1989; [*Memorandum. Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations*](#), from Mark Pollins, Director, Water Enforcement Division and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008; [*Data Entry Guide for the Permit Compliance System \(ICIS-NPDES\); NPDES Compliance Inspection Manual*](#), EPA Report #: 305-X-4-001, June 2004; [*National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule*](#), October 22, 2015.

Metric 7k1 — Major and non-major facilities in noncompliance

Metric type: Review Indicator

What it measures: The percentage of major and non-major facilities with violations reported to the national database. Violations factored into metric 7k1 include effluent, single event, compliance schedule, and permit schedule violations for non-compliance codes D, E, N, S, T, X, and V.

Guidance: Review the percent of major and non-major facilities in noncompliance and compare this percentage to the national average and prior year trends for the state. If noncompliance is significantly higher, or is high and remains high, the reviewer should consider selecting additional files with violations and enforcement actions to ensure that timely and appropriate enforcement occurs in response to violations when evaluating file review metric 10b. If levels are well below the national average, reviewers may also want to look into what is behind the lower numbers – either higher levels of compliance or failure to identify or report violations.

The number of non-major facilities in Category 1 noncompliance (more serious) violations [i.e. as defined in [40CFR123.45\(a\)\(2\)\(G\)\(i-vi\)](#)] and the number of non-major facilities in Category 2 noncompliance (i.e., less serious violations) [i.e. as defined by [40CFR123.45\(a\)\(2\)\(G\)\(vii\)](#)] work in conjunction with the NNCR process, which is designed to obtain accurate counts of facilities in noncompliance.

Reviewers may also wish to consult the national average as additional context in interpreting noncompliance at facilities in a given state. If state noncompliance at majors or non-majors is significantly above the national average, timely and appropriate action may not be promoting return to compliance. Conversely, if the state noncompliance rate is low, compliance may be high or the state may not be identifying or reporting violations accurately during inspections or in inspection reports. Information about relative non-compliance at major and non-major facilities may help inform the number of files selected with violations with and without enforcement.

Note: As previously addressed on p.1 on metric types regarding review indicator metrics, reviewers should not establish SRF report findings on the basis of review indicator metrics. Findings should primarily be based on file review metrics for CWA timely and appropriate enforcement, using file review metric 10b, as it is possible to factor in the specific date when the violation was discovered and the date of the enforcement action for individual violations only during on-site file reviews. The above metric provides an overall total number of SNC violations and formal actions taken in the review year and quarter one of the following fiscal year, but does not calculate timely enforcement based upon the start date for each violation.

Applicable EPA policy/guidance: [The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)](#), 1989; Memorandum [Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations](#) from Mark Pollins, Director, Water Enforcement Division, and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008;; [Data Entry Guide for the Permit Compliance System \(ICIS-NPDES\); NPDES Compliance Inspection Manual](#), EPA Report #: 305-X-4-001, June 2004. [Permit Compliance System \(PCS\) Policy Statement](#), August 31, 1985, as amended in 2000; [ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement](#) from Michael M. Stahl, Director, Office of Compliance and James A. Hanlon, Director, Office of Wastewater Management, December 28, 2007 and the [ICIS Addendum Data Elements Attachment; National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule](#), October 22, 2015.

Metric 8a3 — Percentage of major facilities in SNC and non-major facilities in Category I noncompliance during the reporting year

Metric type: Review Indicator

This metric is a key indicator of EPA's commitment to ensure agencies identify the most significant violations in terms of their environmental and human health impacts to target enforcement actions toward the most important water pollution problems.

What it measures: Percentage of major and non-major NPDES facilities in significant non-compliance or Category I noncompliance during the review year. The numerator = the number of major facilities in SNC and the number of non-major facilities in Category I noncompliance during review year; denominator = total number of major and non-major facilities.

Guidance: Review the percent of major facilities in significant noncompliance and non-major facilities in Category I noncompliance and compare this percentage to the national average and prior year trends for the state. If significant noncompliance is significantly higher or lower than the national average, or is high and remains high, the reviewer should consider selecting additional files with violations and enforcement actions to ensure that timely and appropriate enforcement occurs in response to violations. If significant noncompliance at majors or non-major facilities in Category 1 noncompliance is significantly above the national average, timely and appropriate action may not be promoting return to compliance. If the percentage of major facilities in SNC or non-major facilities in Category I noncompliance is significantly lower than the national average, reviewers should carefully review files for inspected facilities without violations, and those with non-SNC violations, to determine whether SNC or Category I violation determinations are accurately identified in files reviewed. Reviewers will have the flexibility to utilize drilldown data available on ECHO to view the proportion of major and non-major facilities reported as in significant noncompliance.

Note: As previously addressed on p.1 on metric types regarding review indicator metrics, reviewers should not establish SRF report findings on the basis of review indicator metrics. Findings should primarily be based on file review metrics for CWA timely and appropriate enforcement, using file review metric 10b, as it is possible to factor in the specific date when the violation was discovered and the date of the enforcement action for individual violations only during on-site file reviews. The above metric provides an overall total number of SNC violations and formal actions taken in the review year and quarter one of the following fiscal year, but does not calculate timely enforcement based upon the start date for each violation.

The following guidance defines significant and other types of violations and minimum data reporting requirements: [*Interim Significant Non- Compliance Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources*](#) (*Interim Wet Weather SNC Policy*) issued to EPA Regions only on October 23, 2007; Memo *ICIS Addendum to the Appendix of the 1985 PCS Policy Statement* from Michael M Stahl, Director, Office of Compliance and James A Hanlon, Director, Office of Wastewater Management, December 7, 2007; *PCS Quality Assurance Guidance Manual*, August 28, 1992. *The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)*, 1989; Memorandum. *Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits* issued to Water Management Division Directions and Regional Counsels from Steven A. Herman, 1995; *National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule*, October 22, 2015.

Element 4 — Enforcement

Reviewers will use Element 4 to determine the agency's effectiveness in taking timely and appropriate enforcement (metrics 10a1 and 10b) and using enforcement to return facilities to compliance (metric 9b). High noncompliance reported under metrics 7j1, 7k1 and 8a3 in Element 3 may indicate a lack of timely and appropriate enforcement. For example, if violation and SNC rates are higher than the national average, but the number of formal or informal enforcement is low, reviewers may wish to select extra facilities with SNC and non-SNC violations to determine why enforcement activity is low. If enforcement numbers are high, reviewers should review facility files with enforcement to determine if those actions were appropriate and return facilities to compliance. Adequate file selection is important to develop robust findings in the report and can be based on SNC rate or violation rate trend data. Reviewers should also factor in findings from the Inspection Coverage Data table that may affect timely and appropriate enforcement.

Additional context: Reviewers should discuss whether compliance schedule milestones are in place for any files selected for review to ensure the accuracy of responses for metrics 9a and 10b as compliance schedules may start before the SRF review year and, therefore, not be captured in review year data for metric 10a1. Reviewers have the flexibility to examine information beyond the DFR for documentation in the file that provides rationale for use of informal action and documentation including but not limited to information from quarterly meetings and Pacesetter calls.

File Reviews

As part of file reviews, regions should review files for wet weather, significant industrial user, and pretreatment facilities that the state inspected in accordance with its NPDES CMS plan to ensure that enforcement activities at these facilities promote return to compliance under metric 9a and are timely and appropriate under metric 10b. As part of the review of regional files selection lists, EPA will review the representativeness of files selected to ensure NPDES CMS commitments at non-major facilities, including pretreatment, SIU, and wet weather facilities, are adequately factored into the review process.

Key metrics: 9a, 10a1, 10b

Metric 9a — Percentage of enforcement responses that returned, or will return, a source in violation to compliance

Metric type: File, Goal

Goal: 100%

What it measures: Percentage of enforcement responses in reviewed files that returned, or will return, a source in violation to compliance. Reviewers should evaluate all enforcement responses found in selected files regardless of the type of violation. The violations addressed by reviewed enforcement responses may be SNC or non-SNC violations. The numerator = number of enforcement responses that returned or will return the source to compliance; denominator = total number of enforcement responses in reviewed files.

Guidance: Actions that promote return to compliance generally include:

- injunctive relief,
- documentation of return to compliance, and
- an enforceable requirement that compliance be achieved by a date certain for significant noncompliance at major facilities.

Non-major facilities, and facilities with non-SNC violations, should also receive an enforcement response (either informal or formal enforcement) that results in the violator returning to compliance, particularly in areas where minor facilities have a major impact on water quality. Non-SNC violations, and violations at non-major facilities should generally receive an enforcement response in the range of options noted in the Enforcement Response Guide of the NPDES Enforcement Management System Guidance, see especially Chapter 2 pp. 55-68 for the range of recommended responses to potential violations. Administrative penalty orders (APOs) count as formal enforcement actions but return to compliance at a facility that has received an APO should be documented in the file for the action to be deemed as returning the facility to compliance.

Applicable EPA policy/guidance: [*The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)*](#), 1989; “[*Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations*](#)” from Mark Pollins Water Enforcement Division and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008.

Metric 10a1 — Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations

Metric type: Review Indicator

What it measures: The percentage of major NPDES facilities in SNC during the review year with formal enforcement action taken during the review year or quarter 1 of the following fiscal year.

Numerator = the number of major NPDES facilities in the denominator having formal enforcement action in the review year or quarter 1 of the following fiscal year

Denominator = the number of major facilities with two or more consecutive quarters of SNC non-effluent violations or SNC effluent violations at:

- the same pipe and parameter reported in the Quarterly Noncompliance Report (QNCR), or
- facilities with significant effluent violations in 2 consecutive quarters for violations of the same pipe and parameter in each quarter, or
- facilities that did not submit discharge monitoring reports (DMRs) listed in the QNCR in 2 consecutive quarters, or
- facilities with compliance schedule violations in 2 consecutive quarters with open compliance schedule violations at any time in the fiscal year

Guidance: Per the guidance in the NPDES EMS, formal enforcement should occur at facilities in significant non-compliance prior to the second official QNCR unless there is supportable justification for an alternative action, such as an informal enforcement action, permit modification, or the facility returns to compliance. This metric is a review indicator metric given the complexity of assessing the interplay between review year actions taken and those actions taken over time that have on-going compliance schedules with milestones in the review year. This metric is a review indicator and is not designed to be used to establish SRF report findings. Actions taken may not be directly linked to SNC violations reported in the review year if related to prior year compliance monitoring activities.

Note: As previously addressed on p.1 on metric types regarding review indicator metrics, reviewers should not establish SRF report findings on the basis of review indicator metrics. The above metric provides an overall total number of SNC violations and formal actions taken in the review year and quarter one of the following fiscal year, but does not calculate timely enforcement based upon the start date for each violation.

Applicable EPA policy/guidance: [*The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)*](#), 1989; “[*Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations*](#)” from Mark Pollins, Director, Water Enforcement Division and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008.; *Guidance for Preparation of Quarterly and Semi-Annual Noncompliance Reports* (Per Section 123.45, Code of Federal Regulations, Title 40) March 13, 1986; [*Revision of NPDES Significant Noncompliance \(SNC\) Criteria to*](#)

[Address Violations of Non-Monthly Average Limits](#) issued to Water Management Division Directions and Regional Counsels from Steven A. Herman, 1995; [National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule](#), October 22, 2015.

Metric 10b — Enforcement responses reviewed that address violations in an appropriate manner

Metric type: File, Goal

Goal: 100%

What it measures: The percentage of enforcement actions taken in an appropriate manner. The numerator = the number of appropriate enforcement responses in reviewed files taken to address violations; denominator = the number of actions identified by the reviewer.

Note: The denominator for this metric should include all violations regardless of whether the agency accurately identifies the violation.

Guidance: All SNC violations should be responded to in an appropriate manner with an enforcement response that reflects the nature and severity of the violation. Unless there is supportable justification such as violations that were returned to compliance quickly within the review year with only an informal action or other documentation in the file, the enforcement response should be a formal action which returns to compliance by permittee to return to compliance by date certain.

When formal enforcement action is not taken, there should be a written record that clearly justifies why the alternative action (*e.g.*, informal enforcement action) is more appropriate. As indicated in the introduction section for Element 4, reviewers have the flexibility to consider a wide range of information sources beyond that found in the ECHO Detailed Facility Report (DFR) to make findings under Metric 10b, including Pacesetter meetings, state web sites, and documentation from quarterly calls on progress in addressing violations.

Examining the appropriateness of enforcement taken includes examination of any compliance schedule milestones due in the review year. Some files may contain an inspection or action that takes place in the review year at facilities where long term consent decrees exist. If compliance schedule milestones are due from prior year consent decrees in the SRF review year, reviewers have the flexibility to factor this into their response under CWA metric 10b. For example, if a facility is meeting the terms of a long-term consent decree but appears to be in SNC under data metric 10a1, reviewers should give credit for meeting the terms of the consent decree. Conversely, if there is no evidence that follow up is occurring to verify compliance schedule milestones, especially those past due by 90 days or more (a SNC violation), appropriate enforcement is likely not occurring and should be factored into the responses for Metric 10b.

Non-major facilities with Category 1 or 2 violations, and facilities with non-SNC violations, should also receive an enforcement response (either informal or formal enforcement) within 12 months that results in the violator returning to compliance. Non-SNC violations, and violations at non-major facilities should generally receive an enforcement response in the range of options noted in the Enforcement Response Guide of the NPDES Enforcement Management System Guidance in 12 months. See especially Chapter 2 pp. 55-68 for the range of recommended responses to potential violations.

Reviewers should consider Administrative Penalty Orders (APOs) as formal enforcement actions under SRF file review metric 10b. APOs, as formal enforcement actions, are generally an appropriate response to non-SNC violations and violations at non-major facilities. Per the NPDES EMS policy, APOs are not appropriate to address SNC violations at major facilities because APOs generally do not contain injunctive relief provisions. An APO at a major facility may be appropriate if the file reviewed shows documentation of return to compliance. In addition, there are some types of violations that could occur at non-majors, such as reporting false information, for which an APO is not sufficient. Refer to the Enforcement Response Guide in the EMS if you have questions about whether the response is appropriate.

Applicable EPA policy/guidance: [*The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)*](#), 1989; [*“Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations”*](#) from Mark Pollins, Director, Water Enforcement Division and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008; [*National Pollutant Discharge Elimination System Enforcement Management System \(NPDES EMS\)*](#), Chapter 7, Quarterly Noncompliance Report Guidance; [*Revision of NPDES Significant Noncompliance \(SNC\) Criteria to Address Violations of Non-Monthly Average Limits*](#) issued to Water Management Division Directions and Regional Counsels from Steven A. Herman, 1995; [*Interim Significant Non-Compliance Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources \(Interim Wet Weather SNC Policy\)*](#) issued to EPA Regions only on October 23, 2007.

Element 5 — Penalties

Element 5 evaluates penalty documentation using three metrics — 11a for gravity and economic benefit, 12a for difference between initial and final penalty, and 12b for collection.

File Reviews

As part of file reviews, regions should review files for wet weather, significant industrial user, and pretreatment facilities that the state inspected in accordance with its NPDES CMS plan, along with those for NPDES major facilities, to ensure that penalties at these facilities are well documented. As part of the review of regional files selection lists, EPA will review the representativeness of files selected to ensure NPDES CMS commitments are adequately factored into the review process.

Key metrics: 11a, 12a, and 12b.

Metric 11a — Penalty calculations reviewed that document and include gravity and economic benefit

Metric type: File, Goal

Goal: 100%

What it measures: Percentage of penalty calculations reviewed that document and include, where appropriate, gravity and economic benefit. The numerator = the number of penalties reviewed where the penalty was appropriately calculated and documented; the denominator = the total

number of penalties reviewed.

Guidance: Agencies should document penalties sought, including the calculation of gravity and economic benefit where appropriate. With regard to this documentation, the Revisions to the Policy Framework for State/EPA Enforcement Agreements (1993) says the following:

EPA asks that a State or local agency make case records available to EPA upon request and during an EPA audit of State performance. All recordkeeping and reporting should meet the requirements of the quality assurance management policy and follow procedures established by each national program consistent with the Agency's Monitoring Policy and Quality Assurance Management System.

State and local recordkeeping should include documentation of the penalty sought, including the calculation of economic benefit where appropriate. It is important that accurate and complete documentation of economic benefit calculations be maintained to support defensibility in court, enhance Agency's negotiating posture, and lead to greater consistency.

Agencies may use their own penalty policies and either EPA's computerized model, known as BEN, or their own method to calculate economic benefit consistent with national policy.

Review the files containing enforcement responses with penalties and examine whether the gravity and economic benefit components were documented (sometimes found in a penalty calculation worksheet). If the penalty does not include an economic benefit or gravity calculation, the reviewer should determine if the file documents the reason for the absence, such as one of the mitigation factors listed in the policy. Reviewers have the flexibility in the SRF report narrative to add context regarding the number of files reviewed where ability to pay was a factor and penalty documentation was not complete for economic benefit and/or gravity

Applicable EPA policy/guidance: [Interim Clean Water Act Settlement Penalty Policy](#), March 1, 1995; [Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements](#) (1993); [Revised Policy Framework for State/EPA Enforcement Agreements](#) (1986).

Metric 12a — Documentation of rationale for difference between initial penalty calculation and final penalty

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of penalties reviewed that document the rationale for the final value assessed when it is lower than the initial calculated value. The numerator = number of penalties reviewed that document the rationale for the final value assessed compared to the initial value calculated; denominator = number of penalties reviewed where final value assessed is lower than initial value calculated.

Guidance: According to the *Revisions to the Policy Framework for State/EPA Enforcement Agreements* (1993), states should document any adjustments to the initial penalty including a justification for any differences between the initial and final assessed penalty. Review penalty files to identify their contents with respect to initial and final penalties. If only one of the two penalty

amounts is found in the file, ask the agency why the initial and final assessed penalties are not both documented, along with the rationale for any differences.

Applicable EPA guidance/policy: [*Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements*](#) (1993), [*Revised Policy Framework for State/EPA Enforcement Agreements*](#) (1986); [*Interim Clean Water Act Settlement Penalty Policy*](#), March 1, 1995.

Metric 12b — Penalties collected

Metric type: File, Goal

Goal: 100% of files with documentation of penalty collection

What it measures: Percentage of penalty files reviewed that document collection of penalty. The numerator = the number of penalties with documentation of collection or measure, or documentation of measures to collect a delinquent penalty; denominator = the number of penalties reviewed for which penalty payment was due by the time of the review.

Guidance: This metric assesses whether the final penalty was collected. Begin by looking in the file for a cancelled check or other correspondence documenting transmittal of the check. If this documentation is not in the file, ask the agency if they can provide proof of collection through the data system of record. The dollar amount on the detailed facility report should list the final penalty dollar value collected, not an initial proposed penalty value at the start of settlement negotiation; address inaccuracies as data quality issues under Element 1. Findings in SRF reports are not designed to address trends in penalty dollar amounts over time as there is no guidance on assessing penalty dollar amounts against a national goal.

If the penalty has not been collected, there should be documentation either in the file or in the data system of record that the agency has taken appropriate follow-up measures.

Applicable EPA policy/guidance: [*Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements*](#) (1993), [*Revised Policy Framework for State/EPA Enforcement Agreements*](#) (1986); [*Interim Clean Water Act Settlement Penalty Policy*](#), March 1, 1995.

Appendix A: Acronyms

Note: This is not a complete list of acronyms used in this document. It includes only those acronyms that are not frequently used in the Agency lexicon, or which have multiple meanings in the Agency lexicon.

Agency	Agency is the state or EPA regional directly implemented program reviewed.
CMS	Compliance Monitoring Strategy. When the reference is to the National CMS, the reference is to Source 9, below.
EMS	Enforcement Management System. In this document, EMS ALWAYS means Enforcement Management System. Elsewhere in the Agency, the acronym refers to an Environmental Management System, however, that term is not used in this document or the State Review Framework.
FFY	Federal Fiscal Year (October 1 through September 30)
SRF	State Review Framework. In this document, SRF ALWAYS refers to the State Review Framework.
SRF Tracker	The Tracker is an on-line database that contains records of individual agency reviews and includes a system to track agency progress in completing recommendations stemming from the SRF reviews.

Appendix B: Information Sources

The following documents referenced in the metric discussions above are available electronically at: <http://echo.epa.gov>

1. [*The Enforcement Management System, National Pollutant Discharge Elimination System \(Clean Water Act\)*](#), 1989
2. [*Memo Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations*](#) from Mark Pollins, Director, Water Enforcement Division, and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008
3. [*Policy Framework for State/EPA Agreements*](#), August 1986, as revised
4. [*Permit Compliance System \(PCS\) Policy Statement*](#), August 31, 1985, as amended in 2000.
5. [*Memo ICIS Addendum to the Appendix of the 1985 PCS Policy Statement*](#) from Michael M Stahl, Director, Office of Compliance and James A Hanlon, Director, Office of Wastewater Management, December 7, 2007
6. Chapter 7 of the [*Enforcement Management System, Quarterly Noncompliance Report Guidance; Guidance for Preparation of Quarterly and Semi-Annual Noncompliance Reports*](#) (40 CFR 123.45) (this document is also included as an attachment to Source 1)
7. [*Revised Interim Clean Water Act Settlement Penalty Policy*](#), March 1, 1995.
8. Memorandum. Clean Water Act [*National Pollutant Discharge Elimination System Compliance Strategy*](#), July 21, 2014.
9. Memorandum, The Office of Enforcement and Compliance Assurance's Agency Response to the Evaluation Report: Better Enforcement Oversight Needed for Major Facilities with Water Discharge Permits in Long-term Significant Noncompliance ([ReportNo.2007-P-00023](#)) from Granta Y Nakayama, Assistant Administrator, Aug 14, 2007.
10. Memorandum, [*Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements*](#), from Steven A. Herman, Assistant Administrator, June 23, 1993 (this document contains an amendment to source 3)
11. [*PCS Quality Assurance Guidance Manual*](#), August 28, 1992

12. The Code of Federal Regulations including [40CFR123.26\(e\)](#), [40CFR123.26\(e\)\(5\)](#) and [40CFR123.45c](#).
13. [Clean Water Act Action Plan](#) (Prior to February 22, 2010 known as the Clean Water Act Enforcement Action Plan), October 15, 2009.
14. [Interim Significant Non-compliance Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources \(WW SNC Policy\)](#), issued to EPA Regions only on October 23, 2007.

References (also see SRF Compendium of Guidance and Policy Documents)

- Clean Water Act Civil Enforcement Policy and Guidance site:
<http://www2.epa.gov/enforcement/water-enforcement-policyguidance-and-publications>

VI. Key Contacts

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Development & Use of NPDES CMS Data in Specific State Reports by Region:

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Appendix C: Inspection Coverage Data Table

State: [insert state]

FY: [insert FY]

Inspection Coverage Data Table

Percent of planned inspections completed: Planned inspections per the negotiated CMS Plan completed in the Year Reviewed. Calculate as a percentage by category where the numerator = number of inspections completed; denominator = number of inspections planned. Compliance monitoring activities counted for metrics below should use the inspection type codes listed in the NPDES CMS policy in Attachment 2, Part 4, pp. 25-28. See <http://www2.epa.gov/compliance/clean-water-act-national-pollutant-discharge-elimination-system-compliance-monitoring> for additional details.

Where inspections covered by the CMS do not have data entered in ICIS- NPDES, reviewers should gather and assess information from the agency to review performance against the applicable CMS commitments and note this as a problem with a finding of Area for State Attention or Improvement. If a state does not have a state-specific CMS plan for a given CMS inspection area, regions will evaluate the state against the national inspection coverage goals set forth in the 2014 NPDES compliance monitoring strategy under metrics 4a1 – 4a10.

#	Metric	Description (based on NPDES CMS target)	Universe	CMS Commitment / Performance Goal	Inspections Conducted	Violations Found	Enforcement Actions Taken	Penalties Assessed
5a1	Inspection coverage of NPDES majors	1 comprehensive inspection every 2 years; alternative: one comprehensive inspection every 3 years based upon Inspection Targeting Model (ITM) or comparable targeting methodology for facilities in compliance, not subject to any credible citizen tips or complaints, and facilities not contributing to section 303(d) impaired waters.						
5b1	Inspections coverage of NPDES non-majors with individual permits	1 focused, reconnaissance, enforcement follow-up, oversight, or sludge/biosolids inspection every 5 years for facilities not contributing to 303(d) impairment; for facilities contributing to 303(d) impairment 1 comprehensive inspection at least every 5 years.						

#	Metric	Description (based on NPDES CMS target)	Universe	CMS Commitment / Performance Goal	Inspections Conducted	Violations Found	Enforcement Actions Taken	Penalties Assessed
5b2	Inspections coverage of NPDES non-majors with individual permits	1 focused, reconnaissance, enforcement follow-up, oversight, or sludge/biosolids inspection every 5 years for facilities not contributing to 303(d) impairment; for facilities contributing to 303(d) impairment 1 comprehensive inspection at least every 5 years.						
4a1	Pretreatment compliance inspections and audits	Every five years, two pretreatment compliance inspections and one audit at each approved local pretreatment program that includes ≥ 2 oversight inspections of industrial users (IUs)						
4a2	Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs	One sampling inspection at each SIU annually						
4a4	CSO inspections	One inspection of each major and non-major CSO every five years (for states with combined sewer systems)						
4a5	SSO inspections	5% universe permitted POTWs with SSS annually	Number of POTW permits with ≥ 1 sanitary sewer collection system					

#	Metric	Description (based on NPDES CMS target)	Universe	CMS Commitment / Performance Goal-	Inspections Conducted	Violations Found	Enforcement Actions Taken	Penalties Assessed
4a7	Phase I and II MS4 audits or inspections	One on-site audit, on-site inspection or off-site desk audit* of each Phase I MS4 every five years and one inspection or on-site audit of each Phase II MS4 every seven years thereafter						
4a8	Industrial stormwater inspections	Inspections of 10% of the industrial stormwater universe each year (includes inspections of unpermitted facilities with and without “no exposure certification”)	Permitted industrial SW facilities					
4a9	Phase I and II construction stormwater inspections	Inspections of 10% of Phase I and Phase II construction stormwater universe each year including inspections of unpermitted sites	Permitted construction sw sites					

***Off-site desk audits include but are not limited to review of facility reports and records, review of agency-gathered testing, sampling and ambient monitoring data, evaluation of responses to CWA section 308 information requests, review of compliance deliverables submitted pursuant to permits or enforcement actions, and analysis of aerial or satellite images. An off-site desk audit conducted pursuant to a CMS plan will include the appropriate combination of these activities to allow the region or the state to make a facility-level or program level compliance determination. In order for an off-site desk audit or focused inspection to count toward CMS implementation for the results in this table, the region or state must report the activity into ICIS-NPDES (either through direct data entry or via the CDX National Environmental Information Exchange Network). See Part 3 of the CWA NPDES CMS for additional details on focused inspections and off-site desk audits.**

#	Metric	Description (based on NPDES CMS target)	Universe	CMS Commitment / Performance Goal-	Inspections Conducted	Violations Found	Enforcement Actions Taken	Penalties Assessed
4a10	Inspections of large and medium NPDES-permitted CAFOs	One comprehensive inspection of each large and medium NPDES-permitted CAFO every five years						
4a11	4a11: Number of sludge/biosolids inspections at each major POTW.	One inspection every 5 years for each major POTW in a state with biosolids program authorization. (use and disposal operations, including incineration and surface application). *Includes off-site desk audit substitutions if sites are not subject to enforcement actions, compliance schedules from concluded enforcement actions; (2) in SNC in the previous four quarters; (3) have no unresolved SEVs in prior inspection(s); (4) do not discharge to CWA section 303(d) listed waters for pollutant(s) contributing to the listing; and (5) have no known potential to impact drinking water supplies.						

