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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 9, 122, 123, 127, 403, and 503.****[EPA-HQ-OECA-2019-0408; FRL-XXXX-XX]****[RIN 2020-AA52]****TITLE:** NPDES Electronic Reporting Rule – Phase 2 Extension**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (“NPDES eRule”) on 22 October 2015. The 2015 rule required EPA and states to modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. That rule replaced most paper-based NPDES reporting requirements with electronic reporting. The rule identified following for electronic reporting: (1) Discharge Monitoring Reports (DMRs); (2) general permit reports (e.g., Notices of Intent to discharge in compliance with a general permit); and (3) other specified program reports. The NPDES eRule included a phased implementation schedule. Most states and permittees have successfully implemented Phase 1 of the NPDES eRule, which includes electronic submission of DMRs and the Federal Biosolids Annual Report where EPA is the Regulatory Authority. Electronic submission of all other reports and notices are part of Phase 2 implementation. In this notice, EPA proposes postponing the compliance deadlines for Phase 2 implementation by three years and providing states with additional flexibility to request additional time as needed (but not later than December 21, 2026). Further, this notice proposes changes to the NPDES eRule that would clarify existing requirements and eliminate some duplicative or outdated reporting requirements.

These changes will help ensure a smoother transition from paper to electronic reporting for the NPDES program. Taken together, these data standardizations and the corresponding electronic reporting requirements are designed to save the NPDES authorized programs considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers typically review previous noncompliance events during permit renewal), ensure full exchange of NPDES program data between states and EPA, enhance public transparency, improve environmental decision-making, and protect human health and the environment.

DATES: Comments must be received on or before [XXX – Note to OFR: Insert 60 days after date of publication in the *Federal Register*]. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before [XXX – Note to OFR: Insert 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2019-0408, 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 (i.e. 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-dockets>.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Mr. Carey A. Johnston, Office of Compliance (mail code 2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC, 20460; telephone number: 202-566-1014; or e-mail: johnston.carey@epa.gov (preferred). Also see the following website for additional information regarding the rulemaking: <https://www.epa.gov/compliance/npdes-ereporting>.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include all NPDES-permitted facilities, whether covered by an individual permit or general permit, industrial users located in cities without approved local pretreatment programs, facilities subject to EPA's biosolids regulations, and governmental entities that have received NPDES program authorization or are implementing

portions of the NPDES program in a cooperative agreement with EPA. These entities include:

Category	Examples of regulated entities
Facilities seeking coverage under an individual NPDES permits, general permit, or subject to an NPDES inspection	Publicly-owned treatment works (POTW) facilities, treatment works treating domestic sewage (TWTDS), municipalities, counties, stormwater management districts, state-operated facilities, Federally-operated facilities, industrial facilities, construction sites, and concentrated animal feeding operations (CAFOs).
Industrial users located in cities without approved local pretreatment programs	Industrial facilities discharging to POTWs and for which the designated pretreatment Control Authority is EPA or the authorized state, tribe, or territory rather than an approved local pretreatment program.
POTWs and other facilities subject to EPA's biosolids regulations	Class I sludge management facilities (as defined in 40 CFR 503.9(c)), POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more.
State and territorial governments	States and territories that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Tribal governments	Tribes that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Federal governments	Federal facilities with a NPDES permit and EPA Regional Offices acting for those states, tribes, and territories that do not have NPDES program authorization or that do not have program authorization for a particular NPDES subprogram (e.g., biosolids or pretreatment).

This table is not intended to be an exhaustive list, but rather provides some examples of the types of entities potentially regulated by this action. Other types of entities not listed in this table may also be regulated. If you have questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

B. *What action is the agency taking?*

EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (“NPDES eRule”) on 22 October 2015. The 2015 rule required EPA and states to modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. The rule divided implementation into two “Phases.” The deadline for Phase 1 implementation passed on December 21, 2016. The deadline for Phase 2 is currently December 21, 2020. Some state authorized NPDES programs have provided feedback to EPA on how to improve Phase 2 implementation of the NPDES eRule and, in particular, have recommended changes to the schedule for Phase 2 implementation to allow both EPA and states sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009). This notice proposes a change to the compliance deadlines for Phase 2 implementation and other changes to the NPDES eRule to allow for a smoother transition from paper to electronic reporting for the NPDES program.

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

Pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, EPA promulgated the NPDES eRule, which added a new part to title 40 (40 CFR part 127) and made changes to existing NPDES regulations. The EPA promulgated the NPDES eRule under authority of the CWA sections 101(f), 304(i), 308, 402, and 501. EPA is using the same authority to propose the changes in this notice. EPA notes that the Congressional Declaration of Goals and Policy of the CWA specifies in section 101(f) that “It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels

of government.”

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

D. What are the incremental costs and benefits of this action?

EPA identified only minimal incremental costs of this proposed rule as the overall impact of these proposed changes would be to allow states to more efficiently implement the NPDES eRule. EPA proposes postponing the compliance deadlines for Phase 2 implementation by three years and providing states with additional flexibility to request an extension if more time is necessary but with no extension allowed beyond December 21, 2026.

This rule also proposes changes to the NPDES eRule that would clarify existing

requirements and eliminate some duplicative or outdated reporting requirements. For example, EPA proposes to eliminate three data elements from the minimum set of NPDES program data (Appendix A to 40 CFR part 127): Reportable Noncompliance Tracking, Reportable Noncompliance Tracking Start Date, and Applicable Categorical Standards. This will reduce the costs to authorized NPDES programs in collecting, managing, and sharing these data. EPA also anticipates that the clarifications contained in this proposed rule will help states avoid unnecessary implementation costs. For example, the proposed changes would make clear that the electronic reporting requirement for Notices of Termination (NOTs) applies only to general permit covered facilities (see Table 1 to Appendix A, 40 CFR part 127) and not to individually permitted facilities.

II. Background

EPA published the NPDES eRule on 22 October 2015. The 2015 rule required EPA and states to modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. That rule replaced most paper-based NPDES reporting requirements with electronic reporting. This rule converted the following paper reports to electronic: (1) Discharge Monitoring Reports (DMRs); (2) general permit reports (e.g., Notices of Intent to discharge in compliance with a general permit); and (3) other specified program reports. The NPDES eRule included a phased implementation schedule (40 CFR 127.26). Most states and permittees have successfully implemented Phase 1 of the NPDES eRule, which includes electronic submission of DMRs and the Federal Biosolids Annual Report where EPA is the Regulatory Authority.

The NPDES eRule requires EPA to calculate electronic reporting participation rates for each authorized NPDES program six months after the deadline for conversion from paper to electronic submissions and annually thereafter [see 40 CFR 127.26(j)]. The compliance

deadlines for Phase 1 of the NPDES eRule were 21 December 2016 and they included NPDES Data Groups No. 3 (Discharge Monitoring Reports or “DMRs”) and No. 4 [Sewage Sludge/Biosolids Annual Program Reports, where EPA implements the biosolids program (40 CFR Part 503)]. EPA’s first three assessments have shown considerable progress in Phase 1 implementation (see DCN 0012 – 0014), although more work needs to be done to achieve the full benefits of Phase 1. Current tracking of Phase 1 implementation is available through the “NPDES eRule Readiness Dashboard.” See: <https://echo.epa.gov/trends/npdes-erule-dashboard-public>.

Electronic submission of all other reports and notices covered by the NPDES eRule are part of Phase 2 implementation. See Table 1 to 40 CFR 127.16. The online “NPDES eRule Phase 2 Implementation Dashboard” provides an inventory of all general permits and program reports covered by the NPDES eRule. See:

https://edap.epa.gov/echo/extensions/eRule_Phase2/eRule_Phase2.html. This dashboard also provides an updated view of EPA’s progress in gathering information and deploying NPDES electronic reporting tools for Phase 2 general permits and program reports (see DCN 0015).

EPA and states are now focusing on implementing Phase 2 of the NPDES eRule and also continuing to work on completing Phase 1 reporting deadlines. EPA and states are now gathering information and deploying NPDES electronic reporting tools for Phase 2 reports. EPA and states are collaborating and sharing information through multiple workgroups. The EPA-state General Permit and Program Report Technical Workgroup focuses on the EPA Regional and state general permits and program reports that will use EPA’s NPDES Electronic Reporting Tool (NeT) for Phase 2 data.

The EPA-state NPDES Noncompliance Report (NNCR) workgroup discusses how to

identify, categorize, sort, and display violations on the NNCR. This workgroup is discussing how best to implement the new NNCR regulations in 40 CFR 123.45. EPA held three listening sessions with the EPA-state NNCR workgroup to discuss updated language in 40 CFR 123.45. States provided feedback on how to clarify the category I noncompliance criteria for enforcement order violations, permit effluent limit violations, and reporting violations. EPA incorporated comments and other minor clarifying text and formatting issues from these workgroup discussions in this proposed rule.

EPA received letters from authorized NPDES programs on how to improve Phase 2 implementation of the NPDES eRule which recommended changes to the schedule for Phase 2 implementation to allow both EPA and states sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009). In response to the feedback from the states in the letters and oral communications, this notice proposes changes to the NPDES eRule to allow for a smoother transition from paper to electronic reporting for the NPDES program.

EPA collected these changes over the past few years as EPA and states began implementing the NPDES eRule. These suggested changes are intended to clarify and streamline NPDES eRule implementation. These changes also update the required minimum set of NPDES program data to include recent changes to the NPDES program. EPA recently updated the NPDES permit application regulations (40 CFR 122.21) and the related forms with the 2019 NPDES Applications and Program Updates final rule. See February 12, 2019; 84 FR 3324. Taken together, these data standardizations and the corresponding electronic reporting requirements are designed to save the NPDES authorized programs considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers

typically review previous noncompliance events during permit renewal), improve the accuracy and completeness of NPDES program data shared with EPA from authorized states, ensure transparency of NPDES program data to the public, improve environmental decision-making, and protect human health and the environment.

Finally, in a separate rulemaking, EPA has proposed to update the minimum set of NPDES program data (Appendix A to 40 CFR part 127) for the municipal separate storm sewer systems (MS4s) sector. See April 20, 2019; 84 FR 18200. These changes to the NPDES eRule will correct obsolete citations and current inconsistencies with the newly modified MS4 Phase II regulations. See December 8, 2016; 81 FR 89320. These updates would not change the burden associated with complying with the NPDES eRule but, rather, the changes would assist permitting authorities and MS4 permittees in implementing NPDES electronic reporting. Today's proposal does not address those previously-proposed changes to the MS4 data elements.

III. Changes to Phase 2 Compliance Deadline

This notice proposes to postpone the compliance deadlines for Phase 2 implementation of the NPDES eRule from December 21, 2020, to December 21, 2023 (see Table 1 to 40 CFR 127.16). EPA has received feedback from authorized NPDES programs on how to improve Phase 2 implementation of the NPDES eRule. This state feedback, in particular, recommended changes to the schedule for Phase 2 implementation to allow both EPA and states sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009). One letter submitted by the Association of Clean Water Agencies ("ACWA") noted that, "the new deadline should take into consideration the resources and time EPA will need to invest in updating ICIS-NPDES, the resources and time EPA will need to invest to complete work on the NPDES Electronic Tool, known as "NeT," and

the resources and time states will then need to complete their implementation of the rule given the new information.”

The reason for this proposal is to allow EPA additional time to complete the development of electronic tools that the States may use to comply with the electronic reporting requirements. EPA had intended for these tools to be available as an option for the states to use by December 2020, but EPA has experienced unexpected delays since EPA promulgated the 2015 NPDES Rule. These delays include the modernization of its pre-existing electronic reporting tool for the collection of DMRs (called “NetDMR”) and the switch from using a commercially license software platform to an open-source software platform for general permits and program reports (called “NPDES Electronic Report Tool” or “NeT”). The NetDMR changes involved migrating tens of thousands of NetDMR users to the Agency’s Central Data Exchange (CDX) system for account management. This simplified NetDMR account management for EPA, states, and NetDMR users. EPA made the switch to open-source software platform for NeT to lower its costs. EPA estimates that these tools will be available by December 21, 2023. EPA has gathered basic information on all general permits and program reports that will use NeT (see NPDES eRule Phase 2 Implementation Dashboard). EPA expects to build the necessary NeT applications in order to meet the new Phase 2 compliance deadlines as it has already deployed general permit electronic reporting tools for more than 27,000 facilities that are subject to federal or authorized state general permits (approximately 55% of the estimated number of facilities that will use NeT). An extension of the Phase 2 compliance deadlines will also assist states who have experienced similar challenges in developing the information technology infrastructure to implement electronic reporting tools for their general permit covered facilities.

The following are the proposed regulatory changes that EPA is considering for the Phase

2 compliance deadlines:

- Change the Phase 2 compliance deadlines in Table 1 to 40 CFR 127.16 from December 21, 2020, to December 21, 2023 for general permit reports and program reports.
- Change the Phase 2 compliance deadlines in the NPDES regulations in 40 CFR parts 122, 403, and 503. These provisions originated the reporting requirements.

EPA proposes to change the Phase 2 compliance (deadline) date for the following NPDES reporting requirements in 40 CFR parts 122, 403, and 503:

- Low Erosivity Waivers (LEW) - 40 CFR 122.26(b)(15)(i)(C);
- No Exposure Certifications (NOE) – 40 CFR 122.26(g)(1)(iii);
- Notice of Intent to discharge (NOI) - 40 CFR 122.28(b)(2)(i);
- Small Municipal Separate Storm Sewer System (MS4) Program Report - 40 CFR 122.34(g)(3);
- Sewer Overflow/Bypass Event Report – 40 CFR 122.41(l)(6)(i), 122.41(l)(7), 122.41(m)(3)(i), and 122.41(m)(3)(ii);
- Medium or Large MS4 Program Report - 40 CFR 122.42(c);
- CAFO Annual Report - 40 CFR 122.42(e)(4);
- Notice of Terminations (NOT) - 40 CFR 122.64(c);
- Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs - 40 CFR 403.12(e) and (h);
- Pretreatment Program Report - 40 CFR 403.12(i); and
- Biosolids Annual Report – 40 CFR 503.18, 503.28, 503.48.

In addition to moving the compliance deadlines to December 21, 2023, EPA proposes to add a reference to the proposed alternative Phase 2 compliance deadlines provisions at 40 CFR

127.24(e) or (f). This is discussed in more detail below. Other than the changes to the deadlines for complying with Phase 2 compliance deadlines and the addition of the reference to the alternative Phase 2 compliance deadlines provisions, EPA is not proposing any changes to the requirements in these sections and will not respond to any public comments on issues other than the dates.

Finally, EPA regulations set the NNCR publication date at December 21, 2021. EPA originally picked this date as it needed time to develop this report and that it was one year after the Phase 2 compliance deadlines for electronic reporting. As previously noted, EPA and states have made significant progress in implementing Phase 1 and EPA has held frequent meetings with states on how to develop the NNCR.

EPA does not see the need to extend the NNCR publication compliance deadline for an additional three years, as it has some Phase 1 data that can be incorporated into the NNCR. EPA plans to incorporate Phase 2 data into the NNCR as these data become available. The benefit of this approach would be to give EPA, states, and the public a complete inventory of facilities with violations based on the most currently available set of NPDES program data. This will help EPA and states identify noncompliance issues that might impact human health or the environment.

However, EPA needs additional time to work with states on completing Phase 1 reporting and how best to categorize and display non-compliance in the NNCR based on Phase 1 data. In addition, EPA is already working with states on reducing the level of Significant Non-Compliance with NPDES requirements using the Phase 1 data as one of its National Compliance Initiatives for 2020-2023.¹ Therefore, EPA is proposing to delay the public release date of the NNCR by one year, to December 21, 2022. This date will allow EPA and states to use the new

¹ See the following website for details: <https://www.epa.gov/enforcement/fy2020-fy2023-national-compliance-initiatives>.

NNCR as EPA is making decisions on its next round of National Compliance Initiatives. EPA solicits comment on this proposed NNCR publication date.

IV. Alternative Phase 2 Compliance Deadlines

In addition to changing the Phase 2 compliance deadline, EPA is proposing new regulatory provisions to create additional flexibility for Phase 2 compliance deadlines in case they are needed. These new provisions respond to the requests from ACWA and other authorized NPDES programs for more time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009).

The EPA proposes a new regulatory provision [40 CFR 127.24(e)] that would allow authorized NPDES programs to request additional time beyond December 21, 2023 to implement Phase 2 of the NPDES eRule. Under this provision, an authorized NPDES program would send a request for EPA to review and approval. This request would identify the facilities, general permits, program reports, or data elements for which the authorized NPDES program needs additional time beyond December 21, 2023. For example, under this option a state could seek approval from the EPA to postpone implementation of electronic reporting for a NPDES general permit until an agreed-upon time after December 21, 2023, but no later than December 21, 2026. This waiver might be helpful if a state has a permit or program report that is a lower priority for electronic reporting (e.g., a general permit that provides coverage for 10 or fewer NPDES-regulated entities) and for which electronic reporting tool development is delayed.

While states may make multiple requests for compliance deadline extensions beyond December 21, 2023, the proposed rule would only allow EPA to grant extensions beyond December 21, 2026. Each alternative Phase 2 compliance deadline request would need to:

- be submitted to EPA by the Director, as defined in 40 CFR 122.2;

- identify each general permit, program report, and related data elements covered by the request and the corresponding alternative compliance deadline(s);
- identify each facility covered by the request and the corresponding alternative compliance deadline(s) (Note: This only applies if the request covers some but not all facilities covered by the relevant general permit or program report requirement);
- be submitted at least 120 days prior to the then-applicable compliance deadline(s) in Table 1 to 40 CFR 127.16 or a previously EPA approved alternative compliance deadline; and
- provide a rationale for the delay and enough details (e.g., tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how the program will successfully implement electronic reporting for general permit, program report, and related data elements covered by the request.

EPA would review each alternative Phase 2 compliance deadline request to determine if it provides enough detail to accurately assess if the state has a reasonable plan to deploy electronic reporting by the requested alternative Phase 2 compliance deadline. EPA would return alternative Phase 2 compliance deadline requests with insufficient detail back to the Director within 30 days of receipt and provide recommendations. EPA would approve or deny each complete alternative Phase 2 compliance deadline request within 120 days of receipt of a sufficiently detailed request. EPA would provide notice to the authorized NPDES program of EPA's approval or denial. The authorized NPDES program could re-apply if the initial request were denied by EPA.

Under the proposal, EPA could elect to deny an alternative Phase 2 compliance deadline request and then could continue to follow the procedure in the existing rule for determining the

initial recipient of electronic NPDES information (see 40 CFR 127.27). EPA must become the initial recipient of electronic NPDES information from NPDES-regulated facilities if the state, tribe, or territory does not consistently maintain electronic data transfers in compliance with the NPDES eRule [see 40 CFR 127.27(d)(2)]. EPA would update its website with each alternative Phase 2 compliance deadline request and the corresponding Agency approval or denial notice. EPA would provide updated information at: <https://www.epa.gov/compliance/npdes-ereporting>. EPA would also update its website and online “NPDES eRule Phase 2 Implementation Dashboard” to clearly identify the approved alternative Phase 2 compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program.

EPA is also proposing a separate regulatory provision [40 CFR 127.24(f)] that would authorize EPA to, on its own initiative, allow for additional time for one or more states to implement NPDES electronic reporting beyond December 21, 2023. Under this proposal, EPA could establish an alternative Phase 2 compliance deadline for electronic reporting and data sharing for one or more facilities, general permit reports, program reports, and related data elements (see Table 2 to Appendix A to 40 CFR part 127). Under the proposal, EPA could set an alternative Phase 2 compliance deadline for up to three years but not beyond December 21, 2026. EPA would update its website and online “NPDES eRule Phase 2 Implementation Dashboard” to clearly identify the alternative Phase 2 compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program. Separately, EPA would provide notice to the one or more authorized NPDES program covered by each alternative Phase 2 compliance deadline through email or letters. This notice would include a rationale for the delay and enough details (e.g., tasks, milestones, roles and responsibilities,

necessary resources) to clearly describe how EPA would successfully implement electronic reporting for general permit, program report, and related data elements covered by the extension. This additional flexibility would also allow more time for EPA and authorized NPDES programs to resolve any issues related to the sharing of Phase 2 data.

V. Clarifying Edits for More Efficient Implementation and 2019 NPDES Updates Rule Changes

The following are proposed clarifying edits to the 2015 NPDES eRule. These changes are based on EPA and state experience over the past few years during NPDES eRule implementation. These proposed changes are intended to clarify and streamline NPDES eRule implementation. The last two changes also include two new data sharing requirements related to NAICS codes and variance requests that were recently added to the NPDES application forms. See the 2019 NPDES Applications and Program Updates Rule (February 12, 2019; 84 FR 3324).

A. Correct the title for 40 CFR 123.45

EPA proposes to delete “by the Director” in the title for this section. EPA proposes this deletion as the NPDES eRule eliminated the previous noncompliance reports that were authored by state NPDES programs and replace them with one noncompliance report (i.e., NPDES Noncompliance Report or “NNCR”). The NNCR is authored by EPA rather than any state “Director.”

B. Provide greater clarity and specificity for the NNCR Category I noncompliance definitions

The NPDES eRule also eliminated state noncompliance reporting [e.g., Quarterly Noncompliance Report (QNCR), Annual Noncompliance Report (ANCR)] and required EPA to produce a public inventory of NPDES violations (called the NPDES Noncompliance Report or

“NNCR”). The NPDES eRule also revised and update the violation classification definitions to specifically identify Category I violations with all other violations as Category II violations. EPA proposes the following changes to the NNCR Category I violation classification definitions, which are listed at 40 CFR 123.45(a)(2). EPA regulatory:

- Re-order the violation categories to better match the order EPA previously used in the pre-2015 version of 123.45 for the Category I noncompliance definitions;
- Correct the label and definition used for violations of administrative or judicial enforcement orders;
- Correct the label for permit effluent limit violations;
- Clarify the definition of Category I noncompliance for reporting violations; and
- Clarify the text in Appendix A to 40 CFR 123.45 and update the formatting to correctly show labels and groups of pollutants.

EPA solicited feedback from the EPA-state NNCR workgroup on these proposed changes. EPA received feedback from states that it would be helpful to re-order the noncompliance categories to better match the order EPA used prior to promulgating the 2015 NPDES eRule. States also provided feedback to EPA that several NNCR Category I definitions should be clarified and refined. States suggested that EPA change “Compliance schedule violations” to “Enforcement order violations,” as this category of violations relates to violations of “any requirement or condition in administrative or judicial enforcement orders, other than compliance construction violations and reporting violations.” This proposed change would remove the word “permit” from this definition as these types of violations are not related to permit requirements. EPA is proposing to change the label “Effluent limits” to “Permit effluent limits” as this category of violations only relates to violations or effluent limits that are in

NPDES permits.

States also suggested deleting the word “complete” in the “Reporting violations” violation category. Some states indicated that this definition could be interpreted to mean that the submission of an incomplete report could trigger Category I noncompliance (e.g., failure to report one value on a DMR as opposed to the entire DMR). EPA proposes to delete the word “complete” to make clear that a Category I reporting violation only occurs when an NPDES-regulated entity fails to file an entire report within the appropriate reporting period.

EPA is retaining in the NNCR the identification of Category I reporting violations for facilities that do not provide the required data for an entire DMR but instead report a noncompliant reason for not providing these data. An example of this kind of noncompliance is when a facility fails to conduct any sampling or analysis during the reporting period as required by its NPDES permit. The facility would use the DMR form to report this noncompliance to the authorized NPDES program. These noncompliant reasons at the DMR form level will continue to be classified as Category I noncompliance reporting violations.

States also requested more clarity on the type of reporting violations that would always trigger Category I noncompliance. EPA is proposing to retain the 30-day grace period and list the reports that must be filed within 30 days: (1) final compliance schedule progress reports; (2) Discharge Monitoring Reports [see 40 CFR 122.41(l)(4)(i)], and (3) program reports [see 40 CFR 127.2(f)]. These reports are critical compliance monitoring information and closely align with NPDES eRule (see Table 1 to 40 CFR 127.16). EPA is also retaining violations of the twenty-four reporting and five-day reporting NPDES requirements [see 40 CFR 122.41(l)(6)] in the “Reporting violations” violation category as these reporting violations relate to “noncompliance which may endanger health or the environment.” States also provided feedback

that they would like the ability to use their discretion to identify other reporting violations as Category I violations. EPA notes that the NNCR already includes this flexibility as the “Other violations” category includes, “any violation or group of violations, which in the discretion of the Director or EPA, are considered to be of concern.”

Finally, EPA proposes to clarify the text in Appendix A to 40 CFR 123.45 and update the formatting to correctly show labels and groups of pollutants. These proposed clarifications would fix an inaccurate reference and use the same wording from the “Violation classifications” section of the NNCR. EPA intends no substantive change to the scope of Category I noncompliance through these changes.

C. Correct Appendix A deficiency descriptions to match current practices of authorized NPDES programs.

EPA proposes to delete the last sentence in the data description for the following four ‘deficiency’ data elements in Appendix A to 40 CFR part 127: “The values for this data element will distinguish between noncompliance and significant noncompliance (SNC).”

- Deficiencies Identified Through the Biosolids/Sewage Sludge Compliance Monitoring
- Deficiencies Identified Through the MS4 Compliance Monitoring
- Deficiencies Identified Through the Pretreatment Compliance Monitoring
- Deficiencies Identified Through the Sewer Overflow/Bypass Compliance Monitoring

EPA is also proposing to delete the regulation citation to 40 CFR 123.45 for these four data elements.

EPA proposes to delete the last sentence in the data description for the four ‘deficiency’ data elements as only violations affect compliance status. This change would make clear that these four ‘deficiency’ data elements should not be used to affect compliance status. These

separate data elements mirror the current inspection and violation identification practices of authorized NPDES programs. In general, EPA and state inspectors document their findings made during inspections and note any ‘deficiencies.’ EPA created four different ‘deficiency’ data elements to identify and track these instances of potential noncompliance. The inspector’s manager will typically review these ‘deficiencies’ and decide if any of them warrant separate identification as violations. These violations are already tracked with the “Violation Code” data element. Deleting this sentence from the descriptions for these four data elements will eliminate any potential confusion as to whether the identified deficiency automatically created an instance of non-compliance.

D. Correct data element name and description and reference for Biosolids or Sewage Sludge – Land Application or Surface Disposal Deficiencies

EPA proposes to rename the “Biosolids or Sewage Sludge—Land Application or Surface Disposal Deficiencies” data element to “Biosolids or Sewage Sludge – Violations” and update the related data description.

EPA mislabeled the “Biosolids or Sewage Sludge—Land Application or Surface Disposal Deficiencies” data element in the NPDES eRule. This element is part of the Federal biosolids annual report and allows NPDES-regulated entities to self-report violations on all regulated biosolids management practices (i.e., land application, surface disposal, and incineration) (see 22 October 2015; 80 FR 64079). This change also makes clear that this data element tracks self-reported violations for the three biosolids management practices regulated under EPA’s Federal biosolids regulations (40 CFR part 503). EPA is also proposing to add the corresponding CFR reference for the biosolids incineration annual report (40 CFR 503.48). This change will help reduce confusion with the data element “Deficiencies Identified Through the

Biosolids/Sewage Sludge Compliance Monitoring;” these deficiencies are not violations and do not affect compliance status.

- E. Correct the title of the “Sewer Overflow/Bypass Event Report” in Table 1 of Appendix A and Table 1 of 40 CFR 127.16

EPA used an incorrect title in two sections of the NPDES eRule for the report that provides information on sewer overflows and bypass events. EPA used the incorrect title, “Sewer Overflow Event Reports [40 CFR 122.41(l)(6) and (7)],” at Table 1 to 40 CFR 127.16 and Table 1 to Appendix A, 40 CFR part 127. The correct title is, “Sewer Overflow/Bypass Event Reports [40 CFR 122.41(l)(4), (6), (7), and 122.41(m)(3)].” EPA used the correct title in all other references to this report. EPA is also proposing to make conforming changes to the “Program area” column and the “Minimum frequency” column in Table 1 (Appendix A 40 CFR part 127).

- F. Deletion of the following two data elements: Reportable Noncompliance Tracking and Reportable Noncompliance Tracking Start Date.

EPA proposes deleting the following two data elements as these data are no longer used for EPA’s national NPDES program:

- Reportable Noncompliance Tracking; and
- Reportable Noncompliance Tracking Start Date.

EPA mistakenly included these two data elements in Appendix A. These two data elements are no longer needed to address unforeseen circumstances when the authorized NPDES program needs to turn off automatic violation detection by EPA’s NPDES data system. The current recommended approach to turn off compliance tracking in EPA’s NPDES data system is for EPA or authorized NPDES programs to use the Permit Compliance Tracking Status and DMR Non-Receipt data elements. See “NPDES Electronic Reporting Implementation Guidance for

Tracking Compliance and Major Designations,” 28 December 2016,

<https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers>.

G. Provide greater clarity for the “Facility Concentrated Aquatic Animal Production (CAAP) Status” data element name and description.

EPA proposes to make changes to the “Facility CAAP Status” data element name and description. States provided feedback to EPA that the current name and description of this data element could be interpreted to mean that this data element applies to all NPDES-regulated entities as the current data description provides “Yes” and “No” as example reference values. This interpretation implies that states would need to provide a “Yes” or “No” for all NPDES-regulated entities.

The proposed changes would make clear that this data element only applies to aquatic animal production facilities. The proposed change would ensure that states do not need to share these data with EPA for facilities that do not have aquatic animal production (i.e., lower data entry burden for states). Moreover, the proposed changes would also provide the information necessary to distinguish between the two CAAP identification methods. EPA proposes to change the name of this data element from “Facility CAAP Designation” to “Facility CAAP Status.” The proposed change from “Designation” to “Status” makes clear that this data element tracks both methods for identifying an aquatic animal production facility as a CAAP facility. The first method is solely based on production amounts provided by the facility and the second method is a manual designation process performed by the authorized NPDES program.

- Method #1 (Based on Facility Production Data) - CAAP identification is automatic based on the comparison of permit application/NOI information against the criteria used in EPA's CAAP NPDES regulations (see 40 CFR 122.24(b)); and

- Method #2 (Authorized NPDES Program Designation) - Using a case-by-case approach the RA may designate any warm or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States (see 40 CFR 122.24(c)).

The two methods are sequenced as follows. Facilities seeking NPDES permit coverage that acquire the CAAP status under Method #1 are not evaluated under Method #2 [i.e., Facility CAAP Status is set to “Yes (Based on Facility Production Data)”]. Conversely, facilities seeking NPDES permit coverage that do not acquire CAAP status under Method #1 can be designated by the authorized NPDES program as a CAAP facility under Method #2 [i.e., Facility CAAP Status is set to “Yes (Authorized NPDES Program Designation)”]. The proposed changes would also require NPDES programs to share data with EPA on aquatic animal production facilities that they inspect under Method #2 and found to not be a CAAP facility [i.e., Facility CAAP Status is set to “No (Authorized NPDES Program Determination)”].

H. Provide greater clarity on the ‘Permit Component’ data element with respect to unpermitted facilities.

EPA proposes changes to the “Permit Component” data element description to clarify its applicability to unpermitted facilities subject to NPDES inspections. EPA proposes these changes as EPA’s regulations require authorized NPDES programs to have “inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements.” See 40 CFR 123.26(b). EPA’s NPDES Compliance Monitoring Strategy (CMS) also provides compliance monitoring goals for authorized NPDES programs and guidance regarding inspection of facilities without

NPDES permit coverage.² For example, this document notes, “Regions and states should also conduct compliance monitoring activities to locate industrial facilities that have failed to obtain permit coverage or file a ‘no exposure certification’ under 40 CFR 122.26(g). Inspections of unpermitted industrial stormwater facilities, including those with ‘no exposure certification,’ will count toward the annual industrial stormwater coverage goal of 10%.”³ EPA provided a discussion of when states must share data on unpermitted facilities with EPA in the preamble to the final rule (October 22, 2015; 80 FR 64078).

This change would clarify that this data element applies to unpermitted facilities when states are required by EPA regulations to share data about these unpermitted facilities with EPA. This change would also update the regulatory citation for this data element to explicitly include certain unpermitted facilities [e.g., certain unpermitted facilities subject to a CWA NPDES inspection, facilities regulated by the Federal biosolids regulation (40 CFR part 503)]. This change would help EPA and states ensure that unpermitted facilities can be properly sorted into their respective NPDES programs (e.g., industrial stormwater, construction stormwater, CAFOs). EPA estimates that this change would only be a minor increase in costs to states as most states already share these data for tracking compliance with the CMS and other programmatic needs. For example, EPA uses this data element to mask facility information in public search tools for unpermitted Concentrated Animal Feeding Operations (CAFOs) and Animal Feeding Operations (AFOs) that EPA or state inspectors found were not discharging and do not require an NPDES permit (see 22 October 2015; 80 FR 64092).

² U.S. EPA, 2014. Issuance of Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy, Memorandum from Lisa Lund, Director, Office of Compliance, July 21. See <https://www.epa.gov/compliance/clean-water-act-national-pollutant-discharge-elimination-system-compliance-monitoring>.

³ *Ibid*, Page 15.

I. Provide greater clarity on the Notice of Termination (NOT) electronic reporting requirements

EPA proposes to make changes to the Notice of Termination (NOT) section in the NPDES regulations (40 CFR 122.64(c)). The NPDES eRule made clear that the electronic reporting requirement for NOTs only applied to general permit covered facilities (see Table 1 to Appendix A, 40 CFR part 127). This proposed language clarifies the electronic reporting requirement for NOTs and helps ensure that the state burden associated with implementing the NPDES eRule is minimized.

J. Provide greater clarity on the “Applicable Effluent Limitations Guidelines” data element and delete the duplicative data element, “Applicable Categorical Standards.”

EPA proposes to update the data description for the “Applicable Effluent Limitations Guidelines” data element to make clear that this data element applies to all NPDES-regulated entities and to clarify EPA’s expectation that the authorized NPDES program should identify all applicable effluent limitations guidelines. Making these changes will also allow EPA to delete the “Applicable Categorical Standards” data element. EPA is also proposing to make conforming changes to the regulatory citation and “NPDES Data Group” columns in Table 2 (Appendix A to 40 CFR part 127).

This proposed change will help reduce the burden on states to create a duplicative data element, “Applicable Categorical Standards.” This change will help ensure that EPA and states have an accurate inventory of facilities that meet the applicability criteria of the one or more effluent guidelines as well as allow EPA to maintain an accurate inventory of facilities that do not have any applicable effluent guidelines. Finally, these changes will also help reduce state data sharing burden as the data description makes clear that the Control Authority can use

pretreatment program report and the state can use the NOI submissions to manage these data.

- K. Provide greater clarity on the “Receiving Waterbody Name for Permitted Feature” data element name and description.

EPA proposes to delete the word “Receiving” from the “Receiving Waterbody Name for Permitted Feature” data element name and update the data description. EPA is also proposing to add conforming regulatory citations to 40 CFR 122.21(f)(9) for this data element as well as the “Source Water for Cooling Purposes” data element.

EPA recently updated the NPDES regulations governing individual NPDES permit applications (see 12 February 2019; 84 FR 3324). The Rule added 40 CFR 122.21(f)(9), requires individual permit applications to include the following cooling water information: “An indication of whether the facility uses cooling water and the source of the cooling water.” EPA now proposes a conforming change to the data element in Appendix A. This proposed change would also make clear that this data element is optional for other intake structures. EPA proposes to update the data sharing requirements for both individual and general permit covered facilities. This would ensure that there is consistent and complete reporting nationwide of industrial classification data, which are useful for regulatory decisions and program oversight.

- L. Requiring NAICS Code Data to Match the 2019 NPDES Applications and Program Updates Final Rule.

EPA proposes to update the data descriptions for the “NAICS Code” and “NAICS Code Primary Indicator” data elements. EPA is also proposing to add conforming regulatory citations to 40 CFR 122.21(f)(3) and 122.28(b)(2)(ii) for these data elements.

EPA proposes these changes to conform to its updated NPDES permit application regulations (see 12 February 2019; 84 FR 3324), which became effective on June 12, 2019.

Since this date, applicants for EPA-issued NPDES permits are required to meet the new application requirements. EPA proposes to update each of the eight NPDES application forms to conform to the February 12, 2019 final rule and improve clarity and usability. States that are authorized to administer the NPDES program might require use of EPA's application forms or might have developed their own state-specific application forms. In either case, the final NPDES Applications and Program Updates Rule provides states up to one year to make conforming programmatic and regulatory changes, and up to two years if statutory changes are needed.

The 2019 NPDES Applications and Program Updates Final Rule requires permit applications to include data on the four-digit Standard Industrial Classification (SIC) codes and the six-digit NAICS codes. Prior to this 2019 rulemaking, EPA only required NPDES permit applications to include SIC code data. EPA is proposing to update the data sharing requirements for both individual and general permit covered facilities. This would ensure that there is consistent and complete reporting nationwide of industrial classification data, which are useful for regulatory decisions and program oversight. EPA is proposing to require states to share these NAICS code data with EPA when they approve NPDES permit coverage. This will help lower the implementation costs to states.

M. Add Waiver Data Elements to Appendix A to Match the 2019 NPDES Applications and Program Updates Final Rule.

EPA proposes to make changes to variance related data elements in Appendix A as well as add new waiver related data elements. These variances relate to the following provisions in the CWA:

- fundamentally different factors (FDFs) (CWA Section 301(n));
- non-conventional pollutants (CWA Section 301(c) and (g));

- water quality related effluent limitations (CWA Section 302(b)(2));
- thermal discharges (CWA Section 316(a)); and
- discharges to marine waters (CWA Section 301(h)).

EPA proposes to make conforming changes to the data element citations. EPA proposes to amend Table 2 to Appendix A for these waiver data elements to include references to 40 CFR 123.41 ('Sharing of Information') for variances that do not expire (e.g., FDFs) as well as references to NPDES permit application variance information sections at 40 CFR 122.21(f)(10) and 122.21(j)(1)(ix).

EPA proposes to include these revised and new data elements in the minimum set of NPDES program data (Appendix A to 40 CFR part 127) as these data would allow EPA and states to better track waiver requests and related statuses for the NPDES program. EPA recently updated the NPDES permit application regulations (40 CFR 122.21) and the related forms with the 2019 NPDES Applications and Program Updates final rule. EPA proposes updating the data sharing requirements for both individual and general permit covered facilities. This would ensure that there is consistent and complete reporting nationwide of waiver data. EPA is proposing to require states to share these waiver data with EPA when they approve NPDES permit coverage. This approach will integrate with the authorized NPDES program's data collection and sharing activities.

VI. Assistance to States to Implement Phase 2

EPA will continue to provide technical assistance and support to authorized NPDES programs during the transition to electronic reporting. This includes building electronic reporting tools for authorized NPDES programs that elect to use these tools and to support the

development of new data transfer protocols. Authorized NPDES programs can request EPA's assistance for electronic reporting by submitting a request to NPDESReporting@epa.gov.

EPA offers authorized programs financial assistance through the Exchange Network Grant Program. This program provides funding to states, territories, and federally recognized Indian tribes to support the development of the National Environmental Information Exchange Network. The primary outcome expected from Exchange Network assistance agreements is improved access to, and exchange of, high-quality environmental data from public and private sector sources. More information on this program is available at:

<https://www.epa.gov/exchangenetwork/exchange-network-grant-program>.

EPA will continue to work with authorized NPDES programs to implement NPDES electronic reporting. This includes the use of workgroups to help authorized NPDES programs share data with EPA and to provide recommendations on how EPA should build the NNCR. Authorized NPDES programs can contact the person listed in the FOR FURTHER INFORMATION CONTACT section to learn how to join these workgroups.

VII. Statutory and Executive Order Reviews

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 was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

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 [2617.01]. You can find a copy of the supporting statement for this ICR in the docket for this rule (see DCN 0016). It is briefly summarized here.

EPA has primary responsibility for ensuring the CWA's NPDES program is effectively and consistently implemented nationwide, thus ensuring that public health and environmental protection goals of the CWA are met. EPA is taking this action pursuant to CWA sections 101(f), 304(i), 308, 402, and 501. The accurate, complete, and timely information collected under this ICR will help EPA and states more efficiently implement the 2015 NPDES eRule. The improved information sharing would increase transparency and accountability and help EPA and authorized NPDES programs collaborate and measure progress in implementing the 2015 NPDES eRule. This information collection would provide EPA with more timely, consistent, and accurate inventory of all general permits and program reports, the number of facilities that must electronically submit reports, and the online location of state electronic reporting tools.

Receiving current high-level data on general permits and program reports is critical to EPA's ability to oversee and manage authorized NPDES programs. Authorizing the burden under this ICR will allow EPA to provide timely assistance to authorized NPDES programs as they implement the NPDES eRule. The general permits and program reports inventory will help promote efficiencies in NPDES eRule implementation as states will be able to use this information to identify other states that have already developed electronic reporting tools. Additionally, with the implementation of this information collection activity, regulated entities would be able to

ensure that they are fully aware of the compliance deadlines and electronic reporting tools for their reporting obligations.

Respondents/affected entities: This ICR covers the 47 states and one U.S. Territory authorized to implement the NPDES program.

Respondent's obligation to respond: EPA is taking this action pursuant to CWA sections 101(f), 304(i), 308, 402, and 501.

Estimated number of respondents: This ICR covers the 48 authorized NPDES programs.

Frequency of response: EPA estimates that twelve authorized NPDES programs will provide updated information on general permits and program reports and the related electronic reporting tools each month. Additionally, all 48 authorized NPDES programs will conduct an annual review and update of EPA's inventory. Finally, EPA estimates that approximately 15 authorized NPDES programs will prepare and submit an alternative Phase 2 compliance deadline request during the three-year period covered by the ICR.

Total estimated burden: 416 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$25,418 (per year), includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for 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 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 [XXX – Note to OFR: insert date 30 days after publication in the Federal Register]. The EPA will respond to any ICR-related comments in the final rule.

D. 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. This action will not impose any requirements on small entities. This action does not affect small entities as the proposed changes in this action only cover states, tribes, and territories that have NPDES program authorization. The RFA defines “small governmental jurisdiction” as the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000 (5 U.S.C. section 601(5)). For the purposes of the RFA, States and tribal governments are not considered small governments.

E. 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, and does not significantly or uniquely affect small governments. The proposed changes in this action help streamline the implementation of the NPDES eRule and provide states with more flexibility. EPA estimates that the additional time and flexibility afforded by the proposed changes will help lower the implementation costs.

F. 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.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not affect small entities as the proposed changes in this action only cover states, tribes, and territories that have NPDES program authorization. Currently there are no tribal governments that are authorized for the NPDES program. Thus, Executive Order 13175 does not apply to this action.

H. 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 changes in this action only cover states, tribes, and territories that have NPDES program authorization.

I. 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 is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The

proposed changes in this action only cover states, tribes, and territories that have NPDES program authorization.

NPDES Electronic Reporting Rule – Phase 2 Extension

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List of Subjects in 40 CFR Parts 9, 122, 123, 127, 403, and 503

JAN 31 2020

Dated: _____.

A handwritten signature in black ink, appearing to read "Andrew Wheeler", written over a horizontal line.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 9, 122, 123, 127, 403, and 503 as follows:

For the reasons cited in the preamble, title 40, chapter I is amended as follows:

PART 9 - OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 122 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1251, 1311, 1313, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

2. In § 9.1, the table is amended by adding the following section in numerical order under the heading titled ‘‘NPDES Electronic Reporting’’ to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
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NPDES Electronic Reporting

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127.24	2020-XXXX
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**PART 122 – EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL
POLLUTANT DISCHARGE ELIMINATION SYSTEM**

3. The authority citation for part 122 continues to read as follows:

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

4. Amend the Low Erosivity Waiver provision at § 122.26(b)(15)(i)(C) to read as follows:

As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all certifications submitted in compliance with paragraphs (b)(15)(i)(A) and (B) of this section must be submitted electronically by the owner or operator to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by state law.

5. Amend the No Exposure Certification provision at § 122.26(g)(1)(iii) to read as follows:

Submit the signed certification to the NPDES permitting authority once every five years. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all certifications submitted in compliance with this section must be submitted electronically by the owner or operator to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by state

law.

6. Amend the Notice of Intent to discharge (NOI) provision at § 122.28(b)(2)(i) to read as follows:

Except as provided in paragraphs (b)(2)(v) and (vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v), contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (b)(2)(vi). A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of §§122.6, 122.21, and 122.26. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, discharger (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit or if required to do so by state law.

7. Amend the Small MS4 Program Report provision at § 122.34 by revising paragraph

(g)(3) to read as follows:

Reporting. Unless the permittee is relying on another entity to satisfy its NPDES permit obligations under §122.35(a), the permittee must submit annual reports to the NPDES permitting authority for its first permit term. For subsequent permit terms, the permittee must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the NPDES permitting authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. The report must include:

* * * * *

8. Amend the Sewer Overflow/Bypass Event Report provision at § 122.41(l)(6) by revising paragraph (i) to read as follows:

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times), and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

9. Amend the Sewer Overflow/Bypass Event Report provision at § 122.41(1)(7) to read as follows:

Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6). For noncompliance events

related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph (l)(6) and the applicable required data in appendix A to 40 CFR part 127. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

10. Amend the Sewer Overflow/Bypass Event Report provision at § 122.41(m)(3) by revising paragraph (i) to read as follows:

Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a

particular permit or if required to do so by state law.

11. Amend the Sewer Overflow/Bypass Event Report provision at § 122.41(m)(3) by revising paragraph (ii) to read as follows:

Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice). As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

12. Amend the Medium or Large MS4 Program Report provision at § 122.42 by revising paragraph (c) to read as follows:

Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under §122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for

electronic reporting. Prior to this date, and independent of part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. The report shall include:

* * * * *

13. Amend the CAFO Annual Report provision at § 122.42(e) by revising paragraph (4) to read as follows:

Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Director. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law. The annual report must include:

* * * * *

14. Amend the Notice of Termination provision at § 122.64 by revising paragraph (c) to read as follows:

Permittees that wish to terminate their permit must submit a Notice of Termination (NOT) to their permitting authority. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all NOTs submitted by general permit

covered facilities in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law.

PART 123 – STATE PROGRAM REQUIREMENTS

15. The authority citation for part 123 continues to read as follows:

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

16. Amend the title of § 123.45 to read as follows:

§123.45 Noncompliance and program reporting.

* * * * *

17. Amend § 123.45 by revising the introductory text and paragraph (a)(2) to read as follows:

As of December 21, 2022, EPA must prepare public (quarterly and annual) reports as set forth here from information that is required to be submitted by NPDES-regulated facilities and the State Director.

(a) * * *

(1) * * *

(2) *Violation classifications.* A violation must be classified as “Category I Noncompliance” if one or more of the criteria set forth below are met.

- (i) *Enforcement order violations.* These include violations of any requirement or condition in administrative or judicial enforcement orders, other than compliance construction violations and reporting violations.

- (ii) *Compliance construction violations.* These include failure to start construction, complete construction, or achieve final compliance within 90 days after the date established in a permit, administrative or judicial order, or regulation.
- (iii) *Permit effluent limit violations.* These include violations of permit effluent limits that exceed the “Criteria for Category I Permit Effluent Limit Violations” in appendix A to §123.45.
- (iv) *Reporting violations.* These include failure to submit a required report within 30 days after the date established in a permit, administrative or judicial order, or regulation. These reports only include final compliance schedule progress reports, Discharge Monitoring Reports [see 40 CFR 122.41(l)(4)(i)], and program reports [see 40 CFR 127.2(f)]. In addition, these violations also include any failure to comply with the reporting requirements at 40 CFR 122.41(l)(6).

* * * * *

17. Amend Appendix A to § 123.45 to read as follows:

Appendix A to §123.45—Criteria for Category I Permit Effluent Limit Violations

This appendix describes the criteria for reporting Category I violations of NPDES permit effluent limits in the NPDES noncompliance report (NNCR) as specified under paragraph (a)(2)(iii) of this section. Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. As specified in paragraph (a)(2) of this section, there are two categories of noncompliance, and the table below indicates the thresholds for violations in Category I. An agency's decision as to what enforcement action, if any, should be

taken in such cases, shall be based on an analysis of facts, legal requirements, policy, and guidance.

Violations of Permit Effluent Limits

The categorization of permit effluent limit violations depends upon the magnitude and/or frequency of the violation. Effluent violations shall be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for Category I permit effluent limit violations apply to all Group I and Group II pollutants and are as follows:

a. **Criteria for Category I Violations of Monthly Average Permit Effluent Limits—Magnitude and Frequency**

Violations of monthly average permit effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the permit effluent limit and occur two months in a six-month period. The TRCs for the two groups of pollutants are as follows:

- Group I Pollutants (TRC) = 1.4
- Group II Pollutants (TRC) = 1.2

The following is a listing of the Group I and Group II pollutants.

Group I Pollutants

Oxygen Demand

- Biochemical Oxygen Demand
- Chemical Oxygen Demand
- Total Oxygen Demands
- Total Organic Carbon
- Other

Solids

- Total Suspended Solids (Residues)
- Total Dissolved Solids (Residues)
- Other

Nutrients

- Inorganic Phosphorus Compounds
- Inorganic Nitrogen Compounds
- Other

Detergents and Oils

- MBAS
- NTA
- Oil and Grease
- Other detergents or algicides

Minerals

- Calcium
- Chloride
- Fluoride
- Magnesium
- Sodium
- Potassium
- Sulfur
- Sulfate
- Total Alkalinity

- Total Hardness
- Other Minerals

Metals

- Aluminum
- Cobalt
- Iron
- Vanadium

Group II Pollutants

Metals (all forms)

- Other metals not specifically listed under Group I

Inorganic

- Cyanide
- Total Residual Chlorine

Organics

- All organics are Group II except those specifically listed under Group I.

b. Criteria for Category I Violations of Monthly Average Permit Effluent Limits—Chronic Violations of monthly average permit effluent limits which are exceeded in any four months in a six-month period.

PART 127 – NPDES ELECTRONIC REPORTING

19. The authority citation for part 127 continues to read as follows:

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

20. Amend Table 1 to 40 CFR 127.16 to read as follows:

Table 1—Compliance Deadlines for Electronic Submissions of NPDES Information

NPDES Information	Compliance Deadlines for Electronic Submissions (1)
General Permit Reports [Notices of Intent to discharge (NOIs); Notices of Termination (NOTs); No Exposure Certifications (NOEs); Low Erosivity Waivers (LEWs) and other Waivers] [40 CFR 122.26(b)(15), 122.28 and 122.64]	December 21, 2023
Discharge Monitoring Reports [40 CFR 122.41(l)(4)]	December 21, 2016
Biosolids Annual Program Reports [40 CFR 503]	December 21, 2016 (when the Regional Administrator is the Director) (2) December 21, 2023 (when the state, tribe or territory is the authorized NPDES program) (2)
Concentrated Animal Feeding Operation (CAFO) Annual Program Reports [40 CFR 122.42(e)(4)]	December 21, 2023
Municipal Separate Storm Sewer System (MS4) Program Reports [40 CFR 122.34(g)(3) and 122.42(c)]	December 21, 2023
POTW Pretreatment Program Annual Reports [40 CFR 403.12(i)]	December 21, 2023
Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs [40 CFR 403.12(e) and (h)]	December 21, 2023
Sewer Overflow/Bypass Event Reports [40 CFR 122.41(l)(4), (6), (7), and 122.41(m)(3)]	December 21, 2023
CWA 316(b) Annual Reports [40 CFR 125 subparts I, J and N]	December 21, 2023

Notes:

1. EPA may approve an alternative compliance deadline for general permit reports and program reports in accordance with §127.24(e) and (f).
2. Note: Director is defined in 40 CFR 122.2.

21. Amend § 127.21 by revising paragraph (b) to read as follows:

States, tribes, and territories that have received authorization from EPA to implement the NPDES program must electronically transfer these data, listed in §127.21(a), to EPA within 40 days of the completed activity or within 40 days of the receipt of a report from an NPDES permittee, facility, or entity subject to this part [see §127.1(a)]. EPA may set an alternative

compliance deadline for data sharing for one or more facilities, general permit reports, program reports, and related data elements (see 40 CFR 127.24(f)) provided this alternative compliance date does not extend beyond December 21, 2026.

22. Amend the title of § 127.24 to read as follows:

§127.24 Responsibilities regarding review of waiver requests from NPDES permittees, facilities, and entities subject to this part [see §127.1(a)] and alternative compliance deadlines.

23. Add paragraphs (e) and (f) to §127.24 to read as follows:

(e) A state, tribe, or territory that is designated by EPA as the initial recipient [see §§127.2(b) and 127.27] for an NPDES data group [as defined in §127.2(c)] may submit a request to EPA to establish an alternative compliance deadline for electronic reporting of one or more general permit reports, program reports, and related data elements (see Table 2 to appendix A). A State may request to establish an alternative compliance deadline for up to three years beyond the currently-applicable date but not beyond December 21, 2026. It is the duty of the authorized NPDES program to re-apply for a new alternative compliance deadline.

(1) The alternative compliance deadline request shall:

(i) be submitted to EPA by the Director, as defined in 40 CFR 122.2;

(ii) identify each general permit, program report, and related data elements covered by the request and the corresponding alternative compliance deadline(s);

(iii) identify each facility covered by the request and the corresponding alternative compliance deadline(s) (Note: This only applies if the request covers some but not all facilities subject to the general permit or program report requirement);

(iv) be submitted at least 120 days prior to the applicable compliance deadline in Table 1 to 40 CFR 127.16 or an alternative compliance deadline previously approved by EPA; and

(v) provide a rationale for the delay and enough details (e.g., tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how the program will successfully implement electronic reporting for general permit, program report, and related data elements covered by the request.

(2) EPA will review each alternative compliance deadline request to see if it provides enough detail to accurately assess if the state has a reasonable plan to deploy electronic reporting by the requested alternative compliance deadline. EPA will return alternative compliance deadline requests with insufficient detail back to the Director within 30 days of receipt and provide recommendations. EPA will approve or deny each complete alternative compliance deadline request within 120 days of receipt. EPA will provide notice to the authorized NPDES program of EPA's approval or denial. The authorized NPDES program may re-apply if the initial request is denied by EPA.

(3) EPA will update its website after it approves a request to clearly identify the approved alternative compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program. EPA will also post each alternative compliance deadline request and the corresponding Agency approval or denial notice after each determination. EPA will provide updated information at:

<https://www.epa.gov/compliance/npdes-ereporting>

(f) EPA may, as it deems appropriate, establish an alternative compliance deadline for electronic reporting and data sharing for one or more facilities, general permit reports, program reports, and related data elements (see Table 2 to appendix A) in one or more states. EPA may establish an alternative compliance deadline up to three years beyond the currently applicable date, but in no event beyond December 21, 2026. Separately, EPA will provide notice to the one or more

authorized NPDES program covered by each alternative compliance deadline. This notice will include a rationale for the delay and enough details (e.g., tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how it will successfully implement electronic reporting for general permit, program report, and related data elements covered by the extension. EPA will update its website to clearly identify the alternative compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program.

24. Amend Table 1 to Appendix A to part 127 to read as:

Table 1—Data Sources and Regulatory Citations (1)

Table 1: Data Sources and Regulatory Citations				
NPDES Data Group Number (2)	NPDES Data Group	Program Area	Data Provider	Minimum Frequency (3)
* * * * *				
9	Sewer Overflow/Bypass Event Reports [40 CFR 122.41(1)(4), (6), (7), and 122.41(m)(3)]	Sewer Overflows and Bypass Events	NPDES Permittee	Within 5 days of the time the permittee becomes aware of the sewer overflow event (health or environment endangerment); Monitoring report frequency specific in permit (all other sewer overflow and bypass events); At least 10-days before the date of the anticipated bypass; and Within 5-days of the time the permittee becomes aware of the unanticipated bypass.
* * * * *				

* * * * *

25. Amend Table 2 to Appendix A to part 127 to read as:

Table 2—Required NPDES Program Data

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
* * * * *			

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
Permit Component	This will identify one or more applicable NPDES subprograms (e.g., pretreatment, CAFO, CSO, POTW, biosolids/sewage sludge, stormwater) for the permit record. This field is only required when the permit includes one or more NPDES subprograms. This data element is also required for unpermitted facilities when the authorized NPDES programs is required to share facility, inspection, violation, or enforcement action data regarding these facilities with EPA's national NPDES data system.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 123.26, 123.41(a), 123.43(d), 403.10, and 501.19	1, 2.
* * * * *			
DMR Non-Receipt Start Date	This is the date on which the permit's "on" or "off" period for DMR Non-Receipt tracking status began. Initially system-generated to match effective date. The date must be provided in YYYY-MM-DD format where YYYY is the year, MM is the month, and DD is the day. This data element will also be used to track non-receipt tracking of periodic compliance monitoring data [40 CFR 403.12(e) and (h)] for Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs in states where EPA or the State is the Control Authority).	123.45, 403.10(f)	1.

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
Applicable Effluent Limitations Guidelines	This data element will identify the one or more applicable effluent limitations guidelines and new source performance standards for the facility by the corresponding 40 CFR part number (e.g., part 414—Organic chemicals, plastics, and synthetic fibers point source category, part 433—Metal Finishing point source category). For Categorical Industrial Users (CIUs) this data element will track the one or more applicable categorical standards even when the CIU is subject to one or more local limits that are more stringent than the applicable categorical standards. This data element will also identify if there are no applicable effluent limitations guidelines, new source performance standards, or categorical standards for the facility (including Significant Industrial Users (SIUs)). This data element can be updated by the Control Authority for SIUs and CIUs through submission of the Pretreatment Program Reports [40 CFR 403.12(i)]. Additionally, the authorized NPDES program can automate the creation of these data through submission of the Notices of Intent to discharge (NOI) [40 CFR 122.28(b)(2)(ii)].	122.21, 122.21(j)(6), 122.21(q), 122.44, 122.44(j), 122.28(b)(2)(ii), 403.10(e), 403.10(f), 403.12(i)	1, 2, and 7
* * * * *			
NAICS Code	The one or more six-digit North American Industry Classification System (NAICS) codes/descriptions that represents the economic activity of the facility. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	40 CFR 122.21(f)(3), 122.28(b)(2)(ii), EPA SIC/NAICS Data Standard, Standard No. EX000022.2, 6 January 2006, Office of Management and Budget, Executive Office of the President, Final Decision on North American Industry Classification System (62 FR 17288), 403.10(f)	1, 2, and 7

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
NAICS Code Primary Indicator	This data element will identify the primary economic activity, NAICS code, of the facility. This data element is required for electronic data transfer between state and EPA systems. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	40 CFR 122.21(f)(3), 122.28(b)(2)(ii), EPA SIC/NAICS Data Standard, Standard No. EX000022.2, 6 January 2006, Office of Management and Budget, Executive Office of the President, Final Decision on North American Industry Classification System (62 FR 17288), 403.10(f)	1, 2, and 7
* * * * *			
Waterbody Name for Permitted Feature	The name of the waterbody that is or will likely receive the discharge from each permitted feature. If the permitted feature is a cooling water intake structure, this data element is the name of the source water. Authorized NPDES programs can also use this data element to identify the name of the source water for other intake structures that are permitted features.	122.21, 122.21(f)(9), 122.28(b)(2)(ii)	1,2
* * * * *			
Facility CAAP Status	The unique code/description to indicate whether the facility includes Concentrated Aquatic Animal Production (CAAP) and the CAAP identification method [e.g., “Yes (Based on Facility Production Data)”, “Yes (Authorized NPDES Program Designation)”]. This field also applies when an authorized NPDES program has conducted an on-site inspection of an aquatic animal production facility and determined that the facility should not be regulated under the NPDES permit program [e.g., “No (Authorized NPDES Program Determination)”]. This data element only applies to aquatic animal production facilities. This data element can be automatically generated from production data that is provided by aquatic animal production facilities.	122.21(i)(2), 122.24, 122.25, 122.28(b)(2)(ii)	1,2

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
* * * * *			
Significant Industrial User Subject to Local Limits More Stringent Than Categorical Standards	The unique code (e.g., "Yes", "No") that identifies for each Categorical Industrial User (CIU) discharging to a POTW (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) whether the CIU is subject to one or more local limits that are more stringent than the applicable categorical standards.	122.21(j)(6), 122.28(b)(2)(ii), 122.44(j), 403.12(i)	1, 2, and 7
Significant Industrial User Wastewater Flow Rate	This data element will identify for each Significant Industrial User (SIU) or Categorical Industrial User (CIU) that is discharging to a POTW (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) the estimated maximum monthly average wastewater flow rate (in gallons per day).	122.21(j)(6), 122.28(b)(2)(ii), 122.44(j)	1, 2
* * * * *			
Source Water for Cooling Purposes	The unique code/description that describes the one or more source water for cooling purpose for each cooling water intake structure [e.g., 1 = Ocean, 2 = Estuary, 3 = Great Lake, 4 = Fresh River, 5 = Lake/Reservoir, 6 = contract or arrangement with an independent supplier (or multiple suppliers)]. Each cooling water intake structure will have its own "Permitted Feature ID"	122.21(f)(9), 122.21(r), 122.28(b)(2)(ii), 125.86, 125.95, 125.136, 401.14 and CWA section 316(b)	1,2
* * * * *			
Variance Type	The unique code(s)/description(s) that describes the type for each variance request submitted by the NPDES-regulated entity [e.g., fundamentally different factors (CWA Section 301(n)), non-conventional pollutants (CWA Section 301(c) and (g)), water quality related effluent limitations (CWA Section 302(b)(2)), thermal discharges (CWA Section 316(a)), discharges to marine waters (CWA Section 301(h))]. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a)	1

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
Variance Request Version	The unique code(s)/description(s) that describe whether each variance request from the NPDES-regulated entity is a new request, renewal, or a continuance for variances that do not expire. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a)	1
Variance Status	The unique code(s)/description(s) that describes the status for each the variance request submitted by the NPDES-regulated entity (e.g., pending, approved, denied, withdrawn by NPDES-regulated entity, terminated). This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a)	1
Variance Submission Date	This is the date for each variance request submitted by the NPDES-regulated entity to the NPDES permitting authority. The date must be provided in YYYY-MM-DD format where YYYY is the year, MM is the month, and DD is the day. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a)	1
Variance Action Date	This is the date for each variance request when the NPDES permitting authority approves (grants, renews), denies, or terminates a variance request as well as the date when the NPDES-regulated entity withdraws the variance request. For variances that do not expire, entire the original action date. The date must be provided in YYYY-MM-DD format where YYYY is the year, MM is the month, and DD is the day. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a)	1

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
* * * * *			
Deficiencies Identified Through the Biosolids/Sewage Sludge Compliance Monitoring	This is the unique code/description that that identifies each deficiency in the facility's biosolids and sewage sludge program (40 CFR part 503) for each compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. This data element includes unique codes to identify when the facility failed to comply with any applicable permit requirements or enforcement actions.	123.26, 123.41(a), and CWA section 308	1
Deficiencies Identified Through the MS4 Compliance Monitoring	This is the unique code/description that that identifies each deficiency in the MS4's program to control stormwater pollution for each compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. This data element includes unique codes to identify when the MS4 failed to comply with any applicable permit requirements or enforcement actions.	123.26, 123.41(a), and CWA section 308	1
Deficiencies Identified Through the Pretreatment Compliance Monitoring	This is the unique code/description that that identifies each deficiency in the POTW's authorized pretreatment program for each pretreatment compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. These unique codes include: (1) Failure to enforce against pass through and/or interference; (2) failure to submit required reports within 30 days; (3) failure to meet compliance schedule milestones within 90 days; (4) failure to issue/reissue control mechanisms to 90% of SIUs within 6 months; (5) failure to inspect or sample 80% of SIUs within the past 12 months; and (6) failure to enforce standards and reporting requirements.	123.26, 123.41(a), 403.10, and CWA section 308	1
Deficiencies Identified Through the Sewer Overflow/Bypass Compliance Monitoring	This is the unique code/description that that identifies each deficiency in the POTW's control of combined sewer overflows, sanitary sewer overflows, or bypass events for each compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. This data element includes unique codes to identify when a POTW has failed to provide 24-hour notification to the NPDES permitting authority or failed to submit the Sewer Overflow/Bypass Event Report within the required 5-day period. This data element also includes unique codes to identify when the POTW failed to comply with any applicable long-term CSO control plan, permit requirements, or enforcement actions.	122.41(h), 122.41(l)(6) and (7), 122.43, 123.26, 123.41(a), and CWA sections 308 and 402(q)(1)	1

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
* * * * *			
Biosolids or Sewage Sludge – Violations	This data element is applicable to facilities that use land application, active surface disposal site (e.g., monofills, surface impoundments, lagoons, waste piles, dedicated disposal sites, and dedicated beneficial use sites), and/or incineration. This data element uses one or more unique codes/descriptions to identify all violations. This includes violations of additional or more stringent requirements (40 CFR 503.5), sampling and analysis requirements (40 CFR 503.8), land application requirements (40 CFR 503, Subpart B), surface disposal requirements (40 CFR 503, Subpart C), pathogen and vector attraction reduction requirements (40 CFR 503, Subpart D), and incineration requirements (40 CFR 503, Subpart E).	503.18, 503.28, 503.48	4

26. Amend the SIU/CIU Semi-Annual Compliance Monitoring Report provision at § 403.12(e) by revising paragraph (1) to read as follows:

Any Industrial User subject to a categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in §403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, as of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the industrial user to the Control Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for

electronic reporting. Prior to this date, and independent of part 127, the Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority may be required to report electronically if specified by a particular control mechanism or if required to do so by state law.

27. Amend the SIU/CIU Semi-Annual Compliance Monitoring Report provision at § 403.12 by revising paragraph (h) to read as follows:

Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.

The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in part 136 of this chapter and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, as of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the industrial user to the Control Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part

127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority may be required to report electronically if specified by a particular control mechanism or if required to do so by state law.

28. Amend the Pretreatment Program Report provision at § 403.12 by revising paragraph (i) to read as follows:

Annual POTW reports. POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and must include, at a minimum, the applicable required data in appendix A to 40 CFR part 127. The report required by this section must also include a summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority and any other relevant information requested by the Approval Authority. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to the Approval Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the Approval Authority may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

29. Amend the Biosolids Annual Report provision at § 503.18 by revising paragraph (a) to read as follows:

Class I sludge management facilities, POTWs (as defined in §501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. As of December 21, 2016, all reports submitted in compliance with this section must be submitted electronically by the operator to EPA when the Regional Administrator is the Director in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. As of December 21, 2023, or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to the compliance deadlines for electronic reporting (see Table 1 in 40 CFR 127.16), the Director may also require operators to electronically submit annual reports under this section if required to do so by state law.

30. Amend the Biosolids Annual Report provision at § 503.28 to read as follows:

Class I sludge management facilities, POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. As of December 21, 2016, all reports submitted in compliance with this section must be submitted electronically by the operator to EPA when the Regional Administrator is the Director in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. As of December 21, 2023, or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all

reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to the compliance deadlines for electronic reporting (see Table 1 in 40 CFR 127.16), the Director may also require operators to electronically submit annual reports under this section if required to do so by state law.

31. Amend the Biosolids Annual Report provision at § 503.48 to read as follows:

Class I sludge management facilities, POTWs (as defined in §501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater shall submit a report on February 19 of each year. As of December 21, 2016, all reports submitted in compliance with this section must be submitted electronically by the operator to EPA when the Regional Administrator is the Director in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. As of December 21, 2023, or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to the compliance deadlines for electronic reporting (see Table 1 in 40 CFR 127.16), the Director may also require operators to electronically submit annual reports under this section if required to do so by state law.