

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 127

[EPA-HQ-OW-2018-0293; FRL-9992-94-OW]

RIN 2040-AF78

Updates to NPDES eRule Data Elements To Reflect MS4 General Permit Remand Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update specific data elements within the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (NPDES eRule) published on October 22, 2015 (80 FR 64064), that apply to regulated municipal separate storm sewer systems (MS4s). These changes are necessary given the promulgation of a separate rulemaking after publication of the NPDES eRule that modified the NPDES permit requirements for small MS4s. That rule, referred to as the MS4 General Permit Remand Rule, published on December 9, 2016 (81 FR 89320), made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This proposed rule updates those data elements to be consistent with the current MS4 regulations, corrects related typographical errors, and makes other selected clarifications at the request of state NPDES permitting programs.

DATES: Comments must be received on or before July 29, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-

OW-2018-0293, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The 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. The 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: Greg Schaner, Office of Wastewater Management, Water Permits Division (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-0721; email address: schaner.greg@epa.gov. Refer also to the EPA's website for further information related to this proposed rule.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially regulated by this proposed action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Federal and state government	EPA or state NPDES stormwater permitting authorities	924110
Local governments	Operators of municipal separate storm sewer systems	924110
Military bases	Operators of small municipal separate storm sewer systems	928110
Highway, road, airport runways, and other thoroughfare systems owned or operated by the United States, by a State, city, town, borough, county, parish, district, association or other public body.	Operators of small municipal separate storm sewer systems	237310
Large hospital complexes	Operators of small municipal separate storm sewer systems	622110
Public colleges and universities	Operators of small municipal separate storm sewer systems	611310
Large prison complexes	Operators of small municipal separate storm sewer systems	922140

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now

aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you

should carefully examine the applicability criteria found in 40 CFR 122.26 and 122.32, and the discussion in the preamble. If you have questions regarding the applicability of this action

to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

The EPA is proposing a set of changes to the NPDES eRule that updates the data elements that apply to regulated MS4s. These changes are necessary because of a separate rulemaking that the EPA promulgated after publication of the NPDES eRule. That rulemaking, published on December 9, 2016 and referred to as the MS4 General Permit Remand Rule (MS4 Remand Rule), modified the NPDES permit requirements for small MS4s contained within the Phase II stormwater regulations. Promulgation of these Phase II regulatory changes made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This proposed rule updates those specific data elements to make them consistent with current stormwater Phase II regulations, corrects related typographical errors, and clarifies some other data elements at the request of state NPDES permitting authorities. The proposed changes are limited to the correction of inaccuracies and the addition of requested clarifications, and do not increase the reporting burden on regulated MS4 permittees.

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

This rule proposes to modify the existing NPDES eRule; therefore, the authorities for this action are derivative of the authorities for that action. The EPA promulgated the NPDES eRule on October 22, 2015 (80 FR 64064) pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, which added a new part to title 40 (40 CFR part 127) and made changes to existing regulations. The EPA promulgated the NPDES eRule under authority of the CWA sections 101(f), 304(i), 308, 402, and 501.

These proposed updates to the NPDES eRule are necessary because the EPA promulgated subsequent modifications to the Phase II stormwater permitting regulations for small MS4s, known as the MS4 Remand Rule. The authority for that rule is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, including sections 402 and 501. The MS4 Remand Rule was published on December 9, 2016 (81 FR 89320) and was incorporated into the Code of Federal Regulations at 40 CFR 122.28(d), and as modifications to 40 CFR 122.33 thru 122.35.

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

These proposed regulatory updates do not increase the regulatory burden associated with complying with the NPDES eRule, but rather correct current inconsistencies between the language used in the current data elements and the newly modified Phase II stormwater regulations and make several clarifications suggested by state NPDES permitting authorities. EPA anticipates no change in the overall cost burden to affected entities to comply with the NPDES eRule above what was projected as a result of promulgating the rule.

III. Background

Under the NPDES eRule (promulgated on October 22, 2015, see 80 FR 64064), NPDES permitting authorities and permittees must replace the paper-based system of reporting permit information and data with an electronic system. The rule also lists specific data elements that must be reported in EPA's national NPDES data system, the Integrated Compliance Information System (ICIS)-NPDES. See 40 CFR part 127, Appendix A. Permitting authorities and permittees must begin reporting electronically for permitted MS4s on December 21, 2020.

Following the issuance of the NPDES eRule, EPA promulgated changes to certain Phase II stormwater permitting requirements related to small MS4s. This rulemaking, referred to as the MS4 General Permit Remand Rule (MS4 Remand Rule), was published on December 9, 2016 (see 81 FR 89320), and became effective as of January 9, 2017. The Phase II rule changes address a decision by the U.S. Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al. v. EPA*, 344 F.3d 832 (9th Cir. 2003) (EDC decision). That court found that EPA regulations for obtaining coverage under a small MS4 general permit did not provide for adequate public notice, the opportunity to request a hearing, or permitting authority review to determine whether the best management practices (BMPs) selected by each MS4 in its stormwater management program (SWMP) meet the CWA, including the requirement to "reduce the discharge of pollutants to the maximum extent practicable." The Phase II rule changes resolved these problems by revising the procedures to be used to issue and administer small MS4 general permits, and by making it clear that the terms and conditions of the permit are enforceable, not the contents of the permittee-developed SWMP.

Because the description of the MS4-related data elements in Appendix A of

the NPDES eRule were based on the regulations in place prior to issuance of the MS4 Remand Rule, it is necessary to update the NPDES eRule to reflect these changes. If left unchanged, the eRule data elements would be inconsistent with the new requirements for small MS4 permits in the Phase II regulations. EPA is taking this action now to ensure that such inconsistencies are fixed, and to correct a small number of typographical errors and other mistakes made in relevant parts of the Appendix A data elements.

The EPA is also proposing to clarify the MS4-related data elements to address suggestions by authorized NPDES programs that participated in the EPA-State Stormwater Technical Workgroup. The EPA convened the EPA-State Stormwater Technical Workgroup (Workgroup) to discuss the MS4 data elements listed in Appendix A to 40 CFR part 127. This Workgroup met bi-weekly from November 2017, to July 2018, and included approximately 100 subject matter experts from the EPA Headquarters, seven EPA Regions, and 34 states. The EPA documented member recommendations in a memorandum entitled *Implementation Technical Paper No. 9: Data Requirements for NPDES Electronic Reporting Rule Stormwater Information* (EPA, October 2018), posted on the EPA's website at <https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers>. This technical paper provides more detail on electronic formatting and submission of data elements required through authorized NPDES program inspections and oversight, MS4 program compliance monitoring reports, NPDES permit applications, and NPDES general permit reports [e.g., Notices of Intent (NOIs)]. The EPA plans to use this technical paper to develop electronic reporting tools and to update NPDES data sharing protocols and schemas, the EPA's NPDES data system (ICIS-NPDES), and the forthcoming NPDES Noncompliance Report (NNCR).

IV. Types of Changes Proposed To Correct Inconsistencies Between the NPDES eRule Data Elements and Small MS4 Permit Regulations

The changes needed to eliminate the current inconsistencies between the NPDES eRule data elements and the post-MS4 Remand Rule regulations are limited, and because these inconsistencies are repeated frequently, they fall into several broad categories. The following describes the broad categories of inconsistencies and the types of proposed changes.

A. Clarifications Concerning the Proper Role of the NPDES Permit as the Correct Source of the MS4's Requirements

The MS4 Remand Rule modified the Phase II stormwater regulations by, among other things, clarifying that it is the permit that establishes the enforceable requirements for the MS4. By establishing procedures for the permitting authority to ensure that the permit contains all of the requirements to assess compliance, the MS4 Remand Rule also clarified that these requirements are not found in documents such as the MS4's Notice of Intent for coverage or its SWMP, unless the SWMP, or portions of it, has been formally incorporated as part of the permit following a review, approval, and public notice process. For instance, the MS4 Remand Rule preamble clarified the relationship between the permit and the SWMP as follows:

EPA is revising § 122.34(a) to clarify that the permit, not the stormwater management program, contains the requirements, including requirements for each of the six minimum measures, for reducing pollutants to the maximum extent practicable, protecting water quality and satisfying the appropriate water quality requirements of the CWA. . . . [U]nder EPA's small MS4 regulations, the details included in the permittee's SWMP document are not directly enforceable as effluent limitations of the permit. The SWMP document is intended to be a tool that describes the means by which the MS4 establishes its stormwater controls and engages in the adaptive management process during the term of the permit. While the requirement to develop a SWMP document is an enforceable condition of the permit (see § 122.34(b) of the final rule), the contents of the SWMP document and the SWMP document itself are not enforceable as effluent limitations of the permit, unless the document or the specific details within the SWMP are specifically incorporated by the permitting authority into the permit. 81 FR 89339 (December 9, 2015).

The MS4 data elements in Table 2 of the NPDES eRule's Appendix A data elements were based on the pre-MS4 Remand Rule version of the Phase II regulations. Therefore, some of the language used for the current data elements does not accurately reflect that the permit terms alone constitute the enforceable requirements of the permit. In order to ensure that reported information related to MS4s accurately reflects the regulations upon which they are based, the EPA proposes to clarify the descriptions of the data elements where necessary to ensure that the requirements that are reported and tracked through electronic reporting are the terms and conditions of the permit.

The following is a summary of the changes that the EPA proposes in order

to correct the inconsistencies described above.

- *Corrections to data elements that reference the permittee's intentions as opposed to the permit requirements.* Language in the current Appendix A data elements that describes the permittee's intentions in implementing the "minimum control measure" components of its stormwater program is not consistent with the current Phase II regulations. For instance, the current Appendix A data element description for the public education and outreach minimum control measure is described as "The one or more unique codes/descriptions that identifies educational materials the permittee *intends* to distribute or equivalent outreach activities the permittee will implement to inform the target audience about the impacts of stormwater discharges and the steps the public can take to reduce stormwater pollutants" (emphasis added). Use of this data description made sense under the pre-MS4 Remand Rule regulations, where the MS4's compliance obligation was contained within the permittee's SWMP, the contents of which were also required to be summarized in the MS4's NOI, if the permitting authority elected to issue a general permit for eligible small MS4s.

The MS4 Remand Rule clarified, among other things, that the MS4's description of its compliance actions does not substitute for the terms and conditions in the permit. The revised Phase II regulations make it clear that the permittee's compliance is judged by whether it has met the requirements of the permit; the permittee's intention as reflected in its SWMP does not constitute the basis for permit compliance. Though, in the example above, this language accurately reflected existing regulatory requirements for the public education and outreach minimum control measure prior to the MS4 Remand Rule, its emphasis on the intention of the permittee, rather than the permit requirements, is inconsistent with the revised Phase II regulations.

EPA's proposed rule modifies the relevant language for each of the data elements that includes this type of language to reflect that the permit establishes the enforceable requirements, not the SWMP or NOI. Using the public education and outreach example again, this proposed rule revises the data element description to read as follows: "The one or more unique codes/descriptions that identifies the permit elements associated with the public education and outreach program requirements, including any educational materials the permittee is required to distribute or

equivalent outreach activities the permittee must implement to inform the target audience about the impacts of stormwater discharges and the steps the public can take to reduce stormwater pollutants." This modification clarifies that it is the specific "permit elements" related to the public education and outreach program that the regulations require the MS4 to report to the EPA. Another related, yet minor, change would modify the corresponding "Data Name" to reflect that it is not the details within the SWMP that define the permittee's compliance responsibilities. Therefore, instead of using "MS4 Public Education Program" as the data name, the name would refer to "Public Education and Outreach Permit Requirements." These same changes would be made to the data elements for the other minimum control measures.

- *Corrections to data elements that refer to the MS4's "measurable goals" as opposed to its permit requirements.* Several of the data elements refer to the permittee's "measurable goals," which is language that is no longer current after EPA modified the Phase II regulations. Previously, small MS4s were required to submit information describing the "specific actions taken by the permittee to implement each BMP and the frequency and the dates for such actions." See 64 FR 68763 (December 8, 1999). The submitted measurable goals were then used as the basis for the permittee's enforceable requirements, and the permittee was required to evaluate and submit annual reports on the progress made with respect to meeting these measurable goals. References to the MS4's measurable goals were largely removed from the Phase II regulations to more clearly convey that the terms and conditions in the relevant permit are enforceable, not the permittee's proposed measurable goals.

EPA's proposed rule removes in the current data elements references to measurable goals and replaces them with language that refers to the "specific schedules or deadlines" for complying with the relevant requirements of the permit. For instance, one of the current Appendix A data elements associated with the construction site stormwater minimum control measure is described as "The one or more unique codes/descriptions that identify the measurable goals associated with the construction program, including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action." The proposed rule revises this language as follows: "The one or more

unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action." Another related, yet minor, change modifies the corresponding "Data Name" to remove language that references the measurable goal and substitutes it with the permit's relevant "deadlines."

- *Updates to the data element(s) associated with permit requirements established in addition to the minimum control measure requirements.* The proposed rule also updates the language used to describe MS4 terms and conditions that are included in the permit to address the modified Phase II regulatory language at 40 CFR 122.34(c) related to "other applicable NPDES requirements." These changes include updates to the language used for the "Data Name" and "Data Description." The proposed rule also corrects an error by adding a data element that was omitted from the current Table 2 related to the deadlines associated with "other applicable permit requirements."

- *Additional clarifications to accurately characterize the source of data on permit requirements.* The proposed rule suggests a few additional changes to clarify that the source of data on an MS4's permit requirements is the permit itself, not the permit application or NOI. For instance, the current title for one of the Table 2 sections for MS4 data elements is "Municipal Separate Storm Sewer System (MS4) Information on NPDES Permit Application or Notice of Intent." In order to clarify that the terms and conditions that the MS4 is responsible for meeting are found in the permit, EPA proposes to modify this title as follows: "Municipal Separate Storm Sewer System (MS4) Information in NPDES Permit."

B. Other Conforming Changes To Ensure Consistency With the Current Phase II Regulations

- *Removing data element made unnecessary or obsolete by the modified Phase II regulations.* One of the current data elements requires information from permittees that is no longer required under the revised Phase II regulations. The data element titled *MS4 Permit Components Descriptions and Measurable Goals* would be deleted from Table 2 of Appendix A in the section entitled "Compliance Monitoring Activity Information (Data Elements Specific to Municipal Storm Sewer System Program Reports)." The

current data element requests information on "all of the permitted components and measurable goals that are included in the MS4 permit." This data element is redundant of the data element that would now be titled "Municipal Separate Storm Sewer System (MS4) Information in NPDES Permit," and for that reason may be removed.

- *Changes to conform data elements to current Phase II reporting requirements.* The following are changes made to data elements to reflect the current Phase II reporting requirements for small MS4s under 40 CFR 122.34(d)(3). These data elements are all located in the section entitled "Compliance Monitoring Activity Information (Data Elements Specific to Municipal Storm Sewer System Program Reports)."

1. *Status of Compliance with Each Minimum Control Measure.* The proposed rule modifies this data element to reflect the changes made to the description of information required to be reported under 40 CFR 122.34(d)(3)(i). To reflect the fact that the Phase II regulations were changed to require the permittee to include in its report "[t]he status of compliance with permit terms and conditions," conforming changes are made to the Data Name so that the revised Data Name is "Status of Compliance with MS4 Permit Requirements." Similar changes are made to the Data Description to read as follows: "The unique code . . . that identifies if the permittee has complied with the MS4 permit requirements."

2. *Results of Information Collected and Analyzed.* The current data elements inadvertently omit information required to be reported under 40 CFR 122.34(d)(3)(ii). This provision requires small MS4 permittees to include in their annual reports "[r]esults of information collected and analyzed, including monitoring data, if any, during the reporting period." The proposed rule corrects this omission by adding a new data element to capture this information.

3. *Progress and Summary of Results with Each Minimum Control Measure.* The proposed rule modifies this data element to reflect the changes made to the description of information required to be reported under 40 CFR 122.34(d)(3)(iii). To reflect the modified description of the information to be reported, namely "[a] summary of the storm water activities the permittee proposes to undertake to comply with the permit during the next reporting cycle," conforming changes are made to the Data Name (*i.e.*, it would be changed

to "Summary of Activities Undertaken to Comply with the MS4 Permit Requirements") and to the Data Description (*i.e.*, it would be changed to "This is a text summary describing the stormwater activities undertaken by each permittee to comply with the MS4 permit requirements.").

4. *Changes to MS4 Permittee's Components and Measurable Goals.* The proposed rule modifies this data element to reflect the changes made to the description of information required to be reported at 40 CFR 122.34(d)(3)(iv). To reflect the changes in the regulations that require the permittee to include in its report "[a]ny changes made during the reporting period to the permittee's storm water management program," conforming changes will be made to the Data Name (*i.e.*, it would be changed to "Summary of Activities Undertaken to Comply with the MS4 Permit Requirements") and to the Data Description (*i.e.*, it would be changed to "The one or more codes/descriptions that describe . . . any changes made to the MS4 permittee's Stormwater Management Program (SWMP) during the reporting period.").

- *Clarification related to data provided for small MS4 permittees under a Two-Step General Permit approach.* For permitting authorities that use a "Two-Step General Permit" under 40 CFR 122.28(d)(2) to provide permit coverage for small MS4s, there is flexibility regarding whether the permittee or the NPDES authority will be responsible for submitting data initially. EPA envisions that most NPDES authorities will choose to require the permittee to supply the initial information that characterizes what actions the MS4 proposes to take to address the permit requirements as a first step. Then, during the second step of the permitting process, the permitting authority will modify this information as necessary to reflect the final permit requirements. To allow or authorize this approach, the proposed rule includes the following text for many of the data elements in the "MS4 NPDES Permit-Related Information" section: "This data element includes proposed activities that are submitted by small MS4s seeking coverage under a 'Two-Step General Permit.' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with the U.S. EPA national NPDES data system as required in Subpart B, 40 CFR 127."

Additionally, the EPA proposes adding a note to the MS4 Permit-Related Information section of Table 2 that

provides a basic explanation of how the Two-Step General Permit process is designed to work, and how the permit information for these types of permits is to be reported. The following text is proposed for the note: “Small MS4s seeking coverage under a ‘Two-Step General Permit’ issued pursuant to § 122.28(d)(2) will be required to submit to the authorized NPDES program information on stormwater control activities they propose to take to address specific requirements. The authorized NPDES program will review this information and then establish, through a second permitting step, additional permit terms and conditions, as necessary to satisfy the MS4 permit standard, for each MS4. The authorized NPDES programs should use their best professional judgement to adequately identify the mandatory set of requirements using actual language from the permit, summarized versions of one or more permit requirements, or a mix of actual and summarized permit requirements. Any summary of permit requirements should provide a clear understanding of the one or more permit requirements. The requirements listed in this section will be used to facilitate electronic reporting of the MS4 Program Report.”

- *Updates to regulatory citations to reflect current Phase II regulations.* The proposed rule would update a number of the existing MS4 regulatory citations in Table 2 of Appendix A in order to reflect changes made to the Phase II regulations, and, in a few instances, to correct erroneous citations that are currently included in the table. For instance, the current table references 40 CFR 122.28(b)(2)(ii) for the supporting authority for the data elements associated with each of the minimum control measures. Because the modified Phase II regulations now include a section addressing small MS4 general permits, this citation would be updated to refer to the correct section (*i.e.*, 40 CFR 122.28(d)). Elsewhere, the proposed rule adds references to 40 CFR 122.33(b) to more accurately reflect the current Phase II regulatory authority for requiring basic system information. The proposed rule also provides the updated reference to the correct annual reporting provision (*i.e.*, 40 CFR 122.34(d)(3)). Other examples include the proposed addition of updated citations for Phase I MS4s, such as an updated citation to 40 CFR 122.26(d)(2)(iv)(A)(6), (B)(5), and (D)(4) to support the use of the data element for “Deadlines Associated with Public Education and Outreach Permit Requirements” for Phase I MS4s.

- *Corrections to current description of the frequency of required small MS4*

reporting. The current Table 1 imprecisely notes that small MS4s are required to report only in years two and four of permit coverage. While this is correct for small MS4s that have already been permitted for at least one permit term, if the permittee is in its first permit term, it is required to report annually for the entire permit term. The proposed rule corrects this inaccuracy. See 40 CFR 122.34(d)(3).

- *Clarification of the types of MS4 permit holders that can be chosen under the data element for MS4 Permit Class.* The proposed rule includes a minor update to the examples of MS4 permit types under the MS4 Permit Class data element, which better reflect the types of general permits that are described under the revised Phase II permitting regulations. The following examples would replace the current examples: Large/Medium MS4 permit (Phase I), Small MS4 permit (Phase II)—Comprehensive General Permit, Small MS4 permit (Phase II)—Two-Step General Permit, Small MS4 permit (Phase II)—Individual Permit.

C. Other Clarifications Requested by NPDES Permitting Authorities

During meetings of the EPA-State Stormwater technical workgroup (see Section III), Regional and state subject matter experts suggested the need for additional clarification to the MS4 data elements. The clarifications that are included in the proposed rule are described as follows.

- *Revised description of the types of entities potentially covered under an MS4 permit.* The data description that accompanies the unique MS4 identifier data element does not reflect the fact that regulated small MS4s can also include so-called “non-traditional MS4s,” such as colleges or universities, military installations, transportation systems, and state and federal facilities. In order to more accurately describe the different types of MS4s that can be regulated, the proposed rule includes the following modified language: “The unique identifier for each entity covered under an MS4 permit (*e.g.*, city, county, incorporated town, unincorporated town, college or university, local school board, military installation, highways or other thoroughfares, federal facility, state facility, prison).”

A further clarification would be added to better describe how the unique identifier can be used to apply to multiple MS4 entities covered under one permit, as follows: “Use of this identifier allows for better tracking of how the MS4 permit elements apply to each entity covered under the MS4 permit (*e.g.*, if one MS4 NPDES permit

covers two cities, the authorized NPDES program may elect to assign each city with a unique identifier). The authorized NPDES program will make the final determination on how to identify entities covered under an MS4 permit.” Lastly, a minor change would be made to the Data Name to better describe the types of entities that may be regulated; the Data Name would now read as “Unique MS4 Regulated Entity Identifier” instead of “Unique Identifier for Each Municipality Covered Under MS4 Permit.”

Additionally, to better match the existing regulations, the proposed rule replaces references throughout Table 2 to “municipality” with the word or phrase “entity” or “MS4-regulated entity.”

- *Inclusion of a unique identifier for each permit requirement or set of permit requirements.* The proposed rule would require that each unique permit requirement or set of permit requirements be designated with a “Unique MS4 Activity Identifier.” This addition is intended to improve the accuracy of compliance reporting by linking permit requirements to a unique identifier. EPA does not consider this additional identifier to constitute a change in reporting burden given that information on permit requirements is already required; this new element will merely ensure that each individual permit requirement (referred to in Appendix A as “the one or more unique codes/descriptions that identify” the permit requirement) can be recognized with its own unique number or other identifier.

- *Consolidation of data elements related to tracking implementation activities performed by other government entities.* The existing data elements require information to be submitted with the annual report on whether the MS4 permittee is relying on other government entities to satisfy any permit obligations, and to provide the status of their implementation activities. To assist the states in more accurately tracking these other government entities to the specific permit requirements for which they have assumed responsibility, the proposed rule moves the requirement to report on the MS4’s reliance on other government entities to a different section of Table 2, namely the MS4 NPDES Permit-Related Information section. The Technical Workgroup indicated that this change would enable NPDES permitting authorities to obtain information on the MS4’s reliance on other government entities in a way that will better enable them to ensure that reporting on the compliance status of these specific

permit responsibilities will be accurate and more easily understood. By making this change, EPA proposes deleting two existing elements, which would already be addressed, namely the “MS4 Reliance on Other Government Entities Status” and “MS4 Reliance on Other Government Entities Permit Component Status” data elements.

- *Clarification of permit information required for storm sewer system map.* The proposed rule would clarify that, for previously permitted MS4 permittees, rather than requiring information on “the status of the permittee’s storm sewer system map” associated with the Illicit Discharge Detection and Elimination permit requirement, a more direct way of conveying this information is to request the “date of the most recent storm sewer system map.” Additionally, the proposed rule would clarify that the requirement to show all “MS4 outfalls” on the storm sewer system map excludes private outfalls. This clarification is consistent with the regulatory definition of MS4, which is limited to stormwater conveyances “owned or operated by a . . . public body” at 40 CFR 122.26(b)(8)(i). Privately-owned conveyances and their associated outfalls do not fall within the definition of an MS4 because they are not “owned or operated by a . . . public body.”

- *Relocation of MS4 industrial stormwater control data element.* The proposed rule would move the Phase I MS4 industrial stormwater control data element from its current location in the “Compliance Monitoring Activity” section of Table 2 to the newly named MS4 NPDES Permit-Related Information section. This change is not substantive, but merely intended to better reflect the fact that this information is typically provided prior to permit coverage, much like the other information included in that same section.

Additionally, the proposed rule would add an accompanying data element for any permit deadlines associated with the industrial stormwater control requirements. EPA does not consider this a new reporting burden, but rather a clarification that where the permit establishes specific deadlines for actions related to industrial stormwater control, compliance with these dates must be tracked.

- *Ability to submit further information regarding instances of noncompliance.* The existing data element requiring information on whether the permittee has complied with the MS4 permit requirements limits the information submitted to a

“Yes” or “No” response. Members of the Technical Workgroup recommended that MS4s be given the opportunity to provide further information for context if the answer is “No” (e.g., that the MS4 was not in compliance with one or more permit requirements). To address this recommendation, the proposed rule suggests clarifying that MS4s as necessary will be asked to provide information related to noncompliance.

- *Clarification of information required to be reported in the summary of activities to comply with the MS4 permit requirements.* The proposed rule clarifies that among the information that must be conveyed by the MS4 in its annual report is a summary of activities undertaken (1) as part of the industrial stormwater control program (for Phase I MS4s and select Phase II MS4s that have industrial stormwater requirements), and (2) to comply with permit requirements during the next reporting period. This clarification does not constitute a new reporting burden since this information was already required to be reported; the proposed text just makes the requirement more clear.

- *Clarification regarding how information on enforcement actions taken by Phase II MS4s is to be reported.* The proposed rule would clarify that Phase II MS4s are not required to distinguish between different types of enforcement action, as Phase I MS4s are required to do. In contrast with Phase I MS4s, Phase II MS4s may simply report any enforcement action taken as a “Phase II MS4 Enforcement Action.” The permitting authority may elect to provide this option as a system default so that MS4 permittees may simply select “Phase II MS4 Enforcement Action” to fulfill this requirement for the reporting period.

- *Clarification related to data elements that may not apply to non-traditional MS4s.* The proposed rule would provide further clarification on the data elements that may not apply because non-traditional MS4s typically do not possess the requisite legal authority to enforce stormwater laws. The following sentence would be added to three data elements (i.e., “MS4 Enforcement Action Type,” “MS4 Enforcement Action Total by Type,” and “MS4 Enforcement Agency”): “This data element may have different reported data for non-traditional MS4s (e.g., transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.”

- *Clarification regarding how to report the specific MS4 enforcement agency in the annual report.* The proposed rule suggests alternate wording to better explain how MS4 permittees will specifically identify in the annual report the specific MS4 enforcement agency that was responsible for taking enforcement action during the reporting period. The proposed language explains that the permittee will select the MS4 enforcement agency from among the unique MS4 regulated entities identified during the permit application process for co-permittees applying for coverage under an individual permit, unless there is only one regulated entity.

V. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and 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 expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2020–0035. The proposed rule would impose no new information collection burdens beyond what has already been approved by OMB for the NPDES eRule published on October 22, 2015 (80 FR 64064). This proposed rule is limited to updating the language used to describe various data requirements for MS4 permittees to reflect recent changes to the underlying NPDES regulations and to correct various errors and omissions.

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. In making this determination, the impact of concern is any significant adverse economic

impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule would impose no new regulatory burdens on regulated entities in the NPDES program. The action is limited to updating the language used to describe various data requirements for MS4 permittees to reflect recent changes to the underlying NPDES regulations, to correct various errors and omissions, to make targeted clarifications by request of state NPDES permitting authorities. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

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 action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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 proposed rule does not have tribal implications, as specified in Executive Order 13175. EPA considered the potential impacts on tribes and concluded that there would be no substantial direct compliance costs or impact on tribes. Because the purpose of the proposed rule is to eliminate inconsistencies between regulations and application forms, improve permit

documentation, transparency and oversight, provide clarifications to existing regulations, and delete outdated provisions, it is not expected to have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Executive Order 13175 does not apply to this action and EPA determined that tribal consultation is not necessary for this action. The EPA specifically solicits input on this proposed action from tribal officials.

The EPA notes that it consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing the final NPDES eRule, which this proposal would modify, to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in Section VIII.F of the final NPDES eRule preamble at 80 FR 64094.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule offers the same environmental justice benefits that were described in the final NPDES eRule preamble in Section VIII.J. The final rule preamble states that “[a]s described in the context of non-monetary benefits, discussed in Section VI and described below, the final rule would significantly increase transparency and access to crucial information that is relevant to the protection of the health and environment of minority, low income, and tribal populations.” See 80 FR 64095.

List of Subjects in 40 CFR Part 122

Environmental protection, Electronic data processing, Municipal separate storm sewer systems, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 23, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 127, Appendix A as follows:

PART 127—NPDES ELECTRONIC REPORTING

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

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

■ 2. Amend § 127, Appendix A, Table 1—Data Sources and Regulatory Citations to read as follows:

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS ¹

NPDES data group number ²	NPDES Data Group	Program area	Data provider	Minimum frequency ³
6	Municipal Separate Storm Sewer System (MS4) Program Reports [40 CFR 122.34(d)(3) and 122.42(c)].	MS4	NPDES Permittee	Annual for first permit term; Year two and year four in subsequent permit terms (Small MS4), Annual (Medium and Large MS4).

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS¹—Continued

NPDES data group number ²	NPDES Data Group	Program area	Data provider	Minimum frequency ³
*	*	*	*	*

Note 1: Entities regulated by a NPDES permit will comply with all reporting requirements in their respective NPDES permit.
Note 2: Use the “NPDES Data Group Number” in this table and the “NPDES Data Group Number” column in Table 2 to identify the source of the required data entry. EPA notes that electronic systems may use additional data to facilitate electronic reporting as well as management and reporting of electronic data. For example, NPDES permittees may be required to enter their NPDES permit number (“NPDES ID”—NPDES Data Group 1 and 2) into the applicable electronic reporting system in order to identify their permit and submit a Discharge Monitoring Report (DMR—NPDES Data Group 3). Additionally, NPDES regulated entities may be required to enter and submit data to update or correct erroneous data. For example, NPDES permittees may be required to enter new data regarding the Facility Individual First Name and Last Name (NPDES Data Group 1 and 2) with their DMR submission when there is a facility personnel change.
Note 3: The applicable reporting frequency is specified in the NPDES permit or control mechanism, which may be more frequent than the minimum frequency specified in this table.

■ 3. Amend § 127, Appendix A, Table 2—Required NPDES Program Data to read as follows:

TABLE 2—REQUIRED NPDES DATA

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
Basic Facility Information:			
[Note: As indicated in the “CWA, Regulatory, or Other Citation” column, some of these data elements apply to 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 and to regulated entities or locations that generate, process, or receive biosolids or sewage sludge.]			
Facility Type of Ownership.	The unique code/description identifying the type of facility (e.g., state government, municipal or water district, Federal facility, tribal facility). This data element is used by EPA’s national NPDES data system to identify the facility type (e.g., POTW, Non-POTW, and Federal).	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Name	The name of the facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Address	The address of the physical facility location	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site City	The name of the city, town, village, or other locality, when identifiable, within which the boundaries (the majority of) the facility site is located. This is not always the same as the city used for USPS mail delivery.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site State	The U.S. Postal Service (USPS) abbreviation for the state or state equivalent for the U.S. where the facility is located.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) where the facility is located. This zip code matches the “Facility Site City” or the city used for USPS mail delivery.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Tribal Land Indicator.	The EPA Tribal Internal Identifier for every unit of land trust allotment (“tribal land”) within Indian Country (i.e., Federally recognized American Indian and Alaska Native tribal entities). This unique number will identify whether the facility is on tribal land and the current name of the American Indian tribe or Alaskan Native entity. This unique number is different from the Bureau of Indian Affairs tribal code and does not change when a Tribe changes its name.	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
Facility Site Longitude.	The measure of the angular distance on a meridian east or west of the prime meridian for the facility. The format for this data element is decimal degrees (<i>e.g.</i> , -77.029289) and the WGS84 standard coordinate system. This data element will also be used to describe the two-dimensional area (polygon) regulated by a municipal storm sewer system (MS4) NPDES permit through use of multiple latitude and longitude coordinates. This data element can also be system generated when the Facility Site Address, Facility Site City, and Facility Site State data elements can be used to generate accurate longitude and latitude values. (Note: "Post Office Box" addresses and "Rural Route" addresses are generally not geocodable.)	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4
Facility Site Latitude	The measure of the angular distance on a meridian north or south of the equator for the facility. The format for this data element is decimal degrees (<i>e.g.</i> , 38.893829) and the WGS84 standard coordinate system. This data element will also be used to describe the two-dimensional area (polygon) regulated by a municipal storm sewer system (MS4) NPDES permit through use of multiple latitude and longitude coordinates. This data element can also be system generated when the Facility Site Address, Facility Site City, and Facility Site State data elements can be used to generate accurate longitude and latitude values. (Note: "Post Office Box" addresses and "Rural Route" addresses are generally not geocodable.)	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4
Facility Contact Affiliation Type.	The affiliation of the contact with the facility (<i>e.g.</i> , "Owner," "Operator," or "Main Contact"). This is a unique code/description that identifies the nature of the individual's affiliation to the facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact First Name.	The given name of an individual affiliated with this facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact Last Name.	The surname of an individual affiliated with this facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact Title	The title held by an individual in an organization affiliated with this facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Individual E-Mail Address.	The business e-mail address of the designated individual affiliated with this facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Organization Formal Name.	The legal name of the person, firm, public organization, or other entity that operates the facility described in this application. This name may or may not be the same name as the facility. The operator of the facility is the legal entity that controls the facility's operation rather than the plant or site manager. Do not use a colloquial name.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7

Basic Permit Information:

[Note: As indicated in the "CWA, Regulatory, or Other Citation" column, some of these data elements also apply to 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 and to regulated entities or locations that generate, process, or receive biosolids or sewage sludge.]

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
NPDES ID	This is the unique number for the NPDES permit or control mechanism for NPDES regulated entities or Unpermitted ID for an unpermitted facility. This data element is used for compliance monitoring activities, violation determinations, and enforcement actions. This data element also applies to 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 the POTW is the Control Authority.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48.	1, 2, 3, 4, 5, 6, 7, 8, 9
Master General Permit Number.	The unique identifier of the master general permit, which is linked to a General Permit Covered Facility. This data element only applies to facilities regulated by a master general permit.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48.	1,2
* NPDES Data Group Number.	* This is the unique code/description that identifies the types of NPDES program data that are required to be reported by the facility. This corresponds to Table 1 in this appendix (e.g., 3 = Discharge Monitoring Report [40 CFR 122.41(l)(4)]). This data element can be system generated. This data element will record each NPDES Data Group that the facility is required to submit. For example, when a POTW is required to submit a Discharge Monitoring Report, Sewage Sludge/Biosolids Annual Program Report, Pretreatment Program Report, and Sewer Overflow/Bypass Event Report, the values for this data element for this facility will be 3, 4, 7, and 9. The following general permit reports will have the following values for this data element: 2a = Notice of Intent to discharge (NOI); 2b = Notice of Termination (NOT); 2c = No Exposure Certification (NOE); and 2d = Low Erosivity Waiver or Other.	* 122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48 and CWA Section 308.	1
<p>* Municipal Separate Storm Sewer System (MS4) NPDES Permit-Related Information:</p> <p>[Note: Small MS4s seeking coverage under a “Two-Step General Permit” issued pursuant to § 122.28(d)(2) are required to submit to the authorized NPDES program information on stormwater control activities they propose to take to address specific requirements. The authorized NPDES program will review this information and then establish, through a second permitting step, additional permit terms and conditions, as necessary to satisfy the MS4 permit standard, for each MS4. The authorized NPDES programs should use their best professional judgement to adequately identify the mandatory set of requirements using actual language from the permit, summarized versions of one or more permit requirements, or a mix of actual and summarized permit requirements. Any summary of permit requirements should provide a clear understanding of the one or more permit requirements. The requirements listed in this section will be used to facilitate electronic reporting of the MS4 Program Report.]</p>			
MS4 Permit Class	The unique code/description that identifies the size and permit type of the MS4 permit holder (e.g., Large/Medium MS4 permit (Phase I), Small MS4 permit (Phase II)—Comprehensive General Permit, Small MS4 permit (Phase II)—Two-Step General Permit, Small MS4 permit (Phase II)—Individual Permit).	122.26, 122.28(b)(2)(ii), 122.33.	1

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
Unique MS4 Regulated Entity Identifier.	The unique identifier for each entity covered under an MS4 permit (e.g., city, county, incorporated town, unincorporated town, college or university, local school board, military installation, highways or other thoroughfares, federal facility, state facility, prison). Use of this identifier allows for better tracking of how the MS4 permit elements apply to each entity covered under the MS4 permit (e.g., if one MS4 NPDES permit covers two cities, the authorized NPDES program may elect to assign each city with a unique identifier). The authorized NPDES program will make the final determination on how to identify entities covered under an MS4 permit. This unique identifier must not change over time. Use of this unique identifier is similar to how the 'Permitted Feature Identifier' data element is used to distinguish between permitted features.	122.21(f), 122.26(d) 122.28(b)(2)(ii), 122.34(d)(3), and 122.42(c).	1
Unique MS4 Activity Identifier.	The unique identifier for each MS4 permit requirement or set of MS4 permit requirements. The general expectation is that each permit requirement or set of permit requirements will be uniquely identified with this data element.	122.21(f), 122.26(d) 122.28(b)(2)(ii), 122.34(d)(3), and 122.42(c).	1, 6
Public Education and Outreach Permit Requirements.	The one or more unique codes/descriptions that identifies the permit elements associated with the public education and outreach program requirements, including any educational materials the permittee is required to distribute or equivalent outreach activities the permittee must implement to inform the target audience about the impacts of stormwater discharges and the steps the public can take to reduce stormwater pollutants. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(A)(6), (B)(5) and (6), and (D)(4); 122.28(d), 122.34(b)(1) and (d)(3)(v).	1, 2
Deadlines Associated With Public Education and Outreach Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's public education and outreach requirements including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(A)(6), (B)(5) and (6), and (D)(4); 122.28(d), 122.34(b)(1) and (d)(3)(v).	1, 2
Public Involvement/ Participation Permit Requirements.	The one or more unique codes/descriptions that identifies the permit elements associated with the public involvement/participation program requirements, which must involve the public and comply with State, Tribal, and local public notice requirements. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv), 122.28(d), 122.34(b)(2) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
Deadlines Associated With Public Involvement/Participation Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's the public involvement/participation requirements including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.28(d), 122.34(b)(2) and (d)(3)(v).	1, 2
Illicit Discharge Detection and Elimination Permit Requirements.	The one or more unique codes/descriptions and dates that identify the permit elements associated with the Illicit Discharge Detection and Elimination requirements, including (at a minimum): (1) The date of the most recent storm sewer system map showing the location of all outfalls and names and locations of all waters of the U.S. that receive discharges from those outfalls; (2) the ordinance or other regulatory mechanism to prohibit non-stormwater discharges into the permittee's MS4; (3) the procedures and actions the permittee is required to take to enforce the prohibition of non-stormwater discharges to the permittee's MS4; (4) the procedures and actions the permittee must take to detect and address non-stormwater discharges, including illegal dumping, to the permittee's MS4; and (5) the procedures and actions the permittee must take to inform public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste. The term "MS4 outfalls" does not include private outfalls. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(1)(iii)(B), 122.26(d)(2)(i)(B) and (C), 122.26(d)(2)(iv)(B), 122.34(b)(3)(ii)(A) and (d)(3)(v).	1, 2
Deadlines Associated With Illicit Discharge Detection and Elimination Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's illicit discharge detection and elimination requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(1)(iii)(B), 122.26(d)(2)(i)(B) and (C), 122.26(d)(2)(iv)(B), 122.34(b)(3)(ii)(A)–(D) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
Construction Site Stormwater Runoff Control Permit Re- quirements.	The one or more unique codes/descriptions that identify the permit elements associated with the construction site runoff control requirements, including (at a minimum): (1) The ordinance or other regulatory mechanism to require erosion and sediment controls, including sanctions to ensure compliance; (2) requirements for construction site operators to implement appropriate erosion and sediment control BMPs and control waste at the construction site that may cause adverse impacts to water quality; (3) procedures for site plan review that incorporate consideration of potential water quality impacts; (4) procedures for receipt and consideration of information submitted by the public; and (5) procedures for site inspection and enforcement of control measures. This data element will use the “Unique MS4 Activity Identifier” to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a “Two-Step General Permit.” Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv)(D), 122.34(b)(4)(ii) and (d)(3)(v).	1, 2
Deadlines Associ- ated with the Con- struction Site Stormwater Runoff Control Permit Re- quirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit’s construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the “Unique MS4 Activity Identifier” to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a “Two-Step General Permit.” Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(D), 122.34(b)(4)(ii) and (d)(3)(v).	1, 2
Post-Construction Stormwater Man- agement in New Development and Redevelopment Permit Require- ments.	The one or more unique codes/descriptions that identify the permit elements associated with the Post Construction Stormwater Management in New Development and Redevelopment requirements, including (at a minimum): (1) The ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects; (2) the requirements to address stormwater runoff from new development and redevelopment projects that disturb a minimum of greater than or equal to one acre (including if the permittee requires on-site retention of stormwater); and (3) the requirements to ensure adequate long-term operation and maintenance of BMPs for controlling runoff from new development and redevelopment projects. This data element will use the “Unique MS4 Activity Identifier” to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a “Two-Step General Permit.” Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv)(A)(2), 122.34(b)(5) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
Deadlines Associated with the Post-Construction Stormwater Management in New Development and Redevelopment Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's post-construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(A)(2), 122.34(b)(5) and (d)(3)(v).	1, 2
Pollution Prevention/Good Housekeeping for Municipal Operations Permit Requirements.	The one or more unique codes/descriptions that identify the permit elements associated with the Pollution Prevention/Good Housekeeping requirements including (at a minimum): Development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv), 122.26(d)(2)(iv)(A)(1), (2) and (3), 122.34(b)(6)(i) and (d)(3)(v).	1, 2
Deadlines Associated with the Pollution Prevention/Good Housekeeping for Municipal Operations Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's pollution prevention/good housekeeping requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.26(d)(2)(iv)(A)(1), (2) and (3), 122.34(b)(6)(i) and (d)(3)(v).	1, 2
Other Applicable Permit Requirements.	The one or more unique codes/descriptions that identify any other applicable permit requirements, such as those related to the assumptions and requirements of any available wasteload allocation prepared by a state and approved by EPA. This data element is optional if there are no additional MS4 permit requirements. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.34(c) and (d)(3)(v), 122.44(d)(1)(vii)(B).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
Deadlines Associated with the Other Applicable Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's other applicable permit requirements. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a "Two-Step General Permit." Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.34(c) and (d)(3)(v), 122.44(d)(1)(vii)(B).	1, 2
MS4 Industrial Stormwater Control (for Phase I MS4s only).	The one or more unique codes/descriptions that identify how the Phase I MS4 permittee will comply with industrial stormwater control requirements, including (at a minimum): (1) Status of the ordinance or other regulatory mechanism to control the contribution of pollutants by stormwater discharges associated with industrial activity, including authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance, and including sanctions to ensure compliance; (2) status of the MS4 permittee industrial stormwater inventory, which identifies facilities with industrial activities and assesses the quality of the stormwater discharged from each facility with an industrial activity; (3) status of program to monitor and control pollutants in stormwater discharges from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Toxics Release Inventory (TRI) reporting requirements (Emergency Planning and Community Right-To-Know Act Section 313), and industrial facilities that are contributing a substantial pollutant loading to the MS4; and (4) status of monitoring program for discharges associated with industrial facilities. This data element is optional for Phase II MS4s. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements.	40 CFR 122.26(d)(2)(i)(A, B, C, E, and F) and 40 CFR 122.26(d)(2)(ii) and (iv)(A)(5) and (iv)(C), 122.42(c).	6
Deadlines Associated with Industrial Stormwater Control.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's industrial stormwater control requirements. This data element is optional for Phase II MS4s. This data element will use the "Unique MS4 Activity Identifier" to separately identify these permit requirements.	40 CFR 122.26(d)(2)(i)(A, B, C, E, and F) and 40 CFR 122.26(d)(2)(ii) and (iv)(A)(5) and (iv)(C), 122.42(c).	1
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Compliance Monitoring Activity Information (Data Elements Specific to Municipal Separate Storm Sewer System Program Reports): (Note: The MS4 permit may require one report for each unique governmental entity or one report per permit).			
Status of Compliance with MS4 Permit Requirements.	The unique code (e.g., "Yes", "No") that identifies if the permittee has complied with the MS4 permit requirements. As necessary, the permittee will provide information related to noncompliance.	122.34(d)(3) and 122.42(c) ..	6
Results of Information Collected and Analyzed.	This is a text summary describing the results of information collected and analyzed, including monitoring data, if any, during the reporting period.	122.34(d)(3)(ii) and 122.42(c).	6
Summary of Activities Undertaken to Comply with the MS4 Permit Requirements.	This is a text summary describing the stormwater activities undertaken by each permittee to comply with the MS4 permit requirements. This includes a text summary of a the MS4 program's industrial stormwater control activities during the reporting period (required for Phase I MS4s, optional for Phase II MS4s) as well as a summary of activities to be undertaken to comply with the MS4 permit requirements during the next reporting period.	122.34(d)(3)(iii) and 122.42(c).	6
Changes to MS4 Permittee's SWMP.	The one or more codes/descriptions that describe for each unique MS4 regulated entity any changes made to the MS4 permittee's Stormwater Management Program (SWMP) during the reporting period.	122.34(d)(3)(iv) and 122.42(c).	6

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (see Table 1)
MS4 Enforcement Action Type.	For each unique MS4 regulated entity covered by the MS4 NPDES permit, this data element identifies the one or more types of enforcement actions taken during the past reporting period (e.g., notice of violations, stop work orders, administration orders, administrative fines, civil penalties, criminal actions). Phase II MS4s have the option to only report one type of enforcement action (“Phase II MS4 Enforcement Action”) taken during the reporting period (i.e., the authorized NPDES program can system-generate this data element for Phase II MS4s). This data element may have different reported data for non-traditional MS4s (e.g., transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c) ..	6
MS4 Enforcement Actions Total by Type.	For each unique MS4 regulated entity covered under a Phase II MS4 permit and for each MS4 Enforcement Action Type, this data element identifies the total number of enforcement actions taken by responsible MS4 Municipal Enforcement Agency by enforcement action type. Phase II MS4s have the option to only report this data element will be the total number of enforcement actions taken during the reporting period. This data element may have different reported data for non-traditional MS4s (e.g., transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c) ..	6
MS4 Enforcement Agency.	This will identify the unique MS4 regulated entity that is responsible for each type of enforcement action conducted in the reporting period. This column will be pre-populated and un-editable if there is only one regulated entity covered by the MS4 permit (i.e., there are no co-permittees). The MS4 will provide a list of identifiers for all co-permittees during the NPDES permit application process (individual and general permit covered facilities). This data element may have different reported data for non-traditional MS4s (e.g., transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c) ..	6

Notes:

(1) The NPDES program authority may pre-populate these data elements and other data elements (e.g., Federal Registry System ID) in the NPDES electronic reporting systems in order to create efficiencies and standardization. For example, the NPDES program authority may configure their electronic reporting system to automatically generate NPDES IDs for control mechanisms for new facilities reported on a Pretreatment Program Report [40 CFR 403.12(i)]. Additionally, the NPDES program authority may decide whether to allow NPDES regulated entities to override these pre-populated data.

(2) The data elements in this table conform to EPA’s policy regarding the application requirements for renewal or reissuance of NPDES permits for discharges from Phase I municipal separate storm sewer systems (see 61 FR 41698; 6 August 1996).

(3) The data elements in this table are also supported by the Office Management and Budget approved permit applications and forms for the NPDES program.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4185–N3]

RIN 0938–AT59

Medicare and Medicaid Programs; Risk Adjustment Data Validation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; extension of comment period and the announcement of the release of additional data.

SUMMARY: This document extends the comment period for the Risk Adjustment Data Validation (RADV) provisions of the proposed rule titled “Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for