

compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with Texas Water Quality Standards and the corresponding implementation guidance. The Region has solicited certification from the Texas Railroad Commission.

**Executive Order 12866.** The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. Guidance on Executive Order 12866 contain the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of guidelines on which a number of the permit's provisions are based and submitted it to OMB for review. See 58 FR 12494.

**Paperwork Reduction Act.** The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040-0086 (NPDES permit application) and 2040-0004 (discharge monitoring reports).

This reissued permit will not significantly change the reporting and application requirements from those under the previous general permit, which authorized discharges to the territorial seas off Texas. Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000), the paperwork burdens are expected to be nearly identical. When it issued the OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for this permit will be the same.

However, the alternative to obtaining authorization to discharge under this general permit is under an individual permit. The application and reporting

burden of obtaining authorization to discharge under the general permit is expected to be significantly less than under an individual permit.

**Regulatory Flexibility Act.** The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit modification proposed today is not a "rule" subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that issuance of this permit modification will not have a significant impact on a substantial number of small entities.

**Unfunded Mandates Reform Act.** Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. \* \* \*

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA has determined that the proposed permit modification would not contain a Federal requirement that may result in expenditures of \$100 million or more for State, local and

tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, *etc.*, with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit, as proposed, also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit.

**National Environmental Policy Act.** Issuance of an NPDES general permit for oil and gas extraction in the territorial seas of Texas is a major federal action significantly affecting the quality of the human environment. Thus, EPA has prepared a Draft EIS to evaluate the potential environmental consequences of its Federal (general permit) action, pursuant to its responsibilities under the National Environmental Policy Act of 1969 (NEPA).

EPA issued a Notice of Intent (NOI) on February 12, 1993, to prepare an Environmental Impact Statement (EIS) on new source NPDES General Permits for the Offshore Subcategory of the Oil & Gas Extraction Category proposed for the territorial seas of both Texas and Louisiana. Scoping issues were considered through the NOI and other informal procedures, including interagency meetings conducted in July, 1993. The Draft EIS was issued in January 1994, for review and comment from interested agencies, officials, groups and individuals. EPA's public hearing to receive comments on the Draft EIS was held on March 16, 1994. The Final EIS issued in June 1996, however, covered only EPA's proposed general permit action for Louisiana, recognizing that a separate Final EIS would be prepared prior to its decision on the NPDES general permit for the territorial seas of Texas.

EPA intends to rely on its original Draft EIS (which is available for review at the EPA Region 6 Office) in this continued NEPA review process for the current proposal to issue the oil and gas NPDES general permit for the territorial seas of Texas. In addition EPA will