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FEDERAL REGISTER

Vol. 84 Wednesday,
No. 219 November 13, 2019

Pages 60883–61516

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0485; Product Identifier 2019–NM–064–AD; Amendment 39–19757; AD 2019–20–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–243, A330–243F, A330–341, A330–342, and A330–343 airplanes. This AD was prompted by reports of thrust reverser unit (TRU) beams found with evidence of thermally caused material degradation in the rearmost section of the TRU beam at certain latches. This AD requires an inspection for heat damage of each left-hand and right-hand TRU beam as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. Depending on findings, this AD might also require inspections of the TRU beam latches, the TRU beam clevises, and the thrust reverser outer fixed structure rear area; corrective actions; and replacement of TRU beams. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 18, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0485.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0485; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0148R1, dated April 5, 2019 (''EASA AD 2018–0148R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–243, A330–243F, A330–341, A330–342, and A330–343 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–243, A330–243F, A330–341, A330–342, and A330–343 airplanes. The NPRM published in the **Federal Register** on June 26, 2019 (84 FR 30052). The NPRM was prompted by reports of TRU beams found with evidence of thermally caused material degradation in the rearmost section of the TRU beam at certain latches. The NPRM proposed to require an inspection for heat damage of each left-hand and right-hand TRU beam. The NPRM also proposed to require, depending on the findings, inspections of the TRU beam latches, the TRU beam clevises, and the thrust reverser outer fixed structure rear area; corrective actions; and replacement of TRU beams.

The FAA is issuing this AD to address degradation of TRU beams, which could lead to disconnection of the TRU from the engine, causing possible damage to the engine adjacent structure and controls and possible damage to the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. Patrick Imperatrice expressed support for the NPRM.

Request To Allow Certain Substitutions

American Airlines identified several errors in the service information referenced in EASA AD 2018–0148R1, and requested correction of the errors through allowing certain substitutions. The commenter noted that the proposed AD requires compliance with EASA AD 2018–0148R1, which in turn references service information from Airbus, Rolls Royce, and Safran. The commenter stated that the applicable service information contains several errors when referring to part numbers, documents, and the order in which certain steps are to be done. The commenter added that Safran verified these errors. Specifically, the commenter requested that the proposed AD be revised to allow the following substitutions:

- The installation of NAS1149 series washers in lieu of AN960 washers.
- The installation of NAS6303U4 bolts in lieu of NAS6303U04 bolts.
- The use of NSA5050–4C nuts in lieu of NAS5050–4C nuts.
- The reference to ''Airbus SRM 51–75'' in lieu of ''Rolls Royce SRM 54–02–04'' for paint restoration.
- The reference to ''CMM 78–30–20 Figure 39 Graphic 78–30–20–991–839–A01'' in lieu of ''CMM 78–30–20 Figure

38 Graphic 78–30–20–991–838–A01'' for replacement of damaged right-hand thrust reverser latch covers and hardware.

• The allowance to de-energize the ground service network, as specified in aircraft maintenance manual (AMM) 24–42–00, after closing the fan cowl doors in lieu of de-energizing the ground service network before closing the fan cowl doors.

The FAA acknowledges the referenced errors and agrees with the commenter's request. The FAA has added paragraphs (h)(3) through (8) to this AD to include exceptions allowing the substitutions requested by the commenter.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related IBR Material Under 1 CFR part 51

EASA AD 2018–0148R1 describes procedures for a special detailed inspection for heat damage of each left-hand and right-hand TRU beam, detailed inspections of the TRU beam latches for bush migration and cracks or deformation, detailed inspections of the TRU beam clevises for cracks and deformation, ultrasonic inspections of the thrust reverser outer fixed structure rear area for delamination, replacement of TRU beams, and corrective actions. Corrective actions include restoring paint, repairing delaminated areas, and measuring latch pin hole fitting diameters near migrated bushes. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 51 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$4,335

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$0	$170

* The table only includes the costs for on-condition inspections. The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition corrective actions and replacement specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–20–04 Airbus SAS: Amendment 39–19757; Docket No. FAA–2019–0485; Product Identifier 2019–NM–064–AD.

(a) Effective Date

This AD is effective December 18, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A330–243, A330–243F, A330–341, A330–342, and A330–343 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Reason

This AD was prompted by reports of thrust reverser unit (TRU) beams found with evidence of thermally caused material degradation in the rearmost section of the TRU beam at certain latches. The FAA is issuing this AD to address degradation of TRU beams, which could lead to disconnection of the TRU from the engine, causing possible damage to the engine adjacent structure and controls and possible damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2018–0148R1, dated April 5, 2019 (''EASA AD 2018–0148R1'').

(h) Exceptions to EASA AD 2018–0148R1

(1) Where EASA AD 2018–0148R1 refers to its effective date, or July 27, 2018 (the effective date of EASA AD 2018–0148, dated July 13, 2018), this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0148R1 does not apply to this AD.

(3) Where the service information referenced in EASA AD 2018–0148R1 specifies the installation of AN960 washers, this AD allows the installation of NAS1149 series washers.

(4) Where the service information referenced in EASA AD 2018–0148R1 specifies the installation of NAS6303U04 bolts, this AD allows the installation of NAS6303U4 bolts.

(5) Where the service information referenced in EASA AD 2018–0148R1 specifies the use of NAS5050–4C nuts, this AD allows the use of NSA5050–4C nuts.

(6) Where the service information referenced in EASA AD 2018–0148R1 refers to ''Rolls Royce SRM 54–02–04'' for paint restoration, for this AD replace the phrase ''Rolls Royce SRM 54–02–04'' with ''Airbus SRM 51–75.''

(7) Where the service information referenced in EASA AD 2018–0148R1 refers to ''CMM 78–30–20 Figure 38 Graphic 78–30–20–991–838–A01'' for replacement of damaged right-hand thrust reverser latch covers and hardware, for this AD replace the phrase ''CMM 78–30–20 Figure 38 Graphic 78–30–20–991–838–A01'' with ''CMM 78–30–20 Figure 39 Graphic 78–30–20–991–839–A01.''

(8) Where the service information referenced in EASA AD 2018–0148R1 specifies to de-energize the ground service network, as specified in aircraft maintenance manual (AMM) 24–42–00, before closing the fan cowl doors, this AD allows de-energizing the ground service network after closing the fan cowl doors.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2018–0148R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2018–0148R1 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2018–0148R1, dated April 5, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2018–0148R1, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0485.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24502 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0557; Product Identifier 2019–NE–17–AD; Amendment 39–19775; AD 2019–21–09]

RIN 2120–AA64

Airworthiness Directives; Aviointeriors S.p.A. Centaurus Passenger Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Aviointeriors S.p.A. (Aviointeriors) Centaurus passenger seats with a specific life vest pouch assembly installed. This AD was prompted by reports of life vest pouches that were installed incorrectly on certain seats. This AD requires inspection of the life vest pouch assembly and, depending on the results of the inspection, replacement of the life vest pouch assembly. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 18, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 18, 2019.

ADDRESSES: For service information identified in this final rule, contact Aviointeriors S.p.A., Customer Support, Via Appia Km. 66,4; 04013 Latina, Italy; phone: +39 0773 6891; fax: +39 0773 631546; email: *customer-support@aviointeriors.it;* internet: *http://www.aviointeriors.it.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0557.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0557; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Aviointeriors S.p.A. (Aviointeriors) Centaurus passenger seats with a specific life vest pouch assembly installed. The NPRM published in the **Federal Register** on August 15, 2019 (84 FR 41664). The NPRM was prompted by reports of life vest pouches that were installed incorrectly on certain seats. The NPRM proposed to require inspection of the life vest pouch assembly and, depending on the results of the inspection, replacement of the life vest pouch assembly. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2018–0264R1, dated April 4, 2019 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Incorrect installation of the affected pouch was found on certain affected seats. Subsequent investigation determined that those pouches have been (re)installed in service. This condition, if not detected and corrected, could prevent extraction of the life vest from the pouch, leading to evacuation of the aeroplane without a life vest, possibly resulting in injury to passengers.
>
> To address this potential unsafe condition, Aviointeriors issued the SB to provide inspection instructions and the modification SB to provide instructions to modify the affected seats. Aviointeriors also revised the Component Maintenance Manuals (CMM) to include updated instructions for installing an affected pouch.
>
> For the reason described above, EASA issued AD 2018–0264, requiring inspection of the affected seats and, depending on findings, accomplishment of applicable corrective action(s).
>
> Since that [EASA] AD was issued, it was determined that affected seats may have received an additional P/N related to the aircraft modification addressing the installation of the seats. This [EASA] AD is revised to clarify the Applicability by inserting Note 1 into Appendix 1 of this [EASA] AD.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0557.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Aviointeriors Mandatory Service Bulletin (MSB) No. 16/18, Rev. 1, dated October 11, 2018, and Aviointeriors Optional Service Bulletin (OSB) No. 18/18, Rev. 2, dated March 11, 2019. The MSB describes procedures for inspection and horizontal installation of the life vest pouch assembly. The OSB describes procedures for an alternative (vertical) inspection and installation of the life vest pouch assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects an unknown number of passenger seats installed on, but not limited to, Boeing 777–200 and 777–300 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Inspect life vest pouch assembly	0.2 work-hours × $85 per hour = $17	$0	$17
Replace life vest pouch assembly	0.1 work-hours × $85 per hour = $8.50	172	180.50

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–21–09 Aviointeriors S.p.A.: Amendment 39–19775; Docket No. FAA–2019–0557; Product Identifier 2019–NE–17–AD.

(a) Effective Date

This AD is effective December 18, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Aviointeriors S.p.A. (Aviointeriors) Centaurus Economy Class 13E, 13H, and 13K passenger seats with a seat part number (P/N) listed in Figure 1 to paragraph (c)(1) of this AD, with life vest pouch, P/N 313907100004, installed.

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Figure 1 to Paragraph (c)(1) – Passenger Seat P/Ns

Seat Type	Passenger Seat P/Ns		
13E	13EA5Z5204JV	13EA9Z5506JV	13EG7Z1204RV
	13EA5Z5203JV	13EG5Z1204RV	13EG6Z5703RV
	13EA5Z5304JV	13EG5Z1203RV	13EG6Z5704RV
	13EA5Z5303JV	13EG5Z5204RV	13EG2Z5203RV
	13EA6Z5404JV	13EG5Z5203RV	13EG2Z5204RV
	13EA6Z5403JV	13EG5Z5304RV	13EG9Z5506RV
	13EA7Z5204JV	13EG5Z5303RV	13EG8Z5704RV
	13EA7Z5203JV	13EG7Z5204RV	13EG8Z5703RV
	13EA8Z5404JV	13EG7Z5203RV	13EG5Z5207RV
	13EA8Z5403JV	13EG4Z5506RV	13EG5Z5208RV
	13EA4Z5506JV	13EG9Z5610RV	13EG6Z5404RV
	13EA9Z5610JV	13EF4Z5509RV	13EG6Z5403RV
	13EC4Z5509JV	13EF3Z5506RV	13EG8Z5404RV
	13EC3Z5506JV	13EG7Z1203RV	13EG8Z5403RV
13H	13HR1Z5222JV	13HR5Z1203RV	13HR6Z5203RV
	13HR1Z5221JV	13HR5Z5222RV	13HR6Z5204RV
	13HR2Z5123JV	13HR5Z5221RV	
	13HR5Z1204RV	13HR4Z5123RV	
13K	13KA5Z5208JV	13KG5Z5208RV	
	13KA5Z5207JV	13KG5Z5207RV	

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(2) These appliances are installed on, but not limited to, Boeing 777–200 and 777–300 airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 2561, Life Jacket.

(e) Unsafe Condition

This AD was prompted by reports of life vest pouches installed incorrectly on certain seats. The FAA is issuing this AD to prevent the life vest from failing to extract from the pouch during an emergency. The unsafe condition, if not addressed, could result in having to evacuate the airplane without a life vest, possibly resulting in injury or death to passengers.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) Within three months or 600 flight hours after the effective date of this AD, whichever occurs first, inspect the affected seat life vest pouch assembly using Paragraph 2, Life Vest Inspection, of Aviointeriors Mandatory Service Bulletin (MSB) No. 16/18, Rev. 1, dated October 11, 2018, or Paragraph 2, Life Vest Pouches Inspection, Aviointeriors Optional SB (OSB) No. 18/18, Rev. 2, dated March 11, 2019.

(2) If, during the inspection required by paragraph (g)(1) of this AD, a life vest pouch velcro strip is found damaged or worn, before further flight, remove the life vest pouch from service and replace it with a part eligible for installation using Paragraphs 3 through 5, inclusive, of Aviointeriors MSB No. 16/18, Rev. 1, dated October 11, 2018, or Aviointeriors OSB No. 18/18, Rev. 2, dated March 11, 2019.

(3) If, during the inspection required by paragraph (g)(1) of this AD, a life vest pouch installation is not found acceptable, as defined in Paragraph 2 of Aviointeriors MSB No. 16/18, Rev. 1, dated October 11, 2018, or Aviointeriors OSB No. 18/18, Rev. 2, dated March 11, 2019, before further flight, remove the life vest pouch from service and replace it with a part eligible for installation using Paragraphs 3 through 5, inclusive, of Aviointeriors MSB No. 16/18, Rev. 1, dated October 11, 2018, or Aviointeriors OSB No. 18/18, Rev. 2, dated March 11, 2019.

(h) Installation Prohibition

After the effective date of this AD, do not install an Aviointeriors Centaurus Economy Class passenger seat with a P/N identified in paragraph (c) of this AD unless the affected seat life vest pouch assembly has been inspected in accordance with paragraph (g)(1) of this AD, and depending on the finding, replaced with a part eligible for installation.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0264R1, dated April 4, 2019, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0557.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Aviointeriors Mandatory Service Bulletin No. 16/18, Rev. 1, dated October 11, 2018, and

(ii) Aviointeriors Optional Service Bulletin No. 18/18, Rev. 2, dated March 11, 2019.

(3) For Aviointeriors service information identified in this AD, contact Aviointeriors S.p.A., Customer Support, Via Appia Km. 66,4; 04013 Latina, Italy; phone: +39 0773 6891; fax: +39 0773 631546; email: *customer-support@aviointeriors.it;* internet: *http://www.aviointeriors.it.*

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on October 24, 2019.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–24512 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0439; Product Identifier 2019–NM–037–AD; Amendment 39–19779; AD 2019–21–13]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2012–22–18, which applied to all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes. AD 2012–22–18 required repetitive inspections of the three inner acoustic panels of both engine air inlet (intake) cowls to detect disbonding, and corrective actions, if necessary. This AD continues to require all actions required by AD 2012–22–18, with a reduced initial compliance time and reduced repetitive inspection intervals. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by additional reports of engine air inlet cowl collapse. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 18, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0439.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0439; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0042, dated February 27, 2019 (''EASA AD 2019–0042'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes, certificated in any category.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–22–18, Amendment 39–17256 (77 FR 70366, November 26, 2012) (''AD 2012–22–18''). AD 2012–22–18 applied to all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes. The NPRM published in the **Federal Register** on June 19, 2019 (84 FR 28431). The NPRM was prompted by additional reports of engine air inlet cowl collapse since AD 2012–22–18 was issued. The NPRM proposed to continue to require repetitive inspections of the three inner acoustic panels of both engine air inlet cowls to detect disbonding, and corrective actions if necessary, with a reduced initial compliance time and reduced repetitive inspection intervals. The NPRM also proposed an optional modification that would be terminating action for the repetitive inspections. The FAA is issuing this AD to address disbonding, which could result in detachment of the engine air inlet cowl from the engine, leading to ingestion of parts, which could cause failure of the engine, and possible injury to persons on the ground. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing

this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Patrick Imperatrice indicated his support for the NPRM.

Request To Allow Alternative Tooling

American Airlines (AAL) requested that operators be allowed to use aerospace industry standard tap check tools for the inspection of the engine air inlet cowl acoustic panels instead of the tap check tools specified in Bombardier Service Bulletin RB211–NAC–71–018, Revision 3, dated December 5, 2018 (''Bombardier Service Bulletin RB211–NAC–71–018, Revision 3''). The commenter stated that the tooling paragraph in Bombardier Service Bulletin RB211–NAC–71–018, Revision 3, unnecessarily restricts operators' choices of tap tools with respect to industry standard practices, and places an undue burden on operators with regards to maintaining compliance procedures. The commenter noted that the previous revision level of Bombardier Service Bulletin RB211–NAC–71–018 provided a more general description of the tap tool and did not prohibit the use of an aluminum tap tool. The commenter noted that it has successfully detected disbonding using a variety of standard industry tap tools made of corrosion resistant steel (CRES), mild steel, brass, and aluminum on similar nacelle component thin-skinned carbon fiber/honeycomb sandwich panels, with and without wire mesh on them, without any negative effects, such as galvanic corrosion. The commenter stated that it considers tools similar to or as described in aviation industry manuals, made from any of the typical listed materials, to have an equivalent level of safety and performance as the tool specified in Bombardier Service Bulletin RB211–NAC–71–018, Revision 3. The commenter also advised that, although not a concern from its experience, any aluminum tool would be contacting the stainless steel wire mesh on the carbon fiber panel surface except for localized areas of missing wire mesh.

The FAA acknowledges the commenter's observation that Bombardier Service Bulletin RB211–NAC–71–018, Revision 3, specifies that the tap tool can be purchased or manufactured, should be made of mild steel or brass rod, and that the use of an aluminum tap tool is prohibited.

However, the FAA does not agree with the commenter's request to revise this AD to allow operators to use any aviation industry standard tap check tool, including those made of aluminum, for the inspection of the engine air inlet cowl acoustic panels. The FAA received additional information from Bombardier stating that Bombardier performed numerous tests on acoustic panels using tap tools manufactured from various materials. Bombardier concluded that a better tonal response was received for both disbond and non-disbond areas when a heavier tap tool made from steel or brass material was used, which resulted in more reliable detection of panel disbond.

This AD refers to EASA AD 2019–0042 for a description of the procedures for repetitive inspections of the engine air inlet cowls having a certain part number, repair or replacement of any engine air inlet cowl that has disbond, and an optional modification that terminated the need for the repetitive inspections. In turn, EASA AD 2019–0042 refers to Airbus Service Bulletin A330–71–3024, Revision 04, dated December 17, 2018 (''Airbus Service Bulletin A330–71–3024, Revision 04''), for information regarding the inspection procedures for the engine air inlet cowl. Paragraphs 3.C. and 3.D. of the Accomplishment Instructions of Airbus Service Bulletin A330–71–3024, Revision 04, are considered ''required for compliance'' (RC) and must be done to comply with the requirements of this AD.

Paragraph 3.C. of Airbus Service Bulletin A330–71–3024, Revision 04, states that the tap test must be done using the procedures in Rolls-Royce Service Bulletin No. RB.211–71–AG419, Revision 3, dated December 7, 2018 (''Rolls-Royce Service Bulletin No. RB.211–71–AG419, Revision 3''). Rolls-Royce Service Bulletin No. RB.211–71–AG419, Revision 3, refers to Bombardier Service Bulletin RB211–NAC–71–018, Revision 3, for the inspection procedures.

Operators may request to use tap tools other than those identified in Bombardier Service Bulletin RB211–NAC–71–018, Revision 3, by utilizing the alternative methods of compliance (AMOCs) provision provided in paragraph (j)(1) of this AD and submitting sufficient data to substantiate that the alternative tools would provide an acceptable level of safety. The FAA has not revised this AD in regard to this issue.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0042 describes procedures for repetitive inspections of engine air inlet cowls having certain part numbers, repair or replacement of any engine air inlet cowl that has disbonding, and an optional modification that terminates the need for the repetitive inspections. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 47 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2012–22–18	Up to 20 work-hours × $85 per hour = Up to $1,700.	$0	$1,700	Up to $79,900.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 154 work hours × $85 per hour = Up to $13,090	(*)	Up to $13,090.*

* The FAA has received no definitive data on the parts costs for the optional actions.

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 34 work-hours × $85 per hour = Up to $2,890	(*)	Up to $2,890.*

* The FAA has received no definitive data on the parts costs for the on-condition actions.

The new requirements of this AD add no additional economic burden. However, the optional modification, if done, would result in additional costs as specified in the ''Estimate costs for optional actions'' table.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–22–18, Amendment 39–17256 (77 FR 70366, November 26, 2012), and adding the following new AD:

2019–21–13 Airbus SAS: Amendment 39–19779; Docket No. FAA–2019–0439; Product Identifier 2019–NM–037–AD.

(a) Effective Date

This AD is effective December 18, 2019.

(b) Affected ADs

This AD replaces 2012–22–18, Amendment 39–17256 (77 FR 70366, November 26, 2012) (''AD 2012–22–18'').

(c) Applicability

This AD applies to all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of extensive damage to engine air inlet (intake) cowls as a result of acoustic panel collapse and by additional reports of engine air inlet cowl collapse since AD 2012–22–18 was issued. The FAA is issuing this AD to address disbonding, which could result in detachment of the engine air inlet cowl from the engine, leading to ingestion of parts, which could cause failure of the engine, and possible injury to persons on the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0042, dated February 27, 2019 (''EASA AD 2019–0042'').

(h) Exceptions to EASA AD 2019–0042

(1) Where EASA AD 2019–0042 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0042 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0042 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0042 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on December 18, 2019.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0042, dated February 27, 2019.

(ii) [Reserved]

(4) For information about EASA AD 2019–0042, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(5) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0439.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on October 28, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24507 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0254; Product Identifier 2019–NM–011–AD; Amendment 39–19763; AD 2019–20–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318 and A319 series airplanes, Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by a report that cracks were detected on frame (FR) 16 and FR 20 web holes and passenger door intercostal fitting holes at the door stop fitting locations. This AD requires repetitive rototest inspections of the holes at the door stop fittings for any cracking, and corrective actions if necessary, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 18, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0254.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0254; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318 and A319 series airplanes, Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on May 8, 2019 (84 FR 20054).

The NPRM was prompted by a report that cracks were detected on FR 16 and FR 20 web holes and passenger door intercostal fitting holes at the door stop fitting locations. The NPRM proposed to require repetitive rototest inspections of the holes at the door stop fittings for any cracking, and corrective actions if necessary.

The FAA is issuing this AD to address such cracking, which could affect the structural integrity of the airplane.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0289, dated December 21, 2018 (''EASA AD 2018–0289'') (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 and A319 series airplanes, Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The FAA is issuing this AD to address cracking of FR 16 and FR 20 web holes and passenger door intercostal fitting holes at the door stop fitting locations. Such cracking could affect the structural integrity of the airplane. See the MCAI for additional background information.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0254.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Provide Relief to Requirements in an Affected AD

Allegiant Air commented that the proposed AD states that no AD would be affected; however, it believes that AD 2018–25–02 would be affected by the proposed AD. Allegiant Air stated that paragraph (g)(1) of AD 2018–25–02 requires a revision to the existing maintenance or inspection program, as applicable, to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 6.3, dated October 24, 2017. Allegiant Air commented that this variation includes ALI tasks 531103–01–2 and 531103–01–3, which EASA AD 2018–0289 indicated will be deleted from Airworthiness Limitation Section Part 2. Allegiant Air stated that if the NPRM becomes an AD, the proposed AD should be revised to show that it affects AD 2018–25–02, and it should also provide relief to the requirement to include these two ALI tasks in an operator's maintenance or inspection program. Allegiant Air further commented that EASA AD 2018–0289 states that Airbus Service Bulletin A320–53–1330 is a terminating action for the inspections required by ALI task 531103, which EASA AD 2018–0289 indicates will be deleted.

The FAA agrees to clarify. This AD does not supersede or terminate AD 2018–25–02. However, ALI tasks 531103–01–2 and 531103–01–3, which were incorporated into the maintenance or inspection program as part of the revision required by AD 2018–25–02, are affected. This AD allows those tasks to be terminated as specified in the provisions of EASA 2018–0289.

- As specified in paragraph (5) of EASA AD 2018–0289, the inspection requirements for ALI task 531103 are cancelled for an airplane if the optional terminating action specified in paragraph (5) of EASA AD 2018–0289 is done.
- As specified in paragraph (6) of EASA AD 2018–0289, the inspection requirements for ALI task 531103 are cancelled at repaired door stop locations if the optional terminating action specified in paragraphs (6) of EASA AD 2018–0289 is done.
- As specified in paragraph (7) of EASA AD 2018–0289, the inspection requirements for ALI task 531103 are cancelled if the applicable actions required by paragraphs (1) through (4) of EASA AD 2018–0289 are done.

The FAA has not changed this AD in this regard.

Request To Retain Certain Requirements

An anonymous commenter requested that the proposed AD and paragraphs (5) and (6) of EASA AD 2018–0289, dated December 21, 2018, be ''retained in any FAA AD.'' The commenter also requested that modification using Airbus Service Bulletin A320–53–1330 be counted as a terminating action to any FAA AD, and if this is not possible, then the commenter requested that the FAA retain the same requirements of paragraph (2) of EASA AD 2018–0289.

The FAA infers that the commenter wants to ensure that the proposed requirements and provisions are carried over into the final rule. For clarification, paragraphs (2), (5), and (6) of EASA AD 2018–0289 are included in the requirements of paragraph (g) of this AD, which requires compliance with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0289. All provisions, including credit and terminating action specified in EASA AD 2018–0289 also apply to this AD. The FAA has not changed this AD in this regard.

Request To Revise the Compliance Time

United Airlines (UAL) requested that ALI task 531103–01–2 be carried over in the proposed AD with a compliance time of up to 120 days from the effective date of the AD or until the ALI is deleted, whichever occurs later. UAL commented that EASA AD 2018–0289 specifies that ALI tasks 531103–01–2 and 531103–01–3 will be deleted by Airbus at the next airworthiness limitations section revision opportunity; therefore, there is no reason the ALI task cannot be carried over because ALI task 531103–01–2 and Airbus Service Bulletin A320–53–1339 describe procedures for the same open hole rotating probe high frequency eddy current inspection. UAL stated that the ALI task and the service information have the same inspection threshold and intervals. UAL stated that this will allow operators' maintenance program and engineering departments adequate time to transition internal task cards and/or engineering orders from the ALI task to the service information instructions; transitioning internal documents immediately after publication of the proposed AD is not feasible.

The FAA disagrees with the commenter's request. For clarification, EASA AD 2018–0289 is replacing the requirements imposed by ALI tasks 531103–01–2 and 531103–01–3. This AD, as specified in paragraphs (5), (6), and (7) of EASA AD 2018–0289, allows for the termination of the ALI tasks if the conditions stated in the applicable paragraph are met. Operators have the option to perform the repetitive inspections (no change to ALI tasks), or terminate the repetitive inspections by complying with the provisions specified in paragraphs (5), (6), or (7) of EASA AD 2018–0289. The FAA may issue separate rulemaking in the future that will require tasks that will replace the applicable existing ALI tasks. The FAA has not revised this AD in this regard.

Request To Use a Certain Repair Drawing

UAL requested that the FAA allow repair drawing R53113118 to be used for repair instructions as an alternative to the corrective action specified in paragraph (4) of EASA AD 2018–0289.

The FAA disagrees with the commenter's request. The repair drawing will vary based on the

configuration of the airplane and the extent of the findings during the inspection. However, any person may request approval of an alternative method of compliance (AMOC) under the provisions of paragraph (i) of this AD. The FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0289 describes procedures for repetitive rototest inspections of the holes at the door stop fittings for any cracking, and corrective actions if necessary. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,229 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
33 work-hours × $85 per hour = $2,805	$0	$2,805	$3,447,345

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS FOR ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
51 work-hours × $85 per hour = $4,335	$350	$4,685

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–20–10 Airbus SAS: Amendment 39–19763; Docket No. FAA–2019–0254; Product Identifier 2019–NM–011–AD.

(a) Effective Date

This AD is effective December 18, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any

category, as identified in European Aviation Safety Agency (EASA) AD 2018–0289, dated December 21, 2018 (''EASA AD 2018–0289'').

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that cracks were detected on frame (FR) 16 and FR 20 web holes and passenger door intercostal fitting holes at the door stop fitting locations. The FAA is issuing this AD to address such cracking, which could affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0289.

(h) Exceptions to EASA AD 2018–0289

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2018–0289 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0289 does not apply to this AD.

(3) Where Table 1 of EASA AD 2018–0289 refers to a compliance time ''after 31 May 2017,'' this AD requires using a compliance time after May 31, 2018 (the effective date of task 531103–01–1 in ''ALS Part 2 rev. 6'').

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2018–0289 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Aviation Safety Agency (EASA) AD 2018–0289, dated December 21, 2018.

(ii) [Reserved]

(3) For EASA AD 2018–0289, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0289 may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0254.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on October 18, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24508 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0582; Product Identifier 2019–NM–034–AD; Amendment 39–19769; AD 2019–21–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A and 601–3R Variants) airplanes. This AD was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. This AD requires revising the existing airplane flight manual (AFM) to provide the flightcrew with procedures for ''Unreliable Airspeed'' that stabilize the airplane's airspeed and attitude. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 18, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 18, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0582.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0582; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule,

the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–36, dated December 27, 2018 (''Canadian AD CF–2018–36'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A and 601–3R Variants) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0582.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A and 601–3R Variants) airplanes. The NPRM published in the **Federal Register** on August 12, 2019 (84 FR 39778). The NPRM was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. The NPRM proposed to require revising the existing AFM to provide the flightcrew with procedures for ''Unreliable Airspeed'' that stabilize the airplane's airspeed and attitude. The FAA is issuing this AD to address the loss of all air data system information provided to the flightcrew. If not addressed, this condition may adversely affect continued safe flight and landing. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Change to Format of Paragraph Designation References

The FAA has revised the format the agency uses for referring to paragraph designations throughout this AD. This change is necessary to meet the Office of the Federal Register's drafting requirements. For example, where the FAA previously referred to paragraphs (g)(1) and (g)(2) of this AD, we now refer to paragraphs (g)(1) and (2) of this AD. This change does not affect the requirements of this AD.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the ''Unreliable Airspeed Procedure,'' specified in Unreliable Airspeed, in the Emergency Procedures section of the applicable AFM.

- Canadair Challenger CL–600–1A11 AFM, RAG–600–101, Issue 2, Product Publication 600, Revision A111, dated August 31, 2018.
- Canadair Challenger CL–600–1A11 (Winglets) AFM, RAG–600–101, Issue 2, Product Support Publication (PSP) 600–1, Revision 103, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1A, Revision 120, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1A–1, Revision 79, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1B, Revision 83, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1B–1, Revision 81, dated August 31, 2018.
- Canadair Challenger CL–600–2B16 AFM, PSP 601A–1, Revision 103, dated August 31, 2018.
- Canadair Challenger CL–600–2B16 AFM, PSP 601A–1–1, Revision 92, dated August 31, 2018.

These documents are distinct since they apply to different airplane models in different configurations.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 206 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$17,510

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to

the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–21–03 Bombardier, Inc.: Amendment 39–19769; Docket No. FAA–2019–0582; Product Identifier 2019–NM–034–AD.

(a) Effective Date

This AD is effective December 18, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., airplanes, certificated in any category, identified in paragraphs (c)(1) through (3) of this AD.

(1) Model CL–600–1A11 (600), serial numbers 1001 through 1085 inclusive.

(2) Model CL–600–2A12 (601), serial numbers 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (601–3A and 601–3R Variants), serial numbers 5001 through 5194 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. The FAA is issuing this AD to address the loss of all air data system information provided to the flightcrew. If not addressed, this condition may adversely affect continued safe flight and landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the Emergency Procedures section of the existing AFM to include the information in the ''Unreliable Airspeed Procedure,'' specified in Unreliable Airspeed, of the applicable AFM specified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) – *AFM Revisions*

Airplane Serial Numbers	AFM	AFM Revision	Issue Date
CL-600-1A11 (600) serial numbers 1001 through 1085 inclusive for non-winglets	Canadair Challenger CL-600-1A11 AFM, RAG-600-101, Issue 2, Product Publication 600	Revision A111	August 31, 2018
CL-600-1A11 (600) serial numbers 1001 through 1085 inclusive for winglets	Canadair Challenger CL-600-1A11 (Winglets) AFM, RAG-600-101, Issue 2, Product Support Publication (PSP) 600-1	Revision 103	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive	Canadair Challenger CL-600-2A12 AFM, PSP 601-1A	Revision 120	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive with Bombardier Service Bulletin 601-0360 incorporated	Canadair Challenger CL-600-2A12 AFM, PSP 601-1A-1	Revision 79	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive with -3A engines	Canadair Challenger CL-600-2A12 AFM, PSP 601-1B	Revision 83	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive with -3A engines and Bombardier Service Bulletin 601-0360 incorporated	Canadair Challenger CL-600-2A12 AFM, PSP 601-1B-1	Revision 81	August 31, 2018
CL-600-2B16 (601-3A and 601-3R Variants) serial numbers 5001 through 5194 inclusive	Canadair Challenger CL-600-2B16 AFM, PSP 601A-1	Revision 103	August 31, 2018
CL-600-2B16 (601-3A and 601-3R Variants) serial numbers 5001 through 5194 inclusive with Bombardier Service Bulletin 601-0360 incorporated	Canadair Challenger CL-600-2B16 AFM, PSP 601A-1-1	Revision 92	August 31, 2018

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(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–36, dated December 27, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0582.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–1A11 Airplane Flight Manual (AFM), RAG–600–101, Issue 2, Product Publication 600, Revision A111, dated August 31, 2018.

(ii) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–1A11 (Winglets) AFM, RAG–600–101, Issue 2, Product Support Publication (PSP) 600–1, Revision 103, dated August 31, 2018.

(iii) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–2A12 AFM, PSP 601–1A, Revision 120, dated August 31, 2018.

(iv) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–2A12 AFM, PSP 601–1A–1, Revision 79, dated August 31, 2018.

(v) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–2A12 AFM, PSP 601–1B, Revision 83, dated August 31, 2018.

(vi) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–2A12 AFM, PSP 601–1B–1, Revision 81, dated August 31, 2018.

(vii) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–2B16 AFM, PSP 601A–1, Revision 103, dated August 31, 2018.

(viii) ''Unreliable Airspeed Procedure,'' from Unreliable Airspeed, in the Emergency Procedures section, of the Canadair Challenger CL–600–2B16 AFM, PSP 601A–1–1, Revision 92, dated August 31, 2018.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on October 18, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24506 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0866; Product Identifier 2019–NM–174–AD; Amendment 39–19789; AD 2019–22–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–20–02, which applied to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2019–20–02 required repetitive inspections for cracking of the left- and right-hand side outboard chords of frame fittings and failsafe straps at a certain station around two fasteners, and repair if any cracking is found. This AD also requires repetitive inspections for cracking of the left- and right-hand side outboard chords of frame fittings and failsafe straps at a certain station, but expands the inspection to the area around eight fasteners, and also requires repair if any cracking is found. This AD was prompted by a determination that the inspection area needs to be expanded. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 13, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 13, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 3, 2019 (84 FR 52754, October 3, 2019).

The FAA must receive any comments on this AD by December 30, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0866.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0866; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Rutar, Aerospace Engineer, Airframe

Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2019–20–02, Amendment 39–19755 (84 FR 52754, October 3, 2019) (''AD 2019–20–02''), for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2019–20–02 required repetitive inspections for cracking of the left- and right-hand side outboard chords of frame fittings and failsafe straps at a certain station around two fasteners, and repair if any cracking is found. AD 2019–20–02 was prompted by reports of cracking in this area found on multiple Boeing Model 737–800 airplanes during a passenger-to-freighter conversion. The FAA issued AD 2019–20–02 to address this cracking, which could result in failure of a Principal Structural Element (PSE) to sustain limit load. This condition could adversely affect the structural integrity of the airplane, and result in loss of control of the airplane.

Actions Since AD 2019–20–02 Was Issued

Since AD 2019–20–02 was issued, the FAA has reviewed inspection findings submitted as required by paragraph (h) of AD 2019–20–02. From these findings, four airplanes have been identified to have cracking outside the initial inspection area. Based on these findings, the FAA has determined that the inspection area must be expanded from the area around two fasteners to the area around eight fasteners on both the left- and right-hand sides (which includes the area around the two fasteners inspected as required by AD 2019–20–02) to adequately address the unsafe condition.

The FAA has taken all inspection findings into consideration in assessing the merits of the existing regulatory action. The findings support that the initial inspection thresholds are adequate to ensure fleet safety. All airplane structure has an initial period when fatigue cracking is not anticipated. Beyond this period, structural safety can be maintained with a damage-tolerant design and inspection program. The compliance times for the initial and repetitive inspections as specified in paragraph (g) of AD 2019–20–02 were determined using standard damage tolerance principles. Residual strength is the load that damaged (cracked) structure can still carry without failing. Structure is damage-tolerant if damage that may occur can be detected and repaired before the residual strength capability falls below the minimum residual strength required under Title 14 Code of Federal Regulations (14 CFR) 25.571.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Multi-Operator Message MOM–MOM–19–0623–01B, dated November 5, 2019. This service information describes procedures for repetitive detailed inspections for cracking of the left- and right-hand side outboard chords of the station (STA) 663.75 frame fittings and failsafe straps around eight fasteners adjacent to the stringer S–18A straps.

This AD also requires Boeing Multi-Operator Message MOM–MOM–19–0536–01B, dated September 30, 2019, which the Director of the Federal Register approved for incorporation by reference as of October 3, 2019 (84 FR 52754, October 3, 2019).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is issuing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires repetitive inspections for cracking of the left- and right-hand side outboard chords of the STA 663.75 frame fittings and failsafe straps around eight fasteners adjacent to the stringer S–18A straps. This AD also requires repair of all cracking using a method approved by the FAA or The Boeing Company Organization Designation Authorization (ODA). Accomplishing the initial inspection required by paragraph (i) of this AD terminates the inspections originally required by AD 2019–20–02 and retained in this AD. This AD also requires sending a report of all results of the initial inspections to Boeing.

Interim Action

The FAA considers this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Similarly, Section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because cracking in the STA 663.75 frame fitting outboard chords and failsafe straps around eight fasteners adjacent to the stringer S–18A straps could result in failure of a PSE to sustain limit load. This condition could adversely affect the structural integrity of the airplane and result in loss of control of the airplane. The compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule.

Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0866 and Product Identifier 2019–NM–174–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this final rule.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,911 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained action from AD 2019–20–02).	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.	$162,435 per inspection cycle.
Reporting (retained action from AD 2019–20–02).	1 work-hour × $85 per hour = $85	0	$85	$162,435.
Inspection (new action)	1 work-hour(s) × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle.	$162,435 per inspection cycle.
Reporting (new action)	1 work-hour × $85 per hour = $85	0	$85	$162,435.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2019–20–02, Amendment 39–19755 (84 FR 52754, October 3, 2019), and adding the following new AD:

2019–22–10 The Boeing Company: Amendment 39–19789; Docket No. FAA–2019–0866; Product Identifier 2019–NM–174–AD.

(a) Effective Date

This AD is effective November 13, 2019.

(b) Affected ADs

This AD replaces AD 2019–20–02, Amendment 39–19755 (84 FR 52754, October 3, 2019) (''AD 2019–20–02'').

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking discovered in the left- and right-hand side outboard chords of the station (STA) 663.75 frame fittings and failsafe straps adjacent to the stringer S–18A straps and a determination that the area inspected by AD 2019–20–02 needs to be expanded. The FAA is issuing this AD to address cracking in the STA 663.75 frame fitting outboard chords and failsafe straps adjacent to the stringer S–18A straps, which could result in failure of a Principal Structural Element (PSE) to sustain limit load. This condition could adversely affect the structural integrity of the airplane and result in loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspection and Corrective Action, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–20–02, with no changes. At the earlier of the times specified in paragraphs (g)(1) and (2) of this AD: Do a detailed inspection for cracking of the left- and right-hand side outboard chords of the STA 663.75 frame fittings and failsafe straps adjacent to the stringer S–18A straps, in accordance with Boeing Multi-Operator Message MOM–MOM–19–0536–01B, dated September 30, 2019. If any crack is found, repair before further flight using a method approved in accordance with the procedures specified in paragraph (n) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles until the initial inspection required by paragraph (i) of this AD is done.

(1) Prior to the accumulation of 30,000 total flight cycles, or within 7 days after October 3, 2019 (the effective date of AD 2019–20–02), whichever occurs later.

(2) Prior to the accumulation of 22,600 total flight cycles, or within 1,000 flight cycles after October 3, 2019 (the effective date of AD 2019–20–02), whichever occurs later.

(h) Retained Reporting Requirement With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2019–20–02, with no changes. At the applicable time specified in paragraph (h)(1) or (2) of this AD, submit a report of all findings, positive and negative, of the initial inspection required by paragraph (g) of this AD. Submit the report in accordance with Boeing Multi-Operator Message MOM–MOM–19–0536–01B, dated September 30, 2019.

(1) If the inspection was done on or after October 3, 3019 (the effective date of AD 2019–20–02): Submit the report within 3 days after the inspection.

(2) If the inspection was done before October 3, 2019 (the effective date of AD 2019–20–02): Submit the report within 3 days after October 3, 2019.

(i) New Inspection and Corrective Action

Except as specified in paragraph (j) of this AD: At the applicable initial compliance time specified in Table 1 of ''Ref F'' of Boeing Multi-Operator Message MOM–MOM–19–0623–01B, dated November 5, 2019, do a detailed inspection of the left- and right-hand side outboard chords of the STA 663.75 frame fittings and failsafe straps around eight fasteners adjacent to the stringer S–18A straps, in accordance with Boeing Multi-Operator Message MOM–MOM–19–0623–01B, dated November 5, 2019. If any crack is found, repair before further flight using a method approved in accordance with the procedures specified in paragraph (n) of this AD. Repeat the inspection thereafter at the intervals specified in Table 1 of ''Ref F'' of Boeing Multi-Operator Message MOM–MOM–19–0623–01B, dated November 5, 2019. Accomplishing the initial inspection required by this paragraph terminates the inspections required by paragraph (g) of this AD.

(j) Exception to Service Information Specifications

Where Table 1 of ''Ref F'' of Boeing Multi-Operator Message MOM–MOM–19–0623–01B, dated November 5, 2019, uses the phrase ''the original issue date of MOM–MOM–19–0623–01B,'' this AD requires using ''the effective date of this AD.''

(k) New Reporting Requirement

At the applicable time specified in paragraph (k)(1) or (2) of this AD, submit a report of all findings, positive and negative, of the initial inspection required by paragraph (i) of this AD. Submit the report in accordance with Boeing Multi-Operator Message MOM–MOM–19–0623–01B, dated November 5, 2019.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 3 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 3 days after the effective date of this AD.

(l) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the airplane can be repaired if any crack is found, provided the Manager, Seattle ACO Branch, FAA, concurs with issuance of the special flight permit. Send requests for concurrence by email to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(m) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD; the nature and extent of confidentiality to be provided, if any. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (o) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2019–20–02 are approved as AMOCs for the corresponding provisions of this AD.

(o) Related Information

For more information about this AD, contact Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@faa.gov.*

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on November 13, 2019.

(i) Boeing Multi-Operator Message MOM–MOM–19–0623–01B, dated November 5, 2019.

(ii) [Reserved]

(4) The following service information was approved for IBR on October 3, 2019 (84 FR 52754, October 3, 2019).

(i) Boeing Multi-Operator Message MOM–MOM–19–0536–01B, dated September 30, 2019.

(ii) [Reserved]

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(6) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on November 7, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24716 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0686; Airspace Docket No. 18–ANM–10]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, and Establishment of Class E Airspace; Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace, Class E surface area airspace, and establishes Class E airspace extending upward from 700 feet above the surface at Felts Field Airport, Spokane, WA. After a biennial review, the FAA found it necessary to amend existing airspace and establish new controlled airspace for the safety and management of Instrument Flight Rules (IFR) operations at this airport. This action makes a minor editorial change to the airspace designation and replaces the outdated term Airport/Facility Directory with the term Chart Supplement. The Class D and Class E surface areas are extended to the Spokane International Airport Class C surface area on the southwest and expanded 1.2 miles on the northeast. The Class E airspace extending upward from 700 feet above the surface is established to provide airspace for aircraft transitioning to and from Felts Field airport.

DATES: Effective 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591 telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E surface area airspace and establishes Class E airspace extending upward from 700 feet above the earth at Felts Field, Spokane, WA, to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 29431; June 24, 2019) for Docket No. FAA–2018–0686 to modify Class D airspace and Class E surface area airspace and establish Class E airspace extending upward from 700 feet above the surface at Felts Field Airport, Spokane, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019 and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace, and Class E surface area airspace at Felts Field Airport, Spokane, WA, by expanding an area that will extend to the Spokane International Airport Class C surface area on the southwest and expanded 1.2 miles on the northeast; and Establishing Class E airspace extending upward from 700 feet above the surface within a 4-mile radius of Felts Field Airport, Spokane, WA, and within 1.8 miles each side of the 53° bearing from the airport extending from the 4-mile radius to 6.5 miles from the airport, and within 3.0 miles each side of the 75° bearing from the point in space at (lat. 47°37′46″ N, long. 117°26′30″ W), extending 12.6 miles from the point in space coordinates. After a biennial review of the airspace, the FAA found modification of the airspace necessary for the safety and management of aircraft departing and arriving under IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative

comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Spokane, WA [Amended]

Felts Field, WA
(Lat. 47°40′59″ N, long. 117°19′21″ W)
Felts Field, Point In Space Coordinates
(Lat. 47°39′08″ N, long. 117°18′46″ W)
Felts Field, Point In Space Coordinates
(Lat. 47°41′36″ N, long. 117°22′43″ W)

That airspace extending upward from the surface to and including 4,500 feet MSL within a 4-mile radius of Felts Field Airport and that airspace 1.2 miles each side of the 53° bearing from the airport extending from the 4-mile radius to 5.2 miles from the Felts Field airport, and that airspace from a line 1.5 miles northwest and parallel to a line along the 224° bearing from a point in space lat. 47°41′36″ N, long. 117°22′43″ W, to a line 2.1 miles south and parallel to a line along the 258° bearing from a point in space lat. 47°39′08″ N, long. 117°18′46″ W, extending from the Felts Field's 4-mile radius to 6.5 miles from the Felts Field Airport, excluding that airspace in the Spokane International Airport Class C surface area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Spokane, WA [Amended]

Felts Field, WA
(Lat. 47°40′59″ N, long. 117°19′21″ W)
Felts Field, Point In Space Coordinates
(Lat. 47°39′08″ N, long. 117°18′46″ W)
Felts Field, Point In Space Coordinates
(Lat. 47°41′36″ N, long. 117°22′43″ W)

That airspace extending upward from the surface within a 4-mile radius of Felts Field Airport and that airspace 1.2 miles each side of the 53° bearing from the airport extending from the 4-mile radius to 5.2 miles from the Felts Field airport, and that airspace from a line 1.5 miles northwest and parallel to a line along the 224° bearing from a point in space lat. 47°41′36″ N, long. 117°22′43″ W, to a line 2.1 miles south and parallel to a line along the 258° bearing from a point in space lat. 47°39′08″ N, long. 117°18′46″ W, extending from the Felts Field's 4-mile radius to 6.5 miles from the Felts Field Airport, excluding that airspace in the Spokane International Airport Class C surface area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA E5 Spokane, WA [New]

Felts Field, WA
(Lat. 47°40′59″ N, long. 117°19′21″ W)
Felts Field, Point In Space Coordinates
(Lat. 47°37′46″ N, long. 117°26′30″ W)

That airspace extending upward from 700 feet above the ground within a 4-mile radius of Felts Field Airport, and that airspace 1.8 miles each side of the 53° bearing from the airport extending from the 4-mile radius to 6.5 miles from the Felts Field airport, and that airspace 3.0 miles each side of the 75° bearing from point in space at (Lat. 47°37′46″ N, long. 117°26′30″ W), extending 12.6 miles from the point in space, excluding that airspace in the Spokane International Airport Class C Airspace.

Issued in Seattle, Washington, November 4, 2019.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–24574 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 191105–0076]

RIN 0694–AH85

Addition of Entities to the Entity List, Revision of an Entry on the Entity List, and Removal of Entities From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding twenty-two entities, under a total of thirty-two entries, to the Entity List. These twenty-two entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These entities will be listed on the Entity List under the destinations of Bahrain, France, Iran, Jordan, Lebanon, Oman, Pakistan, Saudi Arabia, Senegal, Syria, Turkey, the United Arab Emirates (U.A.E.) and the United Kingdom (U.K.). This rule also modifies one existing entry on the Entity List under the destination of Pakistan. Finally, this rule removes three entities from the Entity List; one under the destination of Pakistan, one under the destination of Singapore and one under the destination of the U.A.E. The removals are made in connection with requests for removal that BIS received pursuant to sections of the EAR used for requesting removal or modification of an Entity List entry, and the subsequent review by the End-User Review Committee of the information provided in the requests.

DATES: This rule is effective November 13, 2019.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the Export Administration Regulations (EAR)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730–774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be considered contrary to the national security or foreign policy interests of the United States.

This rule implements the decision of the ERC to add twenty-two entities, under a total of thirty-two entries (*i.e.,* some of the entities are identified in more than one destination), to the Entity List. The twenty-two entities being added are located in Bahrain, France, Iran, Jordan, Lebanon, Oman, Pakistan, Saudi Arabia, Senegal, Syria, Turkey, the U.A.E. and the U.K. The ERC made the decision to add each of the twenty-two entities described below under the standard set forth in § 744.11(b) of the EAR.

The ERC determined to add Dart Aviation to the Entity List under the destinations of France, Iran, Senegal and the U.K., because this entity has transshipped U.S.-origin items to sanctioned destinations and entities without the required authorizations.

The ERC determined to add Safe Technical Supply Co., LLC to the Entity List under the destinations of Oman, Saudi Arabia and the UAE, as this entity has been involved in the proliferation of unsafeguarded nuclear activities.

The ERC determined to add Marzoghi, Ltd. and Mohammed Marzoghi to the Entity List under the destination of Bahrain; to also add Mohammed Marzoghi under the destination of the U.A.E. and to add Abdullah Poor Nagar, Al Ras Gate General Trading, Bestway Line FZCO, and Khaled Al Taher under the destination of the U.A.E. as well; and to add Eslem Global Pazarlama Sanayi ve Ticaret and Mehmet Yari under the destination of Turkey. The ERC determined that these eight entities knowingly divert U.S. origin items to Iran without authorization and are therefore unreliable recipients of U.S.-origin goods and technology.

The ERC determined to add to the Entity List EDO–ELEMED, Elemed Liban, Rahal Corporation for Technology and Medical Supplies, and Rahal Establishment under the destinations of Lebanon and Syria, and to add The Jordanian Lebanese Company for Laboratory Instruments S.A.L. under the destination of Jordan. The ERC determined that these five entities have been involved in providing material support to chemical and biological weapons activity in Syria.

The ERC determined to add Engineering Equipment (Private) Limited, Fabcon International, Muhandis Corporation, Paktech Engineers, and Rohtas Enterprise to the Entity List under the destination of Pakistan. The ERC determined these five entities have been involved in supporting unsafeguarded nuclear activities.

Finally, the ERC determined to add Techlink Communications and Techlinks, which were previously erroneously identified as aliases for Technology Links Pvt. Ltd., to the Entity List in individual entries under the destination of Pakistan. For more information on the original appearance of these entities as aliases on the Entity List, see 83 FR 44824 (September 4, 2018). As discussed further below, Technology Links Pvt. Ltd. is being removed from the Entity List pursuant to this rule.

Pursuant to § 744.11(b), the ERC determined that the conduct of the above-described twenty-two entities raises sufficient concerns that prior review of exports, reexports, or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to these entities, will enhance BIS's ability to prevent violations of the EAR. For the twenty-two entities added to the Entity List in this final rule, BIS imposes a license requirement for all items subject to the EAR and a license review policy of a presumption of denial. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

For the reasons described above, this final rule adds the following twenty-two entities, under a total of thirty-two entries, to the Entity List:

Bahrain

- Marzoghi, Ltd.; *and*
- Mohammed Marzoghi.

France

- Dart Aviation, including four aliases (Dart Aviation Technics, Dart Aviation Marlbrine S.A.R.L., MBP Trading Ltd., *and* Sari IEAS).

Iran

- Dart Aviation, including four aliases (Dart Aviation Technics, Dart Aviation Marlbrine S.A.R.L., MBP Trading Ltd., *and* Sari IEAS).

Jordan

- The Jordanian Lebanese Company for Laboratory Instruments S.A.L.

Lebanon

- EDO–ELEMED, including two aliases (EDO ELEMED *and* EDO/ELEMED);
- Elemed Liban;
- Rahal Corporation for Technology and Medical Supplies; *and*
- Rahal Establishment.

Oman

- Safe Technical Supply Co., LLC, including three aliases (Safe Technical Equipment Services LLC; Safe Technical; *and* SafeTech).

Pakistan

- Engineering Equipment (Private) Limited;
- Fabcon International;
- Muhandis Corporation;
- Paktech Engineers;
- Rohtas Enterprises;
- Techlink Communications; *and*
- Techlinks.

Saudi Arabia

- Safe Technical Supply Co., LLC, including three aliases (Safe Technical Equipment Services LLC; Safe Technical; *and* SafeTech).

Senegal

- Dart Aviation, including four aliases (Dart Aviation Technics, Dart Aviation Marlbrine S.A.R.L., MBP Trading Ltd., *and* SARL IEAS).

Syria

- EDO–ELEMED, including two aliases (EDO ELEMED *and* EDO/ELEMED);
- Elemed Liban;
- Rahal Corporation for Technology and Medical Supplies; *and*
- Rahal Establishment.

Turkey

- Eslem Global Pazarlama Sanayi ve Ticaret; *and*
- Mehmet Yari.

United Arab Emirates

- Abdullah Poor Nagar;
- Al Ras Gate General Trading;
- Bestway Line FZCO;
- Khaled Al Taher;
- Mohammed Marzoghi; *and*
- Safe Technical Supply Co., LLC, including three aliases (Safe Technical Equipment Services LLC; Safe Technical; *and* SafeTech).

United Kingdom

- Dart Aviation, including four aliases (Dart Aviation Technics, Dart Aviation Marlbrine S.A.R.L., MBP Trading Ltd., *and* Sari IEAS).

Modification to an Entry on the Entity List

This final rule implements the decision of the ERC to modify one existing entry on the Entity List, under the destination of Pakistan. Specifically, this rule implements the decision of the ERC to modify the existing entry for Mushko Electronics Pvt. Ltd., which was added to the Entity List under the destination of Pakistan on March 22, 2018 (83 FR 12479). BIS is modifying the existing entry by changing the License Requirement from ''All Items Subject to the EAR (See § 744.11 of the EAR)'' to ''Items on the Commerce Control List (CCL) only.'' In addition, BIS is modifying an existing address for Mushko Electronics Pt. Ltd. to correct the spelling of ''Boulevad'' to ''Boulevard.''

Removals From the Entity List

This final rule implements the decision of the ERC to remove from the Entity List the following entities: Technology Links Pvt. Ltd., an entity located in Pakistan; All Industrial Manufacturing (AIM) Pte Ltd., an entity located in Singapore; and Eurotech DMCC, an entity located in the U.A.E. Technology Links Pvt. Ltd. was added to the Entity list on September 4, 2018 (83 FR 44824); All Industrial Manufacturing (AIM) Pte Ltd. was added to the Entity List on September 26, 2018 (83 FR 48534); and Eurotech DMCC was added to the Entity List on January 26, 2018 (83 FR 3580). The ERC decided to remove these three entities based upon their requests for removal and the information that BIS received from them as part of their removal requests pursuant to § 744.16 of the EAR, and the subsequent review that the ERC conducted in accordance with procedures described in Supplement No. 5 to part 744.

For the reasons described above, this final rule implements the decision to remove the following three entities, under the destinations of Pakistan, Singapore and the U.A.E., respectively, from the Entity List:

Pakistan

- Technology Links Pvt. Ltd.

Singapore

- All Industrial Manufacturing (AIM) Pte Ltd.

United Arab Emirates

- Eurotech DMCC.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on November 13, 2019, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (previously, 50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding

the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2018, 83 FR 47799 (September 20, 2018); Notice of November 8, 2018, 83 FR 56253 (November 9, 2018).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under BAHRAIN by adding in alphabetical order two Bahraini entities ''Marzoghi, Ltd.'' and ''Mohammed Marzoghi'';

■ b. Under FRANCE by adding in alphabetical order one French entity ''Dart Aviation'';

■ c. Under IRAN by adding in alphabetical order one Iranian entity ''Dart Aviation'';

■ d. Under JORDAN by adding in alphabetical order one Jordanian entity ''The Jordanian Lebanese Company for Laboratory Instruments S.A.L'';

■ e. Under LEBANON by adding in alphabetical order four Lebanese entities ''EDO–ELEMED,'' ''Elemed Liban,'' ''Rahal Corporation for Technology and Medical Supplies,'' and ''Rahal Establishment'';

■ f. Under OMAN by adding in alphabetical order one Omani entity ''Safe Technical Supply Co., LLC'';

■ g. Under PAKISTAN:

■ i. By adding in alphabetical order three Pakistani entities ''Engineering Equipment (Private) Limited,'' ''Fabcon International,'' and ''Muhandis Corporation'';

■ ii. By revising one Pakistani entity ''Mushko Electronics Pvt. Ltd.'';

■ iii. By adding in alphabetical order four Pakistani entities ''Paktech Engineers,'' ''Rohtas Enterprises,'' ''Techlink Communications,'' and ''Techlinks''; and

■ iv. By removing one Pakistani entity ''Technology Links Pvt. Ltd.'';

■ h. Under SAUDI ARABIA by adding in alphabetical order one Saudi Arabian entity ''Safe Technical Supply Co., LLC'';

■ i. By adding in alphabetical order a heading for SENEGAL and one Senegalese entity ''Dart Aviation'';

■ j. Under SINGAPORE by removing one entity ''All Industrial Manufacturing (AIM) Pte Ltd.'';

■ k. Under SYRIA by adding in alphabetical order four Syrian entities ''EDO–ELEMED,'' ''Elemed Liban,'' ''Rahal Corporation for Technology and Medical Supplies,'' and ''Rahal Establishment'';

■ l. Under TURKEY by adding in alphabetical order two Turkish entities ''Eslem Global Pazarlama Sanayi ve Ticaret'' and ''Mehmet Yari'';

■ m. Under UNITED ARAB EMIRATES:

■ i. By adding in alphabetical order three Emirati entities ''Abdullah Poor Nagar,'' ''Al Ras Gate General Trading,'' and ''Bestway Line FZCO'';

■ ii. By removing one Emirati entity ''Eurotech DMCC''; and

■ iii. By adding in alphabetical order three Emirati entities ''Khaled Al Taher,'' ''Mohammed Marzoghi,'' and ''Safe Technical Supply Co., LLC''; and

■ n. Under UNITED KINGDOM by adding in alphabetical order one British entity ''Dart Aviation''.

The additions and revision read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
BAHRAIN	*	*	*	*
	Marzoghi Ltd., 12-20 Albaba Building 119 Road 1507, Manama, Bahrain.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	Mohammed Marzoghi, 12-20 Albaba Building 119 Road 1507, Manama, Bahrain. (See also addresses in the United Arab (Emirates).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	*	*	*	*
FRANCE	*	*	*	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Dart Aviation, a.k.a., the following four aliases: —Dart Aviation Technics; —Dart Aviation Marlbrine S.A.R.L.; —MBP Trading Ltd.; *and* —Sari IEAS. 3, rue de la Janaie—ZA Yves Burgot 35400 Saint Malo I&V, France. (See also addresses under Iran, Senegal and the United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	* *	*	*	* *
IRAN	* *	*	*	* *
	Dart Aviation, a.k.a., the following four aliases: —Dart Aviation Technics; —Dart Aviation Marlbrine S.A.R.L.; —MBP Trading Ltd.; and —Sari IEAS. East Unit, 1st Floor—Building No. 1 Solhparvar Dead—Bimeh 5th Karaj Makhsous Ave. Tehran, Iran. (See also addresses under France, Senegal and the United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	* *	*	*	* *
JORDAN	* *	*	*	* *
	The Jordanian Lebanese Company for Laboratory Instruments S.A.L., Shmesani, Bldg. No 16 ground floor, Amman, 63 Jordan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	* *	*	*	* *
LEBANON	* *	*	*	* *
	EDO-ELEMED, A.K.A., the following two aliases: —EDO ELEMED, a.k.a., the following two aliases: —EDO ELEMED; *and* —EDO ELEMED St. Nicolas Street, Bldg. #5—Ba'bda, Beirut, Lebanon; *and* Ashrafiyeh, St. Louis Street, Abou Jawdeh Bldg. 2 Floor, Beirut, Lebanon. (See also addresses under Syria)	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	*	* *
	Elemed Liban, St. Nicolas Street, Bldg. #5—Ba'abda, Beirut, Lebanon. (See also addresses under Syria)	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	*	* *
	Rahal Corporation for Technology and Medical Supplies, St. Nicolas Street, Bldg. #5—Ba'abda, Beirut, Lebanon. (See also addresses under Syria)	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	Rahal Establishment, St. Nicolas Street, Bldg. #5—Ba'abda, Beirut, Lebanon. (See also addresses under Syria)	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	* *	*	*	* *
OMAN	* *	*	*	* *

Country	Entity	License requirement	License review policy	Federal Register citation
	Safe Technical Supply Co., LLC, a.k.a., the following three aliases: —Safe Technical; *and* —Safe Tech. Way # 2926, Al Habib Building #65, Rex Road RUWI, Sultanate of Oman; *and* P.O. Box: 926, PC 114, Jibroo, Oman. (See also addresses under Saudi Arabia and the United Arab Emirates).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
PAKISTAN	* *	*	* *	*
	Engineering Equipment (Private) Limited, 26-D Kashmir Plaza, Jinnah Avenue, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Fabcon International, 359 G-4, Johar Town, Lahore, Pakistan; *and* 227 Sunder Industrial Estate, Sunder-Raiwind Road, Lahore, Pakistan and MZ-9 Central Plaza, Barkat Market, Lahore, Pakistan *and* MZ-9, Central Plaza Barket Market, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Muhandis Corporation, No. 283, Kahuta Triangle Industrial Area, Islamabad 44000 Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	Mushko Electronics Pvt. Ltd., Safa House Address, Abdullah Haroon Road, Karachi Pakistan; *and* Victoria Chambers, Abdullah Haroon Road, Saddar Town, Karachi, Pakistan; *and* Office No. 3&8, First Floor, Center Point Plaza, Main Boulevard, Gullberg-III, Lahore, Pakistan; 26-D Kashmir Plaza East, Jinnah Avenue, Blue Area, Islamabad, Pakistan; *and* 68-W, Sama Plaza, Blue Area Sector G-7, Islamabad, Pakistan.	For all items on the Commerce Control List (CCL) only.	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Paktech Engineers, Suite 8-A-2 2nd Floor Islam Plaza G-9 Merkaz, Islamabad, Pakistan 44000.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Rohtas Enterprises, Flat No. 8, Third Floor, Green Valley Apartments, Behind Faiz ul]slam Complex, Faizabad-Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019. Presumption of denial.
	* *	*	* *	*
	Techlink Communications, 111B Block No. 2, Mezzanine Floor, Khalid bin Waleed Road, P.E.C.H.S., Karachi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR 44824, 9/4/18. 83 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	Techlinks, Suite 3, 2nd Floor, Kashmir Center, 632/G-1 Market Johar Town, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR 44824, 9/4/18. 84 FR [INSERT FR PAGE NUMBER], November 13, 2019.

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
SAUDI ARABIA	Safe Technical Supply Co., LLC, a.k.a., the following three aliases: —Safe Technical Equipment Services LLC; —Safe Technical; *and* —SafeTech. Ad Dakhal Mahdud Subdivision, PO Box 30305, Jubail 31951, Saudi Arabia. (See also addresses under Oman and the United Arab Emirates).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	* *	*	* *	*
SENEGAL	Dart Aviation, a.k.a., the following four aliases: —Dart Aviation Technics; —Dart Aviation Marlbrine S.A.R.L.; —MBP Trading Ltd.; *and* —SARL IEAS. CID Aéroport International Léopold Sedar Senghor Dakar Yoff Senegal. (See also addresses under France, Iran and the United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	* *	*	* *	*
SYRIA	* *	*	* *	*
	EDO–ELEMED, a.k.a., the following two aliases: —EDO ELEMED; *and* —EDO/ELEMED. 16 Parliament Street—Salhieh, Diab Building, Damascus, Syria; *and* P.O. Box 8126 Damascus Syria. (See also addresses under Lebanon).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Elemed Liban, 16 Parliament Street—Salhieh, Diab Building, Damascus, Syria; *and* P.O. Box 8126 Damascus Syria. (See also address under Lebanon).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Rahal Corporation for Technology and Medical Supplies, 16 Parliament Street—Salhieh, Diab Building, Damascus, Syria; *and* P.O. Box 8126 Damascus Syria. (See also address under Lebanon)	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	Rahal Establishment, 16 Parliament Street—Salhieh, Diab Building, Damascus, Syria; *and* P.O. Box 8126 Damascus Syria. (See also address under Lebanon)	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
*	* *	*	* *	*
TURKEY	* *	*	* *	*
	Eslem Global Pazarlama Sanayi ve Ticaret, PO Box 34122, Sultanahmet, Fetih, Istanbul, Turkey; *and* Divanyolu Caddesi No: 15/408 Sultanahmet Fatih Istanbul, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Mehmet Yari, P.O. Box 34122, Sultanahmet, Fetih, Istanbul, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
UNITED ARAB EMIRATES.	* *	*	* *	*
	Abdullah Poor Nagar, P.O. Box 64705, Number 20, Al Ras Street, The Gold Sough, Diera, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Al Ras Gate General Trading, P.O. Box 64705, Number 20, Al Ras Street, The Gold Sough, Diera, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Bestway Line FZCO, TPOFCB–06WS10, Jebal Ali Free Zone, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Khaled Al Taher, TPOFCB–06WS10, Jebal Ali Free Zone, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*
	Mohammed Marzoghi, TPOFCB–06WS10, Jebal Ali Free Zone, Dubai, U.A.E.; *and* C21 Gate No 4, Ajman, U.A.E. (see also address under Bahrain).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER].
	* *	*	* *	*
	Safe Technical Supply Co., LLC, a.k.a., the following three aliases: —Safe Technical Equipment Services LLC; —Safe Technical; *and* —SafeTech. Showroom No. 6, Jadaf Ship Docking Yard, Gate No. 1, Al Khail Road, P.O. Box 4832, Dubai, U.A.E.; *and* Shed No: 138–A, Dubai Maritime City, Dubai, U.A.E.; *and* Office No. 3, Mezzanine Floor, Saleh Al Menhali Bldg., Mohammed bin Zayed City, PO Box 30560, Abu Dhabi, U.A.E. (See also addresses under Oman and Saudi Arabia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019].
*	* *	*	* *	*
UNITED KINGDOM.	* *	*	* *	*
	Dart Aviation, a.k.a., the following four aliases: —Dart Aviation Technics; —Dart Aviation Marlbrine S.A.R.L.; —MBP Trading Ltd.; *and* —Sari IEAS. Unit 7 Minton Distribution Park, London Road, Amesbury SP4 7RT Wiltshire, London, United Kingdom; *and* Martlet House E1, Yeoman Gate Yeoman Way Worthing West Sussex BN13 3QZ. (See also addresses under France, Iran and Senegal).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR [INSERT FR PAGE NUMBER], November 13, 2019.
	* *	*	* *	*

Dated: November 6, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2019–24635 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Clarification of Procedures for the Sanctuary Nomination Process

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notification.

SUMMARY: The Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) is clarifying procedures for the Sanctuary Nomination Process (SNP) established in 2014. Specifically, ONMS informs the public of how it intends to treat nominations that have been accepted to the inventory of sites for potential designation as national marine sanctuaries and have been on the inventory for five years.

DATES: The procedures for the Sanctuary Nomination Process set out in this document are effective on November 13, 2019.

ADDRESSES: Jessica Kondel, Policy and Planning Division Chief, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910; 240–533–0647; *jessica.kondel@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Kondel, Policy and Planning Division Chief, 240–533–0647, *jessica.kondel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 2014, NOAA issued a final rule re-establishing the process by which communities may submit nominations of areas of the marine and Great Lakes environment for NOAA to consider for designation as national marine sanctuaries (79 FR 33851). The final rule, which was promulgated at 15 CFR part 922, subpart B, describes the process for submitting nominations, known as the Sanctuary Nomination Process (SNP), describes the national significance criteria and management considerations that NOAA applies to evaluate nominations for inclusion in an inventory of areas that may be considered for future designation as national marine sanctuaries, and promulgates the regulations necessary for implementing the nomination process.

The preamble to the final rule establishing the SNP states that: ''[i]f NOAA takes no designation action on a nomination in the inventory, the nomination will expire after five years from the time it is accepted to the inventory.'' 79 FR 33851, 33855. In the preamble, NOAA also acknowledged that its implementation of the review process may evolve over time, in which case it would notify the public of any such process changes. See 79 FR 33851, 33855.

The intent behind the five-year expiration policy was to ensure that the inventory contains nominations that remain relevant based on original conditions. As the inventory of sanctuary nominations matures, some of the nominations may reach the five-year mark from the time they were accepted to the inventory without NOAA initiating the designation process. If a nomination remains responsive to the SNP criteria and considerations described in the final rule after five years, NOAA believes it may be appropriate to allow it to remain on the inventory for another five years.

To guide NOAA's determination of whether a nomination should remain on the inventory after five years, NOAA has identified a process by which the Agency will consider the continuing viability of nominations that are nearing the five-year expiration mark. With this document, NOAA is announcing that it intends to use the following process to evaluate a nomination as it approaches its five-year anniversary on the inventory:

1. NOAA will send a letter to the original nominating individual/party (''nominator'') at or around the four and a half-year mark of its time on the inventory to give the opportunity for the nominator to provide updates (such as more current nomination information as described in the 2014 final rule under ''Step 1: Nomination Development'' and ''Step 2: Nomination Submission'', and/or new letters of support if available).

2. In addition to any response from the nominator, NOAA will update any relevant information on the nomination. Particular attention will be given to new public and agency/scientific information about the national significance of natural or cultural resources, as well as changes (increases or decreases) in the threats to the resources originally proposed for protection, and/or changes to the management frameworks in the area. In addition, NOAA will assess the level of community-based support for the nomination from a broad range of interests, and if that support has increased or decreased since the time of nomination. This information gathering on any or all of the national significance criteria and management considerations could take place through a public workshop or via a request by NOAA for written public comments.

3. NOAA will review the updated nomination against the SNP national significance criteria and management considerations to assess if the nomination is still accurate and relevant.

Following this public input and internal analysis, ONMS staff will provide the ONMS Director with a recommendation to maintain the nomination in the inventory, or remove it once the 5-year anniversary is reached. Whether removing or maintaining the nomination, NOAA would follow the same procedures for notifying the public as the ones followed when a nomination is submitted, including a letter to the nominator, a notice in the **Federal Register**, and posting information on ''*nominate.noaa.gov*''.

NOAA is not nominating or designating any new national marine sanctuaries with this action. Any designations resulting from the nomination process would be conducted by NOAA through a separate process, and within the public participation standards enacted by the National Marine Sanctuaries Act (NMSA) and the National Environmental Policy Act. NOAA will follow all standards and requirements identified in the NMSA and its implementing regulations when, in the future, it considers any nomination for designation.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2019–24577 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 57

[TD 9881]

RIN 1545–BN57

Electronic Filing of the Report of Health Insurance Provider Information

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending the Health Insurance Providers Fee regulations to require certain covered entities engaged in the business of providing health insurance for United States health risks to electronically file Form 8963, ''Report of Health Insurance Provider Information.'' These final regulations affect those entities.

DATES: *Effective Date.* These regulations are effective on November 13, 2019.

FOR FURTHER INFORMATION CONTACT: David Bergman, (202) 317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations in Title 26 of the Code of Federal Regulations under section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148, 124 Stat. 119 (2010), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA). The final regulations provide guidance on the annual fee imposed on covered entities engaged in the business of providing health insurance for United States health risks, and affect persons engaged in the business of providing health insurance for United States health risks.

On December 9, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–123829–16) in the **Federal Register**, 81 FR 89020, containing proposed regulations that would amend section 57.3(a)(2) of the Health Insurance Providers Fee regulations to provide that a covered entity (including a controlled group) reporting on a Form 8963 or corrected Form 8963 more than $25 million in net premiums written must electronically file the forms after December 31, 2017. Forms 8963 reporting $25 million or less in net premiums written are not required to be electronically filed. The proposed regulations also provided that if a Form 8963 or corrected Form 8963 is required to be filed electronically, any subsequent Form 8963 filed for the same fee year must also be filed electronically, even if the subsequently filed Form 8963 reports $25 million or less in net premiums written. In addition, the proposed regulations provided that a failure to electronically file would be treated as a failure to file for purposes of section 57.3(b).

No comments were received in response to the notice of proposed rulemaking. No public hearing was requested or held. This Treasury Decision adopts the proposed regulations with no substantive change other than the applicability date. The rationale provided in the Explanation of Provisions section of the notice of proposed rulemaking applies equally to these final regulations. The electronic filing requirement will begin in the 2020 fee year because the fee will not be collected in 2019.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. It is hereby certified that the electronic filing requirement would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The rule is expected to affect primarily larger entities because the electronic filing requirement is only imposed if the filer must report more than $25 million in net premiums. Small entities are unlikely to report more than $25 million in net premiums, and the rule contains a specific exemption from the electronic reporting requirement for covered entities that report $25 million or less in net premiums written. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 57

Health insurance, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 57 is amended to read as follows:

PART 57—HEALTH INSURANCE PROVIDERS FEE

■ **Paragraph 1.** The authority citation for 26 CFR part 57 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 57.3 is amended by revising paragraph (a)(2) to read as follows:

§ 57.3 Reporting requirements and associated penalties.

(a) * * *

(2) *Manner of reporting*—(i) *In general.* The IRS may provide rules in guidance published in the Internal Revenue Bulletin for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity.

(ii) *Electronic Filing Required.* Any Form 8963 (including corrected forms) filed pursuant to paragraph (a)(1) of this section and reporting more than $25 million in net premiums written must be filed electronically in accordance with the instructions to the form. If a Form 8963 or corrected Form 8963 is required to be filed electronically under this paragraph (a)(2)(ii), any subsequently filed Form 8963 filed for the same fee year must also be filed electronically. For purposes of § 57.3(b), any Form 8963 required to be filed electronically under this section will not be considered filed unless it is filed electronically.

* * * * *

■ **Par. 3.** Section 57.10 is amended by revising the section heading, paragraph (a) and adding paragraph (c) to read as follows:

§ 57.10 Applicability date.

(a) Except as provided in paragraphs (b) and (c) of this section, §§ 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

* * * * *

(c) Section 57.3(a)(2)(ii) applies to Forms 8963, including corrected Forms 8963, filed after December 31, 2019.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: October 29, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–24671 Filed 11–8–19; 4:15 pm]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ54

Veterans Healing Veterans Medical Access and Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern scholarships to certain health care professionals. This rulemaking implements the mandates of the VA MISSION Act of 2018 by establishing a pilot program to provide funding for the medical education of eligible veterans who are enrolled in covered medical schools.

DATES: This final rule is effective December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Marjorie A. Bowman, MD, Chief Academic Affiliations Officer, Office of Academic Affiliations (10X1), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9490. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on May 21, 2019, VA published a proposed rule, which proposed to amend its regulations that govern scholarships to certain health care professionals. 84 FR 22990. VA provided a 60-day comment period, which ended on July 22, 2019. We received 7 comments on the proposed rule.

On June 6, 2018, section 304 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, established a pilot program that would provide funding for medical education to 18 eligible veterans who enroll in covered medical schools. This is known as the Veterans Healing Veterans Medical Access and Scholarship Program (VHVMASP). For the VHVMASP, the VA MISSION Act of 2018 sets forth the eligibility criteria; the amount and types of available funding; established terms of an agreement to be entered into by the participant; as well as, the consequences for a breach in such agreement. This final rule establishes the regulations needed to carry out the VHVMASP. Immediately following title 38 of the Code of Federal Regulations (CFR) 17.612, we are adding a new undesignated center heading titled ''Veterans Healing Veterans Medical Access and Scholarship Program'' and add new §§ 17.613 through 17.618.

One commenter was in support of the proposed rule. The commenter stated that they commend the proposition of a program that allows those who have fought so selflessly for our country the opportunity to better themselves through education and then turn around and give back to fellow veterans. The commenter believes that the rule will not only be immensely powerful for the veterans that are able to have their medical education funded, but also for the large number of veterans that they will be able to help. We make no changes based on this comment.

Multiple commenters recommended that the program include more universities. In particular, a commenter stated that they understand that the pilot program is in its infancy, but recommends that more universities be included and more scholarships be granted as the program grows and progresses. Another commenter similarly stated that there needs to be more schools where the VHVMASP is provided since there is not even one covered school in every state that has a VA medical facility. This same commenter also stated that this is an amazing idea and maybe some other types of schooling should be included in the VHVMASP, such as law school and drug and alcohol training for counseling, as this is a big area of issues for veterans. Another commenter also stated that the program should not be limited to these six schools, but should be allowed to be available at any accredited medical school, for example, Harvard, Wisconsin, or the University of California at San Francisco. VA understands that the VHVMASP is limited. Section 304 of the VA MISSION Act of 2018 limits the VHVMASP to the nine covered medical schools and to provide funding specifically for medical education. VA does not have the authority to expand the program to additional medical schools or to expand the program to degrees that do not lead to a medical education. We are not making any changes based on these comments.

Multiple commenters also raised concerns about the limitation that a veteran is only eligible if discharged within the past ten years. A commenter questioned why the proposed rule stated that the veterans need to have only been out of the military for no more than ten years. Another commenter suggested that VA should reconsider and drop the within ten-year requirement because this requirement serves veterans to no benefit except to limit and disqualify a number of veterans who would be interested in this program. This commenter stated that the program is already extremely limited because it is a pilot program and that there also seems to be no obvious benefit to VA except cutting out applicants for no good reason. The commenter added that if the limitation targeted older veterans less likely to complete the program it might be justifiable, but a requirement of having to have served within ten years does not target the age of the applicant. Also, an applicant could have been any age when retiring or being discharged from service. Lastly, the commenter stated that the limitation does not seem justified and should be reconsidered or VA should consider adding exceptions to this portion of the rule. Another commenter similarly stated that narrowing this program down to only veterans who have been out of the armed forces for a period of no less than ten years is a disservice to thousands of veterans. Several commenters stated that the current proposal allows a veteran out of the military for four years with a general discharge (or perhaps even a bad conduct discharge) to be eligible for this scholarship while a veteran with an honorable discharge who has been working as a nurse for ten years and wishes to take advantage of this program and go to medical school would not be eligible. The commenters indicated that at a minimum, there should be an exception to the ten-year rule for honorably discharged veterans or veterans should not be allowed to count time using the GI Bill or Vocational Rehabilitation against them (*i.e.:* if a veteran has been out of the military for 12 years but five years of that was spent using GI Bill or Vocational Rehabilitation, for this program VA should allow the veteran to subtract those five years from the 12). A commenter added that given that this scholarship is limited to two students per school, there is no burden to

removing the ten-year requirement, VA saves no money capping it out at ten-years. A commenter stated that the ten-year limitation should be extended to at least 15 years. The commenter indicated that someone who leaves the military at 24 could be engaged in graduate education at 39 and contribute to a supply of veteran physicians.

VA acknowledges that the VHVMASP has limitations, however, VA does not have the authority to amend the selection criteria for the VHVMASP. Section 304 of the VA MISSION Act of 2018 sets out the eligibility criteria for veterans to be eligible to receive the VHVMASP. The first criterion is that the veteran shall have been discharged from the Armed Forces not more than 10 years before the date of application for admission to a covered medical school. VA does not have the authority to amend this criterion. Also, section 211(b)(7) of the Department of Veterans Affairs Expiring Authorities Act of 2018 clarified that a veteran may not concurrently receive educational assistance under chapter 30, 31, 32, 33, 34, or 35 of title 38 United States Code or chapter 1606 or 1607 of title 10 United States Code at the time the veteran would be receiving VHVMASP funding. VA would not count time using the GI Bill or Vocational Rehabilitation against funding received for the VHVMASP, but the veteran would not be able to receive VHVMASP funding if such veteran is concurrently receiving other types of educational assistance. We are not making any changes based on these comments.

Another commenter stated that the ten-year limit should be dropped. The commenter added that three years would help ease the process for the program so that the veteran doesn't have to wait ten years and so the program can function properly with the rotation of veterans in need. The ten-year limitation is the maximum allowable time after a veteran is discharged from service to be eligible to apply for the VHVMASP. The veteran does not have to wait ten years to apply for the program after they have left military service. We are not making any changes based on this comment.

A commenter stated that the proposed rule was not clear with respect to the period of obligated service. For instance, would a participating veteran work for VA upon graduation, would such employment be full time, will the veteran receive benefits, and good pay. VA disagrees that the rule is not clear regarding the period of obligated service. Section 304(d)(1)(E) of the VA MISSION Act of 2018, states that each eligible veteran who accepts funding for medical education under this section shall enter into an agreement with the Secretary that provides that the veteran agree to serve as a full-time clinical practice employee in the Veterans Health Administration for a period of four years, after completion of medical school and post-graduate training. We stated this requirement in proposed § 17.617(a)(4). We also stated in § 17.617(b)(1) that an eligible veteran's obligated service will begin on the date on which the eligible veteran begins full-time permanent employment with VA as a clinical practice employee. As a full-time permanent VA employee, the participant will receive pay as well as be entitled to any other benefit afforded to full-time clinical VA employees. We are not making any changes based on this comment.

Another commenter suggested that VA include the cost of the United States Medical Licensing Examination, Step 1 and Step 2 exams, as part of the covered costs for the participants of the VHVMASP. The commenter also recommended that VA clarify in the final rule that the monthly stipend will be adjusted for inflation. VA has various other scholarship programs and would like to administer the programs as consistently as possible. Under VA's current programs, such as the Employee Incentive Scholarship Program, exams and certifications are not authorized expenses. As an example, students pursuing a nursing degree do not get reimbursed to take the National Council Licensure Exam (NCLEC). Also, the current Health Professional Scholarship Program (HPS) program does not pay for licensures or boards for other disciplines. VA will pay a monthly stipend directly to VHVMASP participants. The payment will be made for each month a participant is enrolled in coursework, beginning with the first month of the school year. The stipend will be adjusted annually based on the approved Cost of Living Allowance (COLA) increase. We are not making any changes based on this comment.

A commenter stated that in 2018, 351 American Medical College Application Service (AMCAS) applicants selected ''veteran'' for military status on their AMCAS application, and 175 applicants selected ''active duty.'' The commenter urged VA to clarify whether the VHVMASP is only applicable to the entering class of 2020 or whether it will be extended in future years. The commenter added that given the VA's physician workforce shortages, they would support the extension of this program indefinitely and its expansion to additional medical schools. VA understands the commenter's concern, however, section 304(b)(3) of the VA MISSION Act 2018, as amended by section 211(b)(7) of the Department of Veterans Affairs Expiring Authorities Act of 2018, specified that the VHVMASP would only be for the entering class of 2020. In addition, VA has other scholarship programs that are available for individuals who are enrolled in education courses that lead to degrees in various health care professions, such as the HPSP, the Visual Impairment and Orientation and Mobility Professional Scholarship Program, and the Employee Incentive Scholarship Program. VA may award these other scholarships to veterans who meet the eligibility criteria for these other scholarship programs. We are not making any changes based on this comment.

A commenter was concerned that VA would not afford some flexibility for participants who fail to meet the terms of the acceptance agreement due to extenuating circumstances, such as life events, or other academic pursuits, that may require participants to take a leave of absence. This same commenter similarly requested that extenuating circumstances also be considered when VA recoups funds from participants who breach their agreement and must pay the amount owed within one year of such breach. Another commenter suggested that the requirement for repayment of any liability for failure to complete the program should be extended to at least five years rather than one year and should consider the possibility of a return to the educational track, *i.e.* someone might have to drop out for a year or two, but then be able to resume their medical education. VA takes into account a participant's extenuating circumstances when recouping funds. A participant may seek a waiver or suspension of the service or financial liability incurred under this program or agreement by written request to the Under Secretary for Health setting forth the basis, circumstances, and causes which support the requested action. We are clarifying the regulation text based on this comment by adding a new paragraph § 17.618(c) to state that the Under Secretary for Health, or designee, may waive or suspend any service or financial liability incurred by a participant whenever compliance by the participant is impossible, due to circumstances beyond the control of the participant, or whenever the Under Secretary for Health, or designee, concludes that a waiver or suspension of compliance is in the VA's best interest.

A commenter stated that the proposed rule outlines the terms of the agreement,

which includes completing post-graduate training leading to eligibility for board certification in a physician specialty applicable to VA. The commenter asks VA to clarify the definition of a physician specialty applicable to the VA. VA currently has many vacancies for physicians. A physician specialty applicable to VA is one which is focused on the diagnosis and treatment of healthcare conditions potentially experienced by veterans. Participants of the VHVMASP would fill these much-needed vacancies as part of the participant's obligated service. This language is also found in section 304 (d)(1)(C) of the VA MISSION Act of 2018. We are not making any changes based on this comment.

A commenter indicated that the proposed rule states that eligible veterans must ensure the State licenses are obtained in a minimal amount of time following completion of residency, or fellowship, if the veteran is enrolled in a fellowship program approved by the VA. The commenter requests that VA clarify whether participants will be required to enter a VA residency program to complete their training and comply with VHVMASP agreements. A participant will not be required to enter a VA residency program because, in general, VA does not have its own residency programs. VA will rely on graduate medical education (GME) programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association (AOA) and sponsored by academic affiliates to meet the participant's residency requirement. We are not making any changes based on this comment.

We made minor technical edits to the numbering in § 17.614. The edits consist of adding numbering to the individual statements in the definition of acceptable level of academic standing. We have also renumbered the definition of covered medical school. No other edits to the content of these paragraphs was made.

We clarified the definition of VHVMASP by adding the public law number for the VA MISSION Act of 2018. The amended definition of VHVMASP is the Veterans Healing Veterans Medical Access and Scholarship Program authorized by section 304 of the VA MISSION Act of 2018, Public Law 115–182.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule with the edits described in this rulemaking.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this final rulemaking, will represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this final rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This final rule contains provisions constituting a new collection of information, at 38 CFR 17.617 and will be included under OMB Control #2900–0793 for approval and submitted under a separate PRA process as explained below. The provisions in this final rule, under 38 CFR 17.617, would require eligible veterans to sign and submit an agreement between VA and the eligible veteran who accepts funding for the VHVMASP. This provision would result in a new information collected burden under OMB control #2900–0793. The notice of proposed rulemaking (NPRM) preceding and associated with this final rule, published on May 19, 2019 (84 FR 22990). In that NPRM, VA detailed the new information collection burden associated with the provisions under 38 CFR 17.617 in the PRA section of the preamble. However, the associated PRA package was not submitted to OMB for approval due to another VA NPRM also requiring a revised information collection under the same approved OMB Control # 2900–0793. Despite this discrepancy published in the NPRM and in accordance with 44 U.S.C. 3507(d), VA submitted the new and revised information collection requests (ICRs) to OMB through a separate PRA process via ROCIS and sought public comment through a **Federal Register** Notice document (84 FR 42991). These separate ICRs are in the final review stage with OMB.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions associated with this rulemaking are not processed by any other entities outside of VA. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD.

This final rule is not expected to be an E.O. 13771 regulatory action because this final rule is not significant under E.O. 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on November 5, 2019, for publication.

Michael P. Shores,

Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, we are amending 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding an entry for §§ 17.613 through 17.618 in numerical order to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Sections 17.613 through 17.618 are also issued under Pub. L. 115–182, sec. 304.

* * * * *

■ 2. Add an undesignated center heading and §§ 17.613 through 17.618 to read as follows.

Veterans Healing Veterans Medical Access and Scholarship Program

17.613 Purpose.
17.614 Definitions.
17.615 Eligibility.
17.616 Award procedures.
17.617 Agreement and obligated service.
17.618 Failure to comply with terms and conditions of agreement.

Veterans Healing Veterans Medical Access and Scholarship Program

§ 17.613 Purpose.

The purpose of §§ 17.613 through 17.618 is to establish the requirement for the Veterans Healing Veterans Medical Access and Scholarship Program (VHVMASP). The VHVMASP will provide funding for the medical education of two eligible veterans from each covered medical school.

§ 17.614 Definitions.

The following definitions apply to §§ 17.613 through 17.618.

Acceptable level of academic standing means:

(1) Maintaining a cumulative grade point average at or above passing, as determined by the medical school;

(2) Completing all required courses with a passing grade;

(3) Successfully completing the required course of study for graduation within four academic years;

(4) Successfully passing the required United States Medical Licensing Examinations steps 1 and 2, within the timeframe for graduation from medical school; and

(5) Having no final determinations of unprofessional conduct or behavior.

Covered medical school means any of the following:

(1) Texas A&M College of Medicine.

(2) Quillen College of Medicine at East Tennessee State University.

(3) Boonshoft School of Medicine at Wright State University.

(4) Joan C. Edwards School of Medicine at Marshall University.

(5) University of South Carolina School of Medicine.

(6) Charles R. Drew University of Medicine and Science.

(7) Howard University College of Medicine.

(8) Meharry Medical College.

(9) Morehouse School of Medicine.

VA means the Department of Veterans Affairs.

VHVMASP means the Veterans Healing Veterans Medical Access and Scholarship Program authorized by section 304 of the VA MISSION Act of 2018, Public Law 115–182.

§ 17.615 Eligibility.

A veteran is considered eligible to receive funding for the VHVMASP if such veteran meets the following criteria.

(a) Has been discharged or released, under conditions other than dishonorable, from the Armed Forces for not more than 10 years before the date of application for admission to a covered medical school;

(b) Is not concurrently receiving educational assistance under chapter 30, 31, 32, 33, 34, or 35 of title 38 United States Code or chapter 1606 or 1607 of title 10 United States Code at the time the veteran would be receiving VHVMASP funding;

(c) Applies for admission to a covered medical school for the entering class of 2020;

(d) Indicates on the application to the covered medical school that they would like to be considered for the VHVMASP;

(e) Meets the minimum admissions criteria for the covered medical school to which the eligible veteran applies; and

(f) Agrees to the terms stated in § 17.617.

§ 17.616 Award procedures.

(a) *Distribution of funds.* (1) Each covered medical school that opts to participate in the VHVMASP will reserve two seats in the entering class of 2020 for eligible veterans who receive funds for the VHVMASP. Funding will be awarded to two eligible veterans with the highest admissions ranking among veteran applicants for such entering class for each covered medical school.

(2) If two or more eligible veterans do not apply for admission at a covered medical school for the entering class of 2020, VA will distribute the available funding to eligible veterans who applied, and are accepted, for admission at other covered medical schools.

(b) *Amount of funds.* An eligible veteran will receive funding from the VHVMASP equal to the actual cost of the following:

(1) Tuition at the covered medical school for which the veteran enrolls for a period of not more than 4 years;

(2) Books, fees, and technical equipment;

(3) Fees associated with the National Residency Match Program;

(4) Two away rotations, performed during the fourth year of school, at a VA medical facility; and

(5) A monthly stipend for the four-year period during which the eligible veteran is enrolled in a covered medical school in an amount to be determined by VA.

§ 17.617 Agreement and obligated service.

(a) *Agreement.* Each eligible veteran who accepts funds from the VHVMASP will enter into an agreement with VA where the eligible veteran agrees to the following:

(1) Maintain enrollment, attendance, and acceptable level of academic standing as defined by the covered medical school;

(2) Complete post-graduate training leading to eligibility for board

certification in a physician specialty applicable to VA;

(3) After completion of medical school and post-graduate training, obtain and maintain a license to practice medicine in a State. Eligible veterans must ensure that State licenses are obtained in a minimal amount of time following completion of residency, or fellowship, if the veteran is enrolled in a fellowship program approved by VA. If a participant fails to obtain his or her degree, or fails to become licensed in a State no later than 90 days after completion of residency, or fellowship, if applicable, the participant is considered to be in breach of the acceptance agreement; and

(4) Serve as a full-time clinical practice employee in VA for a period of four years.

(b) *Obligated service*—(1) *General.* An eligible veteran's obligated service will begin on the date on which the eligible veteran begins full-time permanent employment with VA as a clinical practice employee. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant completes residency, or fellowship, if applicable, or the date the participant becomes licensed in a State, whichever is later.

(2) *Location and position of obligated service.* VA reserves the right to make final decisions on the location and position of the obligated service.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0793.)

§ 17.618 Failure to comply with terms and conditions of agreement.

(a) *Participant fails to satisfy terms of agreement.* If an eligible veteran who accepts funding for the VHVMASP breaches the terms of the agreement stated in § 17.617, the United States is entitled to recover damages in an amount equal to the total amount of VHVMASP funding received by the eligible veteran.

(b) *Repayment period.* The eligible veteran will pay the amount of damages that the United States is entitled to recover under this section in full to the United States no later than 1 year after the date of the breach of the agreement.

(c) *Waivers.* The Under Secretary for Health, or designee, may waive or suspend any service or financial liability incurred by a participant whenever compliance by the participant is impossible, due to circumstances beyond the control of the participant, or whenever the Under Secretary for Health, or designee, concludes that a waiver or suspension of compliance is in the VA's best interest.

[FR Doc. 2019–24503 Filed 11–12–19; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–21 and CP2010–36]

Update to Product Lists

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the product lists. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which are re-published in their entirety, include these updates.

DATES: *Effective Date:* November 13, 2019. For applicability dates, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION:

Applicability Dates: July 2, 2019, Priority Mail Express & Priority Mail Contract 95 (MC2019–157 and CP2019–175); July 12, 2019, Priority Mail Express, Priority Mail & First-Class Package Service Contract 63 (MC2019–158 and CP2019–177); July 18, 2019, Priority Mail & First-Class Package Service Contract 106 (MC2019–160 and CP2019–180); July 18, 2019, Priority Mail Contract 536 (MC2019–161 and CP2019–181); July 19, 2019, Priority Mail & First-Class Package Service Contract 105 (MC2019–159 and CP2019–179); July 23, 2019, Priority Mail Contract 537 (MC2019–163 and CP2019–183); July 23, 2019, Priority Mail Express Contract 78 (MC2019–162 and CP2019–182); July 23, 2019, Priority Mail & First-Class Package Service Contract 107 (MC2019–164 and CP2019–184); July 24, 2019, Priority Mail & First-Class Package Service Contract 108 (MC2019–165 and CP2019–185); July 24, 2019, Priority Mail & First-Class Package Service Contract 109 (MC2019–166 and CP2019–186); July 26, 2019, Priority Mail & First-Class Package Service Contract 110 (MC2019–167 and CP2019–187); July 30, 2019, First-Class Package Service Contract 100 (MC2019–169 and CP2019–191); July 30, 2019, Priority Mail Contract 539 (MC2019–170 and CP2019–192); August 1, 2019, Priority Mail Contract 538 (MC2019–168 and CP2019–190); August 6, 2019, Priority Mail Contract 541 (MC2019–172 and CP2019–194); August 6, 2019, Priority Mail Contract 540 (MC2019–171 and CP2019–193); August 7, 2019, Priority Mail Express & Priority Mail Contract 96 (MC2019–173 and CP2019–195); August 7, 2019, First-Class Package Service Contract 101 (MC2019–174 and CP2019–196); August 7, 2019, Priority Mail Contract 542 (MC2019–175 and CP2019–197); August 8, 2019, Priority Mail Contract 544 (MC2019–177 and CP2019–199); August 8, 2019, Priority Mail Contract 543 (MC2019–176 and CP2019–198); August 12, 2019, Priority Mail Express, Priority Mail & First-Class Package Service Contract 64 (MC2019–178 and CP2019–200); August 12, 2019, Priority Mail Express & Priority Mail Contract 97 (MC2019–179 and CP2019–201); August 15, 2019, Priority Mail Contract 545 (MC2019–181 and CP2019–203); August 15, 2019, Priority Mail Contract 546 (MC2019–182 and CP2019–204); August 15, 2019, Priority Mail & First-Class Package Service Contract 111 (MC2019–183 and CP2019–205); August 15, 2019, Priority Mail & First-Class Package Service Contract 112 (MC2019–184 and CP2019–206); August 15, 2019, Priority Mail & First-Class Package Service Contract 113 (MC2019–185 and CP2019–207); August 22, 2019, Priority Mail & First-Class Package Service Contract 114 (MC2019–186 and CP2019–208); August 26, 2019, Parcel Select Contract 34 (MC2019–188 and CP2019–211); September 12, 2019, Priority Mail Express & Priority Mail Contract 98 (MC2019–190 and CP2019–213); September 12, 2019, Priority Mail Contract 547 (MC2019–189 and CP2019–212); September 18, 2019, Priority Mail Contract 548 (MC2019–191 and CP2019–214); September 18, 2019, Priority Mail & First-Class Package Service Contract 115 (MC2019–192 and CP2019–215); September 20, 2019, Market Test of Experimental Product—Plus One (MT2019–1); September 20, 2019, Priority Mail & First-Class Package Service Contract 116 (MC2019–193 and CP2019–216); September 20, 2019, Priority Mail & First-Class Package Service Contract 117 (MC2019–194 and CP2019–217); September 23, 2019, First-Class Package Service Contract 102 (MC2019–195 and CP2019–218); September 23, 2019, Priority Mail Contract 549 (MC2019–196 and CP2019–219); September 23, 2019, Priority Mail Contract 550 (MC2019–197 and CP2019–220); September 23, 2019, Priority Mail & First-Class Package Service Contract 118 (MC2019–198 and CP2019–221); September 23, 2019,

Priority Mail Express, Priority Mail & First-Class Package Service Contract 65 (MC2019–199 and CP2019–222); September 27, 2019, Priority Mail Contract 551 (MC2019–200 and CP2019–223); September 27, 2019, Priority Mail Express, Priority Mail & First-Class Package Service Contract 66 (MC2019–201 and CP2019–224).

This document identifies updates to the market dominant and the competitive product lists, which appear as 39 CFR appendix A to subpart A of part 3020—Market Dominant Product List and 39 CFR appendix B to subpart A of part 3020—Competitive Product List, respectively. Publication of the updated product lists in the **Federal Register** is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Docket Nos. MC2010–21 and CP2010–36, Order No. 445, April 22, 2010, at 8.

Changes. The product lists are being updated by publishing replacements in their entirety of 39 CFR appendix A to subpart A of part 3020—Market Dominant Product List and 39 CFR appendix B to subpart A of part 3020—Competitive Product List. The following products are being added, removed, or moved within the product lists:

Market Dominant Product List

1. Market Test of Experimental Product—Plus One (MT2019–1) (Order No. 5239), added September 20, 2019.

Competitive Product List

1. Priority Mail Express & Priority Mail Contract 95 (MC2019–157 and CP2019–175) (Order No. 5142), added July 2, 2019.
2. Priority Mail Express, Priority Mail & First-Class Package Service Contract 63 (MC2019–158 and CP2019–177) (Order No. 5150), added July 12, 2019.
3. Priority Mail & First-Class Package Service Contract 106 (MC2019–160 and CP2019–180) (Order No. 5158), added July 18, 2019.
4. Priority Mail Contract 536 (MC2019–161 and CP2019–181) (Order No. 5159), added July 18, 2019.
5. Priority Mail & First-Class Package Service Contract 105 (MC2019–159 and CP2019–179) (Order No. 5160), added July 19, 2019.
6. Priority Mail Contract 537 (MC2019–163 and CP2019–183) (Order No. 5161), added July 23, 2019.
7. Priority Mail Express Contract 78 (MC2019–162 and CP2019–182) (Order No. 5162), added July 23, 2019.
8. Priority Mail & First-Class Package Service Contract 107 (MC2019–164 and CP2019–184) (Order No. 5163), added July 23, 2019.
9. Priority Mail & First-Class Package Service Contract 108 (MC2019–165 and CP2019–185) (Order No. 5165), added July 24, 2019.
10. Priority Mail & First-Class Package Service Contract 109 (MC2019–166 and CP2019–186) (Order No. 5167), added July 24, 2019.
11. Priority Mail & First-Class Package Service Contract 110 (MC2019–167 and CP2019–187) (Order No. 5173), added July 26, 2019.
12. First-Class Package Service Contract 100 (MC2019–169 and CP2019–191) (Order No. 5174), added July 30, 2019.
13. Priority Mail Contract 539 (MC2019–170 and CP2019–192) (Order No. 5175), added July 30, 2019.
14. Priority Mail Contract 538 (MC2019–168 and CP2019–190) (Order No. 5177), added August 1, 2019.
15. Priority Mail Contract 541 (MC2019–172 and CP2019–194) (Order No. 5180), added August 6, 2019.
16. Priority Mail Contract 540 (MC2019–171 and CP2019–193) (Order No. 5181), added August 6, 2019.
17. Priority Mail Express & Priority Mail Contract 96 (MC2019–173 and CP2019–195) (Order No. 5182), added August 7, 2019.
18. First-Class Package Service Contract 101 (MC2019–174 and CP2019–196) (Order No. 5183), added August 7, 2019.
19. Priority Mail Contract 542 (MC2019–175 and CP2019–197) (Order No. 5184), added August 7, 2019.
20. Priority Mail Contract 544 (MC2019–177 and CP2019–199) (Order No. 5186), added August 8, 2019.
21. Priority Mail Contract 543 (MC2019–176 and CP2019–198) (Order No. 5187), added August 8, 2019.
22. Priority Mail Express, Priority Mail & First-Class Package Service Contract 64 (MC2019–178 and CP2019–200) (Order No. 5191), added August 12, 2019.
23. Priority Mail Express & Priority Mail Contract 97 (MC2019–179 and CP2019–201) (Order No. 5192), added August 12, 2019.
24. Priority Mail Contract 545 (MC2019–181 and CP2019–203) (Order No. 5194), added August 15, 2019.
25. Priority Mail Contract 546 (MC2019–182 and CP2019–204) (Order No. 5195), added August 15, 2019.
26. Priority Mail & First-Class Package Service Contract 111 (MC2019–183 and CP2019–205) (Order No. 5197), added August 15, 2019.
27. Priority Mail & First-Class Package Service Contract 112 (MC2019–184 and CP2019–206) (Order No. 5198), added August 15, 2019.
28. Priority Mail & First-Class Package Service Contract 113 (MC2019–185 and CP2019–207) (Order No. 5199), added August 15, 2019.
29. Priority Mail & First-Class Package Service Contract 114 (MC2019–186 and CP2019–208) (Order No. 5206), added August 22, 2019.
30. Parcel Select Contract 34 (MC2019–188 and CP2019–211) (Order No. 5210), added August 26, 2019.
31. Priority Mail Express & Priority Mail Contract 98 (MC2019–190 and CP2019–213) (Order No. 5227), added September 12, 2019.
32. Priority Mail Contract 547 (MC2019–189 and CP2019–212) (Order No. 5228), added September 12, 2019.
33. Priority Mail Contract 548 (MC2019–191 and CP2019–214) (Order No. 5235), added September 18, 2019.
34. Priority Mail & First-Class Package Service Contract 115 (MC2019–192 and CP2019–215) (Order No. 5236), added September 18, 2019.
35. Priority Mail & First-Class Package Service Contract 116 (MC2019–193 and CP2019–216) (Order No. 5240), added September 20, 2019.
36. Priority Mail & First-Class Package Service Contract 117 (MC2019–194 and CP2019–217) (Order No. 5241), added September 20, 2019.
37. First-Class Package Service Contract 102 (MC2019–195 and CP2019–218) (Order No. 5245), added September 23, 2019.
38. Priority Mail Contract 549 (MC2019–196 and CP2019–219) (Order No. 5246), added September 23, 2019.
39. Priority Mail Contract 550 (MC2019–197 and CP2019–220) (Order No. 5247), added September 23, 2019.
40. Priority Mail & First-Class Package Service Contract 118 (MC2019–198 and CP2019–221) (Order No. 5248), added September 23, 2019.
41. Priority Mail Express, Priority Mail & First-Class Package Service Contract 65 (MC2019–199 and CP2019–222) (Order No. 5249), added September 23, 2019.
42. Priority Mail Contract 551 (MC2019–200 and CP2019–223) (Order No. 5255), added September 27, 2019.
43. Priority Mail Express, Priority Mail & First-Class Package Service Contract 66 (MC2019–201 and CP2019–224) (Order No. 5256), added September 27, 2019.

The following negotiated service agreements have expired, or have been terminated early, and are being deleted from the Competitive Product List:

1. Parcel Select Contract 2 (MC2012–16 and CP2012–23) (Order No. 1349).
2. Priority Mail Contract 123 (MC2015–52 and CP2015–80) (Order No. 2535).

3. Priority Mail Express & Priority Mail Contract 21 (MC2016–14 and CP2016–17) (Order No. 2822).
4. Priority Mail Contract 177 (MC2016–57 and CP2016–72) (Order No. 2984).
5. Priority Mail Contract 175 (MC2016–53 and CP2016–68) (Order No. 2991).
6. Priority Mail Contract 186 (MC2016–71 and CP2016–86) (Order No. 3001).
7. First-Class Package Service Contract 41 (MC2016–73 and CP2016–88) (Order No. 3002).
8. Parcel Select Contract 13 (MC2016–75 and CP2016–93) (Order No. 3023).
9. Priority Mail & First-Class Package Service Contract 13 (MC2016–76 and CP2016–98) (Order No. 3067).
10. First-Class Package Service Contract 44 (MC2016–82 and CP2016–107) (Order No. 3120).
11. Priority Mail Contract 192 (MC2016–86 and CP2016–111) (Order No. 3140).
12. Priority Mail & First-Class Package Service Contract 15 (MC2016–89 and CP2016–114) (Order No. 3147).
13. Priority Mail Contract 199 (MC2016–100 and CP2016–128) (Order No. 3188).
14. Priority Mail Contract 200 (MC2016–101 and CP2016–129) (Order No. 3194).
15. Priority Mail Express Contract 35 (MC2016–107 and CP2016–135) (Order No. 3201).
16. First-Class Package Service Contract 52 (MC2016–130 and CP2016–164) (Order No. 3289).
17. Priority Mail Contract 216 (MC2016–133 and CP2016–170) (Order No. 3340).
18. Priority Mail Contract 221 (MC2016–144 and CP2016–181) (Order No. 3350).
19. Priority Mail Contract 223 (MC2016–146 and CP2016–183) (Order No. 3354).
20. Priority Mail Contract 226 (MC2016–153 and CP2016–216) (Order No. 3399).
21. Priority Mail Express, Priority Mail & First-Class Package Service Contract 10 (MC2016–160 and CP2016–231) (Order No. 3417).
22. Priority Mail Contract 229 (MC2016–159 and CP2016–230) (Order No. 3418).
23. Priority Mail & First-Class Package Service Contract 21 (MC2016–165 and CP2016–239) (Order No. 3437).
24. First-Class Package Service Contract 59 (MC2016–171 and CP2016–249) (Order No. 3453).
25. Priority Mail Express Contract 40 (MC2016–169 and CP2016–247) (Order No. 3454).
26. Priority Mail & First-Class Package Service Contract 25 (MC2016–174 and CP2016–253) (Order No. 3465).
27. Priority Mail Express & Priority Mail Contract 30 (MC2016–175 and CP2016–254) (Order No. 3466).
28. Priority Mail & First-Class Package Service Contract 26 (MC2016–177 and CP2016–256) (Order No. 3476).
29. First-Class Package Service Contract 60 (MC2016–176 and CP2016–255) (Order No. 3477).
30. Priority Mail Contract 233 (MC2016–179 and CP2016–258) (Order No. 3478).
31. Priority Mail Express Contract 41 (MC2016–180 and CP2016–259) (Order No. 3479).
32. Priority Mail Contract 232 (MC2016–178 and CP2016–257) (Order No. 3481).
33. Priority Mail Express & Priority Mail Contract 31 (MC2016–182 and CP2016–262) (Order No. 3483).
34. Priority Mail & First-Class Package Service Contract 27 (MC2016–183 and CP2016–263) (Order No. 3485).
35. Priority Mail & First-Class Package Service Contract 28 (MC2016–184 and CP2016–264) (Order No. 3486).
36. Priority Mail Express & Priority Mail Contract 33 (MC2016–186 and CP2016–267) (Order No. 3503).
37. Priority Mail Express & Priority Mail Contract 32 (MC2016–185 and CP2016–266) (Order No. 3504).
38. Priority Mail Express & Priority Mail Contract 34 (MC2016–187 and CP2016–268) (Order No. 3508).
39. Priority Mail & First-Class Package Service Contract 30 (MC2016–189 and CP2016–272) (Order No. 3514).
40. Priority Mail Contract 235 (MC2016–190 and CP2016–273) (Order No. 3515).
41. Priority Mail & First-Class Package Service Contract 29 (MC2016–188 and CP2016–271) (Order No. 3516).
42. Priority Mail Contract 238 (MC2016–193 and CP2016–276) (Order No. 3522).
43. Priority Mail & First-Class Package Service Contract 31 (MC2016–194 and CP2016–277) (Order No. 3523).
44. First-Class Package Service Contract 61 (MC2016–195 and CP2016–278) (Order No. 3524).
45. First-Class Package Service Contract 63 (MC2016–198 and CP2016–282) (Order No. 3529).
46. Priority Mail Contract 239 (MC2016–199 and CP2016–283) (Order No. 3533).
47. First-Class Package Service Contract 62 (MC2016–197 and CP2016–281) (Order No. 3534).
48. Priority Mail Contract 256 (MC2017–17 and CP2017–36) (Order No. 3627).
49. Priority Mail Contract 262 (MC2017–29 and CP2017–54) (Order No. 3662).
50. Priority Mail Contract 275 (MC2017–52 and CP2017–78) (Order No. 3702).
51. Priority Mail Express Contract 45 (MC2017–92 and CP2017–126) (Order No. 3802).
52. First-Class Package Service Contract 74 (MC2017–96 and CP2017–136) (Order No. 3833).
53. Priority Mail Contract 300 (MC2017–101 and CP2017–148) (Order No. 3844).
54. Priority Mail Contract 306 (MC2017–111 and CP2017–159) (Order No. 3860).
55. Priority Mail Contract 324 (MC2017–139 and CP2017–198) (Order No. 3955).
56. Priority Mail Express & Priority Mail Contract 49 (MC2017–147 and CP2017–206) (Order No. 3966).
57. Priority Mail Express Contract 49 (MC2017–149 and CP2017–210) (Order No. 3981).
58. Priority Mail Contract 345 (MC2017–180 and CP2017–281) (Order No. 4092).
59. First-Class Package Service Contract 80 (MC2017–194 and CP2017–295) (Order No. 4110).
60. Parcel Select Contract 23 (MC2017–211 and CP2017–319) (Order No. 4149).
61. First-Class Package Service Contract 83 (MC2018–1 and CP2018–1) (Order No. 4159).
62. Priority Mail Contract 379 (MC2018–36 and CP2018–66) (Order No. 4269).
63. Priority Mail Contract 387 (MC2018–52 and CP2018–83) (Order No. 4290).
64. First-Class Package Service Contract 88 (MC2018–60 and CP2018–100) (Order No. 4316).
65. Priority Mail & First-Class Package Service Contract 66 (MC2018–62 and CP2018–102) (Order No. 4318).
66. Priority Mail Contract 393 (MC2018–64 and CP2018–104) (Order No. 4320).
67. Priority Mail Express & Priority Mail Contract 58 (MC2018–88 and CP2018–130) (Order No. 4350).
68. Priority Mail Contract 412 (MC2018–107 and CP2018–149) (Order No. 4372).
69. Priority Mail Contract 420 (MC2018–118 and CP2018–160) (Order No. 4379).
70. Priority Mail Express & Priority Mail Contract 60 (MC2018–114 and CP2018–156) (Order No. 4381).
71. Priority Mail Contract 419 (MC2018–117 and CP2018–159) (Order No. 4390).

72. Parcel Select Contract 30 (MC2018–122 and CP2018–165) (Order No. 4406).
73. Priority Mail Contract 426 (MC2018–134 and CP2018–190) (Order No. 4564).
74. Priority Mail Contract 429 (MC2018–141 and CP2018–202) (Order No. 4584).
75. Priority Mail Express, Priority Mail & First-Class Package Service Contract 34 (MC2018–147 and CP2018–211) (Order No. 4603).
76. Priority Mail Contract 435 (MC2018–157 and CP2018–226) (Order No. 4637).
77. Priority Mail Contract 436 (MC2018–159 and CP2018–229) (Order No. 4644).
78. Priority Mail Contract 443 (MC2018–168 and CP2018–240) (Order No. 4663).
79. Priority Mail Express Contract 63 (MC2018–181 and CP2018–255) (Order No. 4686).
80. Priority Mail Contract 449 (MC2018–182 and CP2018–256) (Order No. 4687).
81. Priority Mail Contract 454 (MC2018–195 and CP2018–273) (Order No. 4734).
82. Priority Mail Contract 460 (MC2018–204 and CP2018–284) (Order No. 4770).
83. Priority Mail Contract 467 (MC2019–2 and CP2019–2) (Order No. 4858).
84. Priority Mail Contract 477 (MC2019–20 and CP2019–20) (Order No. 4891).
85. Priority Mail Express Contract 66 (MC2019–24 and CP2019–25) (Order No. 4901).
86. Priority Mail Express Contract 67 (MC2019–25 and CP2019–26) (Order No. 4903).
87. Priority Mail Contract 482 (MC2019–29 and CP2019–30) (Order No. 4908).
88. Priority Mail Contract 484 (MC2019–31 and CP2019–32) (Order No. 4909).
89. Priority Mail Express & Priority Mail Contract 76 (MC2019–34 and CP2019–35) (Order No. 4913).
90. Priority Mail Express Contract 68 (MC2019–32 and CP2019–33) (Order No. 4917).
91. Priority Mail Contract 493 (MC2019–44 and CP2019–47) (Order No. 4940).
92. Priority Mail Express, Priority Mail & First-Class Package Service Contract 49 (MC2019–72 and CP2019–77) (Order No. 4978).
93. Priority Mail Express Contract 72 (MC2019–112 and CP2019–121) (Order No. 5049).

Updated product list. The referenced changes to the product lists are incorporated into 39 CFR appendix A to subpart A of part 3020—Market Dominant Product List and 39 CFR appendix B to subpart A of part 3020—Competitive Product List.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise appendices A and B to subpart A to read as follows:

Appendix A to Subpart A of Part 3020—Market Dominant Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail *
- Single-Piece Letters/Postcards
- Presorted Letters/Postcards
- Flats
- Outbound Single-Piece First-Class Mail International
- Inbound Letter Post

USPS Marketing Mail (Commercial and Nonprofit)*
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Parcels
- Every Door Direct Mail—Retail

Periodicals *
- In-County Periodicals
- Outside County Periodicals

Package Services *
- Alaska Bypass Service
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services*
- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Credit Card Authentication
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- Customized Postage
- Stamp Fulfillment Services

Negotiated Service Agreements *

Domestic *
- International *
- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators
- Inbound Market Dominant Exprés Service Agreement 1
- Inbound Market Dominant Registered Service Agreement 1
- Inbound Market Dominant PRIME Tracked Service Agreement

Nonpostal Services *
- Alliances with the Private Sector to Defray Cost of Key Postal Functions
- Philatelic Sales

Market Tests *
- Plus One

Appendix B to Subpart A of Part 3020—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Part B—Competitive Products

2000 Competitive Product List

Domestic Products *
- Priority Mail Express
- Priority Mail
- Parcel Select
- Parcel Return Service
- First-Class Package Service
- USPS Retail Ground

International Products *
- Outbound International Expedited Services
- Inbound Parcel Post (at UPU rates)
- Outbound Priority Mail International
- International Priority Airmail (IPA)
- International Surface Air List (ISAL)
- International Direct Sacks—M-Bags
- Outbound Single-Piece First-Class Package International Service

Negotiated Service Agreements *
- Domestic *
- Priority Mail Express Contract 42
- Priority Mail Express Contract 43
- Priority Mail Express Contract 44
- Priority Mail Express Contract 46
- Priority Mail Express Contract 47
- Priority Mail Express Contract 48
- Priority Mail Express Contract 51
- Priority Mail Express Contract 52
- Priority Mail Express Contract 53
- Priority Mail Express Contract 54
- Priority Mail Express Contract 55
- Priority Mail Express Contract 56
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- Priority Mail Express Contract 62
- Priority Mail Express Contract 64
- Priority Mail Express Contract 65
- Priority Mail Express Contract 69

Priority Mail Express Contract 70
Priority Mail Express Contract 71
Priority Mail Express Contract 73
Priority Mail Express Contract 74
Priority Mail Express Contract 75
Priority Mail Express Contract 76
Priority Mail Express Contract 77
Priority Mail Express Contract 78
Parcel Return Service Contract 6
Parcel Return Service Contract 11
Parcel Return Service Contract 12
Parcel Return Service Contract 13
Parcel Return Service Contract 14
Parcel Return Service Contract 15
Parcel Return Service Contract 16
Priority Mail Contract 77
Priority Mail Contract 78
Priority Mail Contract 80
Priority Mail Contract 125
Priority Mail Contract 150
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Priority Mail Express & Priority Mail Contract 12
Priority Mail Express & Priority Mail Contract 13
Priority Mail Express & Priority Mail Contract 18
Priority Mail Express & Priority Mail Contract 27
Priority Mail Express & Priority Mail Contract 29
Priority Mail Express & Priority Mail Contract 35
Priority Mail Express & Priority Mail Contract 36
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Priority Mail Express & Priority Mail Contract 96
Priority Mail Express & Priority Mail Contract 97
Priority Mail Express & Priority Mail Contract 98
Parcel Select & Parcel Return Service Contract 3
Parcel Select & Parcel Return Service Contract 6
Parcel Select & Parcel Return Service Contract 7
Parcel Select & Parcel Return Service Contract 8
Parcel Select & Parcel Return Service Contract 9
Parcel Select Contract 9
Parcel Select Contract 11
Parcel Select Contract 17
Parcel Select Contract 19
Parcel Select Contract 20
Parcel Select Contract 22

Parcel Select Contract 25
Parcel Select Contract 26
Parcel Select Contract 27
Parcel Select Contract 28
Parcel Select Contract 29
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Priority Mail—Non-Published Rates
Priority Mail—Non-Published Rates 1
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First-Class Package Service Contract 45
First-Class Package Service Contract 55
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First-Class Package Service Contract 65
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Photocopying Service
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Darcie S. Tokioka,
Acting Secretary.

[FR Doc. 2019–24554 Filed 11–12–19; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0353; FRL–10001–80–Region 1]

Air Plan Approval; Massachusetts; Transport Element for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, for the 2010 1-hour sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). This action approves Massachusetts's certification that air emissions in the Commonwealth will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO_2 NAAQS in any other state.

DATES: This rule is effective on December 13, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2019–0353. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office

Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Townsend, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1614, email *hubbard.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose
II. Response to Comments
III. Final Action
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I. Background and Purpose

On August 8, 2019 (84 FR 38898), the EPA published a notice of proposed rulemaking (NPRM) to approve the February 9, 2018 submittal from the Commonwealth of Massachusetts as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS, commonly referred to as the good neighbor provision. Other specific requirements and the rationale for the EPA's proposed action are explained in the NPRM and will not be restated here. Comments on the proposed rulemaking were due on or before September 9, 2019.

II. Response to Comments

The EPA received one adverse comment from an anonymous commenter. This comment is included in the docket for this final action. The EPA has summarized the comment and provided a response below.

Comment: The commenter stated that the EPA should evaluate all sources of SO_2 emissions in Massachusetts located near the border of the SO_2 nonattainment area in New Hampshire, rather than focus our analysis on large SO_2 sources located farther from the nonattainment area in New Hampshire. The commenter expressed concern about the 100 tons per year (tpy) SO_2 emissions threshold by stating that the EPA arbitrarily picked 100 tpy as a threshold, and that smaller sources of annual emissions can violate a 1-hour standard. The commenter asserted that ''EPA must perform modeling to affirmatively rule out any stationary source of SO_2 emissions don't contribute to the SO_2 non-attainment area in the neighboring state of New Hampshire,'' not just those emitting over 100 tpy of SO_2.

Response: The EPA disagrees with the commenter's assertion that modeling must be performed to rule out significant contribution to SO_2 nonattainment in New Hampshire from any stationary source of SO_2 emissions and that the use of a 100 tpy threshold was inappropriate. The EPA continues to believe that a weight of evidence (WOE) approach is sufficient to determine if a state has satisfied the good neighbor provision for the 2010 1-hour SO_2 NAAQS, and there is no legal requirement in the CAA suggesting that dispersion modeling must be used to evaluate good neighbor SIPs.

Regarding the statement about modeling, EPA notes that it did not independently model any sources as part of its evaluation of Massachusetts's good neighbor SIP submission, including sources emitting more than 100 tpy of SO_2 within 50 km from the Massachusetts border. However, when reliable and relevant modeling information is available, the EPA may utilize this information to inform its determination of whether a state has satisfied the good neighbor provision. As further discussed in the NPRM, Massachusetts reviewed potential SO_2 impacts on the Central New Hampshire nonattainment area. New Hampshire submitted an attainment plan for the Central New Hampshire nonattainment area on January 31, 2017, which relied mainly on the emissions limits and other conditions established for the Merrimack Generating Station, and the EPA approved that plan on June 5, 2018.[1] New Hampshire's attainment plan and demonstration for the central New Hampshire nonattainment area relied on air dispersion modeling of the 1-hour critical emission value shown to be equivalent to the federally-enforceable 7-boiler operating day allowable emissions limit for the Merrimack Generating Station. This modeling analysis included the addition of monitored background SO_2 concentrations. These measured background concentrations account for potential contributions from all Massachusetts sources, not just those emitting greater than 100 tpy. The New Hampshire modeling analysis demonstrated that allowable emissions from Merrimack Generating Station, in addition to the background levels, will not cause a violation of the 1-hour SO_2 NAAQS. The attainment plan did not require any reductions from Massachusetts sources, and relied solely on controls and limits at Merrimack Generating Station to address the nonattainment. On September 20, 2019, the EPA took final action to approve New Hampshire's maintenance plan, submitted to ensure the area will continue to maintain the 2010 SO_2 NAAQS, for the Central New Hampshire area.[2] This final action also formally redesignated the Central New Hampshire SO_2 Nonattainment Area to Attainment for the 2010 SO_2 NAAQS. Therefore, the EPA still concludes that sources in Massachusetts do not contribute significantly to SO_2 nonattainment or interfere with maintenance in the Central New Hampshire area.

The EPA continues to believe that the WOE analysis provided in the NPRM is adequate to determine the potential downwind impact from Massachusetts to neighboring states. The EPA's analysis includes the following factors: (1) Ambient air quality data for active SO_2 monitors in Massachusetts or in a neighboring or downwind state within 50 km of the Massachusetts border, (2) emissions information for SO_2 sources in Massachusetts emitting greater than 100 tpy and located within 50 km of the Massachusetts border, (3) emissions information for SO_2 sources in neighboring or downwind states emitting more than 100 tpy and located within 50 km of the Massachusetts border, (4) available modeling and monitoring information for any area within 50 km of the Massachusetts border, including for Portsmouth, New Hampshire, and (5) SO_2 emissions trends in Massachusetts and neighboring and downwind states.

Regarding the commenter's concern with the focus on individual facilities which emitted above 100 tpy (using the most recent year for which point source emission data was available, *i.e.,* 2017); the EPA disagrees that this focus on such sources is arbitrary. The EPA noted in the NPRM to this final action that Massachusetts limited its analysis to sources emitting greater than 100 tpy of SO_2. These emissions account for 96 percent of Massachusetts's statewide SO_2 emissions from point sources, and thus are appropriate to evaluate for purposes of determining whether there is any emissions activity within the state that is in violation of the good neighbor provision. The EPA independently assessed which sources emitting over 100 tpy could have the most potential impact on downwind

[1] *See* the EPA's final action on the Central New Hampshire Nonattainment Area Plan for the 2010 SO_2 NAAQS at 83 FR 25922 (June 5, 2018).

[2] *See* 84 FR 49467 (September 20, 2019).

and neighboring states. Based on the assessment contained in the NPRM, the EPA stated ''we agree with Massachusetts's choice to limit its analysis in this way, because in the absence of special factors, for example the presence of a nearby larger source or unusual factors, Massachusetts sources emitting less than 100 tpy can appropriately be assumed to not be causing or contributing to SO_2 concentrations above the NAAQS. The EPA recognizes that in 2017 Ardagh Glass Inc. emitted 92 tpy SO_2, with the next highest source (Wheelabrator Saugus Inc) emitting 54 tpy SO_2. Ardagh Glass Inc. has permanently ceased operations as of September 26, 2018. Given these facts, the EPA finds Massachusetts's analysis of SO_2 sources above 100 tpy adequate for analysis of SO_2 transport impacts to neighboring and downwind states.'' [3] The EPA continues to find this statement accurate.

The EPA notes that the commenter did not provide a technical analysis or additional information indicating that sources emitting 100 tpy or less within 50 km of the border may have downwind impacts that violate the good neighbor provision. For these reasons, the EPA finds that our analysis of the Massachusetts sources in the proposal, considered alongside other WOE factors described in that document, support the EPA's conclusion that Massachusetts has satisfied the good neighbor provision for the 2010 1-hour SO_2 NAAQS.

III. Final Action

The EPA is approving Massachusetts's February 9, 2018 interstate transport SIP for the 2010 SO_2 1-hour NAAQS as a revision to the Massachusetts SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 Clean Air Act; 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 1, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

■ 2. In § 52.1120(e), amend the table by adding the entry ''Certification of Adequacy of Massachusetts 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act 110(a)(2)(D)(i)(I)'' to the end of the table to read as follows:

§ 52.1120 Identification of plan.

(e) * * *

[3] *See* 84 FR 38898 (August 8, 2019).

MASSACHUSETTS NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date [3]	Explanations
* *	* *	*	*	*
Certification of Adequacy of Massachusetts 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act 110(a)(2)(D)(i)(I).	Statewide	2/9/2018	10/13/2019 [Insert **Federal Register** citation].

[3] To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2019–24323 Filed 11–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2018–0851; FRL–10001–93–OAR]

RIN 2060–AU27

Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the Standards of Performance for Stationary Compression Ignition Internal Combustion Engines. This final action revises the emission standards for particulate matter (PM) for new stationary compression ignition (CI) engines located in remote areas of Alaska.

DATES: The final rule is effective on November 13, 2019.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2018–0851. All documents in the docket are listed in on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *https://www.regulations.gov/* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Melanie King, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; fax number: (919) 541–4991; and email address: *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of this document. The information in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
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II. Background and Final Amendments
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- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action include:

Category	NAICS [1] code	Examples of regulated entities
Industries using stationary CI internal combustion engines	2211	Electric power generation, transmission, or distribution.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the rule. If you have any questions regarding the applicability of any aspect of this action, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a

copy of this final action at: *https://www.epa.gov/stationary-engines/new-source-performance-standards-stationary-compression-ignition-internal-0.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 13, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. That section of the CAA also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background and Final Amendments

On July 11, 2006, the EPA promulgated Standards of Performance for Stationary CI Internal Combustion Engines (71 FR 39154). These standards, known as new source performance standards (NSPS), implement section 111(b) of the CAA. The standards apply to new stationary sources of emissions, *i.e.,* sources whose construction, reconstruction, or modification begins after a standard for those sources is proposed. The NSPS for Stationary CI Engines established limits on emissions of PM, nitrogen oxides (NO_X), carbon monoxide (CO), and non-methane hydrocarbons (NMHC). The emission standards for these stationary CI engines are generally modeled after the EPA's standards for nonroad CI engines (including standards for land-based nonroad CI engines and marine CI engines), which are types of mobile engines regulated under 40 CFR parts 89, 94, 1039, 1042, and 1068. In general, the NSPS for Stationary CI Engines, like the nonroad engine standards, are phased in over several years and have Tiers with increasing levels of stringency, with Tier 4 as the most stringent level. The engine model year in which the Tiers take effect varies for different size ranges of engines. The Tier 4 final standards for both new stationary non-emergency CI engines and nonroad CI engines generally began with either the 2014 or 2015 model year. The NSPS for Stationary CI Engines are codified at 40 CFR part 60, subpart IIII.

In 2011, the EPA finalized revisions to the NSPS for Stationary CI Engines (the ''2011 Amendments'') that amended the standards for engines located in remote areas of Alaska (76 FR 37954, June 28, 2011). As discussed in the 2011 rulemaking, the remote communities in Alaska rely almost exclusively on diesel engines for electricity and heat, and these engines need to be in working condition, particularly in the winter. These communities are scattered over long distances in remote areas and are not connected to population centers by road and/or power grid. Most of these communities are located in the most severe arctic environments in the United States. The 2011 Amendments allowed owners and operators of stationary CI engines located in remote areas of Alaska to use engines certified to marine CI engine standards, rather than land-based nonroad engine standards. The remote communities prefer to use marine CI engines because their design facilitates the use of heat recovery systems to provide heat to community facilities. The 2011 Amendments also removed the requirements to meet Tier 4 emission standards for NO_X, CO, and NMHC that would necessitate the use of selective catalytic reduction aftertreatment devices in light of issues associated with supply, storage, and use of the necessary chemical reductant (usually urea) in remote Alaska.[1] For PM, the 2011 Amendments specified that stationary CI engines located in remote areas of Alaska would not have to meet emission standards that would necessitate the use of aftertreatment devices until the 2014 model year. The aftertreatment technology that was expected to be used to meet the PM standards is a diesel particulate filter (DPF). The EPA expected that providing additional time to gain experience with use of DPFs would alleviate some of the concerns associated with feasibility and costs of installing and operating DPFs in remote villages.

In a letter to the EPA Administrator dated December 20, 2017, Governor Bill Walker of Alaska requested that the EPA rescind the PM emission standards based on aftertreatment for 2014 model year and later stationary CI engines in remote areas of Alaska. The letter stated that it is difficult to operate and maintain PM aftertreatment controls on stationary CI engines in remote areas of Alaska because of cost, complexity, and unreliability. According to the letter, utilities in remote areas have been installing used, remanufactured, and rebuilt pre-2014 model year engines in the remote areas to avoid the requirement to use PM aftertreatment, instead of installing new engines that meet the Tier 3 marine CI engine standards. The EPA's expectation that experience with use of DPFs would alleviate feasibility and cost concerns was not realized and the requirement that 2014 model year and later engines use DPFs had, in fact, resulted in use of older engines. The letter indicated that new engines certified to the Tier 3 marine CI engine standards are notably cleaner than the non-certified engines currently in use in remote areas of Alaska, due to advances in diesel engine electronic fuel injection and electronic governors.

After receiving the letter from Governor Walker, the EPA contacted the Alaska Department of Environmental Conservation and the Alaska Energy Authority (AEA) to obtain more information about the issues described in the letter. In particular, the EPA asked for information regarding the state's concerns about the cost, complexity, and reliability of DPFs, as

[1] Remote areas of Alaska are defined in the Stationary CI Engine NSPS as those that either are not accessible by the Federal Aid Highway System (FAHS), or meet all of the following criteria: (1) The only connection to the FAHS is through the Alaska Marine Highway System, or the stationary CI engine operation is within an isolated grid in Alaska that is not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid; (2) at least 10 percent of the power generated by the stationary CI engine on an annual basis is used for residential purposes; and (3) the generating capacity of the source is less than 12 megawatts, or the stationary CI engine is used exclusively for backup power for renewable energy.

expressed in Governor Walker's letter. The EPA also asked for information on the number of stationary CI engines that are installed in remote areas of Alaska each year and whether any stationary CI engines with DPFs were currently operating in the remote areas. The AEA indicated that owners and operators of engines in rural communities have been delaying replacement of older engines because of the cost and concerns about having to install new engines with DPFs. As stated in Governor Walker's letter, the communities are using rebuilt older engines rather than installing new Tier 3 marine CI engines that would be lower-emitting and more efficient.

As noted previously, the communities in remote areas of Alaska are not accessible by the FAHS and/or not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid. They are isolated, and most are located in the most severe arctic environments in the United States. It is critical for the engines in these communities to remain in working order because they are used for electricity and heating. Information provided by the AEA and engine dealers indicates that the costs for engine and control device maintenance and repair are much higher than for engines located elsewhere in the United States due to the remote location and severe arctic climate. Technicians must travel to the remote areas for service and repairs, and travel costs for technicians and shipping costs for parts are much higher than in other areas. Information provided by the AEA indicated that travel costs can include chartering aircraft and can be approximately $3,000–$4,000 per trip, in addition to daily labor costs.[2] According to the information provided by AEA, a typical DPF service interval is 2,000 hours of operation, so approximately two service trips per year will be needed.[3] The travel time can range from 25 to 99 percent of the total labor invested in a job.[4] In addition to increased maintenance costs, a control device vendor indicated that costs for DPF installation on an engine in remote areas of Alaska can be more than double the costs for an engine in Texas.[5] The remote communities also have a shortage of operators who are trained for the DPF equipment. Typically, the filter element must be periodically removed, and the accumulated ash must be cleaned from the filter and captured. The AEA indicates that few communities have the technical capacity to perform the necessary cleaning procedures for DPFs. Technicians would have to travel to the communities to perform DPF maintenance, resulting in additional DPF maintenance costs from more frequent travel.

According to the AEA, experience with the use of DPFs in remote areas of Alaska is very limited. The AEA was aware of only one remote community that had installed DPFs on two engines in a power plant. The DPFs were installed in April 2018, so there has not been experience with the long-term operation of the engines and DPFs. The AEA noted that, rather than having the emission controls integrated with the certified engine, as is typical for Tier 4 CI engines, the remote communities will have to purchase Tier 3 marine CI engines and equip them with DPFs that may come from third parties. The DPFs would not be integrated into the engine's computer system, which may increase the likelihood of problems occuring that could cause the engine to shut down. As stated previously, the engines are generally used for heating in the villages, so unexpected engine shutdowns could cause life safety issues. Providers of engines and emission controls in Alaska noted that they have experienced operational issues with Tier 4 nonroad and stationary CI engines with DPFs in other areas of Alaska, even when the controls were integrated with the engine by the original equipment manufacturer. For example, one provider noted that he serviced two Tier 4 stationary CI engines that required numerous service calls and the addition of a parasitic load bank to maintain exhaust temperatures high enough for DPF regeneration, which increased fuel consumption and operating costs.[6] Another provider stated that it sold a number of Tier 4 nonroad CI engines equipped with DPFs that met extensive factory tests for reliability and durability, but experienced numerous problems with regeneration of the DPF once they were in-use by operators.[7]

After considering all of the information provided, including information provided on the lack of experience with and higher costs associated with the use of DPFs on engines in remote areas of Alaska, the potential for operational issues, and emission reductions expected if the disincentive to replacing old engines is eliminated, the EPA has determined that the use of DPFs is not adequately demonstrated in remote areas of Alaska. On July 5, 2019, the EPA issued a direct final rule (84 FR 32084) and a parallel proposed rule (84 FR 32114) to revise the provision in 40 CFR 60.4216 for 2014 model year and later stationary CI engines in remote areas of Alaska. After considering the public comments received, the EPA is finalizing the amendment that was proposed. The EPA is amending the provision in 40 CFR 60.4216 to specify that 2014 model year and later stationary CI engines in remote areas of Alaska must be certified to Tier 3 PM standards. The EPA has determined that the Tier 3 PM standards reflect the best system of emission reduction (BSER) that has been adequately demonstrated. The Tier 3 PM standards will limit emissions of PM to levels significantly below those of the older uncertified engines currently in use in many of the remote communities.

This final action revising the NSPS for Stationary CI Engines also satisfies EPA's obligation under the recently enacted Alaska Remote Generator Reliability and Protection Act, Public Law 116–62 (October 4, 2019), to remove the requirement in 40 CFR 60.4216(c) that stationary CI engines in remote areas of Alaska meet the Tier 4 PM standard and replace it with a requirement that those engines meet the Tier 3 PM standard.

III. Public Comments and Responses

This section presents a summary of the public comments received on the proposed amendments and the responses developed. The EPA received two public comments on the proposed rule. The comments can be obtained online from the Federal Docket Management System at *https://www.regulations.gov/.*

Comment: One commenter stated that there was no need to relax air quality standards and no need for diesel generation anywhere in Alaska.

[2] Letter from Ben Hopkins, General Manager Kaktovik Enterprises LLC to Janet Reiser, Executive Director, AEA, June 11, 2018. Available in the rulemaking docket.

[3] Email from David Lockard, AEA to Robert Klepp *et al. FW: Estimated DPF Capital and Operating Costs.* October 26, 2018. Available in the rulemaking docket.

[4] Letter from Bill Mossey, President, Pacific Power Group to Janet Reiser, Executive Director, AEA. August 10, 2018. Available in the rulemaking docket.

[5] Email from Marc Rost, Johnson Matthey to Melanie King, U.S. EPA. *Estimated DPF Capital and Operating Costs.* November 19, 2018.

[6] Summary of April 17, 2018, meeting between the EPA and the AEA to discuss Governor Walker's request for regulatory relief. Available in the rulemaking docket.

[7] Letter from Bill Mossey, President, Pacific Power Group to Janet Reiser, Executive Director, AEA. August 10, 2018. Available in the rulemaking docket.

According to the commenter, there are opportunities for generation using hydropower in combination with transmission, and the commenter has a low-head hydroelectric generation design. The commenter indicated that a demonstration site has been operating in Ontario since 1988.

Response: The commenter did not provide any support for the assertion that replacing diesel generation with hydropower generation in remote areas of Alaska would be feasible on either a technical or economic basis and could provide continuous power for the remote areas. The commenter did not provide information to demonstrate that the communities in remote areas of Alaska are near potential sources of hydropower or that transmission to such communities from any potential sources of hydropower would be feasible. The commenter conceded that some transmission would be required, but did not provide any information regarding the cost or feasibility of installing the transmission infrastructure from a theoretical source of hydropower to a community in remote Alaska. In addition, as noted in the 2011 Amendments, heat recovery systems are used with diesel engines in remote Alaskan communities to provide heat to community facilities and schools. The commenter did not provide information to show how that heat would be generated if the diesel engines are replaced by hydropower generation. Further, the commenter does not explain how the potential for hydroelectric power in remote Alaska is relevant to the EPA's determination that Tier 3 CI engines are the BSER that has been adequately demonstrated. In doing the analysis of the BSER for new stationary CI engines in remote areas of Alaska, we considered adequately demonstrated controls that can be applied to the source, not complete replacement of the source with a different means of generating power and heat.

Comment: One commenter stated that the EPA should not repeal the DPF requirements for remote areas of Alaska. The commenter recommended that the EPA provide the remote areas of Alaska with an extension to allow further time for those areas to gain experience with DPFs and provide training to people in the communities. The commenter indicated that the EPA should formally designate the remote areas on a map or in a list so that communities know what requirements are necessary. The commenter recommended that the EPA use the grant process specified in section 105 of the CAA to provide Alaska with funding for pilot programs to help communities gain experience in installing and operating DPFs and to allow them to install DPFs if the costs are too high.

The commenter disagreed that Tier 4 CI engines will require greater costs due to service and repair trips to remote locations. According to the commenter, any engine, including a Tier 4 CI engine, will require the same costs for trips for maintenance, service, and repairs. Regarding concerns over proper disposal of DPF ash and used filters, the commenter said that the engines without DPFs will emit the hazardous metallics into the atmosphere, and the EPA should compare the health consequences of these emissions with the benefits of capturing and properly disposing of the ash and the filter. The commenter stated that the EPA should promote innovation and environmental and health protection for remote areas of Alaska, which are typically home to lower income individuals and minorities according to the commenter.

Response: Regarding the comment that the EPA should provide an extension to provide more time for remote communities to gain experience with the use of DPF, the EPA already provided an extension for that purpose in the 2011 rulemaking, and as explained above, the EPA's expectation that experience with the use of DPFs would alleviate feasibility and cost concerns was not realized. Instead, the requirement that model year 2014 and later engines use DPFs has, in fact, resulted in the use of older engines. Further, in light of the information the EPA received from Governor Walker, the Alaska Department of Environmental Conservation and the AEA, as explained above, the EPA has determined that Tier 3 CI engines are the BSER and does not believe it is appropriate to retain a requirement that would necessitate the use of a DPF even if additional time is provided to meet that requirement. If more experience is gained with the use of DPFs in remote areas of Alaska, the EPA will consider that information when it next reviews the standards under section 111(b)(1)(B) of the CAA.

Regarding the comment that the EPA should formally designate the areas that are remote on a map or list them somewhere so that communities know what requirements are necessary, the criteria for qualifying as a remote area of Alaska in the regulation is not always based solely on geographical location. In some cases, the criteria include other factors such as the generating capacity of the source, so a map would not be sufficient for determining applicability. Furthermore, it is the responsibility of the owner or operator of stationary CI engines subject to the regulation to determine applicability for specific engines.

In response to the comment that the EPA should use a grant process to help communities gain experience with implementing the Tier 4 standards, although the EPA supports the idea of communities becoming proficient in operating and maintaining DPFs, the potential availability of grants does not change our determination that the use of DPFs is not currently BSER in remote areas of Alaska.

Information on the higher costs in remote areas of Alaska for engine and control device maintenance and repair provided by engine and catalyst dealers is included in the docket for this rulemaking and summarized earlier in this preamble. The commenter asserted that this information was false and that the cost of traveling to the engine location for service and repairs will be the same for any engine. It is true that the cost of engine technician travel per trip would be the same regardless of the type of engine. However, there would likely be increased frequency of travel associated with engines equipped with DPFs to allow engine technicians to perform the maintenance required for the DPFs, since the communities reportedly do not have the capability of performing the maintenance on their own. Therefore, the overall maintenance costs could be higher than for an engine not equipped with a DPF.

Regarding the comment concerning the health consequences of air emissions and the benefits of capturing and properly disposing of the ash collected by the DPF, the EPA has considered the health impacts associated with this final action. As stated previously in this preamble, utilities in the remote areas have been installing used, remanufactured, and rebuilt pre-model year 2014 engines, instead of installing new engines that meet the Tier 3 CI engine standards. According to the AEA, if these amendments are not finalized, higher emitting engines will likely continue to operate in the remote communities. Replacing the higher emitting engines with engines meeting the Tier 3 CI engine standards and that use ultra low sulfur diesel fuel will result in health and environmental protections for the remote communities.

IV. Impacts of the Final Rule

A detailed discussion of the impacts of these amendments can be found in the *Impacts of the Amendments to the NSPS for Stationary Compression Ignition Internal Combustion Engines*

memorandum, which is available in the docket for this action. That memorandum was written for the proposed rule and direct final rule, and the estimates of the impacts did not change for the final rule.

In the original 2006 rulemaking, the EPA assumed that, even in the absence of the NSPS, emissions from stationary CI engines would be reduced to the same emission levels as nonroad CI engines through Tier 3, because engine manufacturers frequently use the same engine in both nonroad and stationary applications. Emission reductions and costs were only estimated for the difference between compliance with the Tier 3 standard and compliance with the Tier 4 standard in the original rulemaking.[8] Using a similar assumption, the foregone PM reductions and costs from these amendments are calculated based on the difference in emissions between the engines that are expected to be used once these amendments are finalized, which are Tier 3 marine CI engines because of heat recovery abilities of marine engines, and the engines currently required by the regulations (known as the baseline), which are Tier 3 nonroad CI engines (either land-nonroad or marine) with a DPF. If the baseline is assumed to be a Tier 3 land-based nonroad CI engine with a DPF, then the foregone PM reductions, based on the difference between a Tier 3 marine CI engine and a Tier 3 land-based nonroad CI engine with a DPF, are 5.3 tons per year in the first year after the amendments. In the fifth year after the amendments, the foregone PM reductions would be 27 tons of PM per year, assuming the number of new engines installed each year remains constant. If the baseline is assumed to be a Tier 3 marine CI engine with a DPF, foregone PM reductions are 6.6 tons of PM per year in the first year and 33 tons of PM in the fifth year. The cost savings in the fifth year after the amendments are estimated to be approximately $8.0 million (2017 dollars). The cost savings are the same for either baseline (Tier 3 land-based nonroad or Tier 3 marine). We also show the cost savings using a present value (PV) in adherence to Executive Order 13771. The PV of the cost savings is estimated in 2016 dollars as $322.9 million at a discount rate of 3 percent and $111.2 million at a discount rate of 7 percent. Finally, the annualized cost savings over time can be shown as an equivalent annualized value (EAV), a value calculated consistent with the PV. The EAV of the cost savings is estimated in 2016 dollars as $9.7 million at a discount rate of 3 percent and $7.8 million at a discount rate of 7 percent. All of these PV and EAV estimates are discounted to 2016 and assume an indefinite time period after promulgation for their calculation.

Note that the AEA has indicated that owners and operators of engines in remote communities have been delaying replacement of older engines because of the cost and concerns about having to install new engines with DPFs. Thus, the costs and additional PM emission reductions from engines installed in 2014 and later have not been occurring as expected when the rule was originally issued in 2006. According to the AEA, if these amendments are not finalized, the remote communities will likely continue delaying replacement of older engines and will not receive the benefits of the reduced PM emissions that will occur if the older engines are replaced by new Tier 3 CI engines. Replacing an older engine with an engine meeting the Tier 3 CI engine emission standard results in a significant reduction in PM emissions compared to the older engine's emissions. For example, for a 238 horsepower (HP) engine, PM emissions from a Tier 3 marine CI engine are reduced by 80 percent from a Tier 0[9] engine.

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

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

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

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 2060–0590. This action does not impose an information collection burden because the EPA is not making any changes to the information collection requirements.

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 action reduces the impact of the rule on owners and operators of stationary CI engines located in remote areas of Alaska. We have, therefore, concluded that this action will relieve 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 action does not have tribal implications as specified in Executive Order 13175. While some Native Alaskan tribes and villages could be impacted by this amendment, this rule would reduce the compliance costs for

[8] *Emission Reduction Associated with NSPS for Stationary CI ICE.* Memorandum from Tanya Parise, Alpha-Gamma Technologies, Inc. to Jaime Pagán, EPA Energy Strategies Group. May 19, 2006. Document EPA–HQ–OAR–2005–0029–0288.

[9] Tier 0 signifies an engine built between 1988 and the first model year in which the Tier 1 standards took effect, which is 1996 for a 238 HP engine. See *Exhaust and Crankcase Emission Factors for Nonroad Compression-Ignition Engines in MOVES2014b,* EPA–420–R–18–009, July 2018.

owners and operators of stationary CI engines in remote areas of Alaska. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the 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

While some Native Alaskan tribes and villages could be impacted by this amendment, the EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The amendments will not have a significant effect on emissions and will likely remove barriers to the installation of new, lower emission engines in remote communities.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: October 30, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 60 is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

■ 2. Section 60.4216 is amended by revising paragraph (c) to read as follows:

§ 60.4216 What requirements must I meet for engines used in Alaska?

* * * * *

(c) Manufacturers, owners, and operators of stationary CI ICE that are located in remote areas of Alaska may choose to meet the applicable emission standards for emergency engines in §§ 60.4202 and 60.4205, and not those for non-emergency engines in §§ 60.4201 and 60.4204, except that for 2014 model year and later non-emergency CI ICE, the owner or operator of any such engine must have that engine certified as meeting at least the Tier 3 PM standards in 40 CFR 89.112 or 40 CFR 1042.101.

* * * * *

[FR Doc. 2019–24335 Filed 11–12–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02]

RIN 0648–XS008

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2019–2020 Commercial Quota Reduction for King Mackerel Run-Around Gillnet Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; commercial quota reduction.

SUMMARY: NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the southern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (equivalent to the commercial quota) for king mackerel using run-around gillnet gear in the southern zone of the Gulf EEZ was exceeded in the 2018–2019 fishing year. Therefore, NMFS reduces the southern zone commercial annual catch limit (ACL) for king mackerel fishing using run-around gillnet gear in the Gulf EEZ during the 2019–2020 fishing year. This commercial ACL reduction is necessary to protect the Gulf king mackerel resource.

DATES: The temporary rule is effective from 6 a.m. on January 21, 2020, through June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf migratory group king mackerel (Gulf king mackerel) below apply as either round or gutted weight.

The king mackerel commercial ACL in the Gulf is divided into separate ACLs for hook-and-line and run-around gillnet gear. The use of run-around gillnets for king mackerel is restricted to the Gulf southern zone. The Gulf southern zone, which includes the EEZ off Collier and Monroe Counties in south Florida, encompasses an area of the EEZ south of a line extending due west from the boundary of Lee and Collier Counties on the Florida west coast, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the Florida east coast (50 CFR 622.369(a)(1)(iii)).

For the 2018–2019 fishing season, the commercial gillnet quota for Gulf king mackerel was 585,900 lb (265,760 kg). Regulations at 50 CFR 622.8(b) and 622.388(a)(1) require NMFS to close any component of the king mackerel commercial sector when its respective

quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. On February 8, 2019, NMFS determined that the 2018–2019 commercial gillnet quota had been reached, and closed the commercial gillnet component for the remainder of the 2018–2019 fishing year (84 FR 3723, February 13, 2019).

NMFS' most recent landings data for the 2018–2019 fishing year indicate that the commercial gillnet component exceeded the 585,900-lb (265,760-kg) quota by 45,357 lb (20,573 kg). The AM specified in 50 CFR 622.388(a)(1)(iii) states if commercial landings of king mackerel caught by run-around gillnet gear exceed the commercial gillnet ACL, then NMFS will reduce the commercial gillnet ACL in the following fishing year by the amount of the overage.

The 2019–2020 commercial gillnet ACL for Gulf king mackerel in the southern zone is 575,400 lb (260,997 kg) (50 CFR 622.384(b)(1)(iii)(B)). The fishing season is currently closed from July 1, 2019, through January 20, 2020, and will open at 6 a.m. on January 21, 2020. The 2019–2020 fishing year runs through June 30, 2020.

Consistent with the AM, NMFS reduces the 2019–2020 commercial gillnet quota by the amount of the 2018–2019 commercial gillnet ACL overage to 530,043 lb (240,423 kg). If king mackerel commercial gillnet landings do not exceed the ACL in the 2019–2020 fishing year, then in the 2020–2021 fishing year, the component's commercial quota will again be 575,400 lb (260,997 kg) as specified in 50 CFR 622.384(b)(1)(iii)(B).

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.8(b) and 622.388(a)(1)(iii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without prior notice and opportunity for public comment.

This action responds to the best scientific information available. The NOAA Assistant Administrator for Fisheries (AA) finds that the need to immediately implement this action to reduce the commercial ACL for the fishery component that uses run-around gillnet gear constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary. Such procedure is unnecessary because the rule implementing the commercial ACL and the associated AM for the commercial ACL reduction has already been subject to public notice and comment, and all that remains is to notify the public of the commercial ACL reduction.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–24516 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 191023–0070]

RIN 0648–BF43

Fisheries of the Northeastern United States; Jonah Crab Fishery; Interstate Fishery Management Plan for Jonah Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service, are implementing regulations for the Jonah crab fishery in Federal waters based on Atlantic States Marine Fisheries Commission recommendations. This action is necessary to enact measures that provide stock protections to a previously unmanaged fishery. The action is intended to ensure compatibility between state and Federal Jonah crab management measures, consistent with the Commission's Interstate Fishery Management Plan for Jonah Crab and the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: This rule is effective December 12, 2019.

ADDRESSES: You may request copies of the Final Environmental Impact Statement (FEIS), including the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), or the Record of Decision (ROD) prepared for this action at: National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276 or by calling (978) 281–9315.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

Under its process for managing species that are managed by both the states and NMFS, the Atlantic States Marine Fisheries Commission makes a management decision, and then recommends that the Federal government enact regulations to complement these measures when appropriate. The Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*) directs the Federal government to support the management efforts of the Commission and, to the extent the Federal government seeks to regulate a Commission species, to develop regulations that are compatible with the Commission's Interstate Fishery Management Plan and consistent with the Magnuson-Stevens Fishery Conservation and Management Act's National Standards.

Historically, Jonah crabs (*Cancer borealis*) have been harvested as an incidental catch in the American lobster trap fishery. Lobster harvesters did not target Jonah crabs but sometimes retained and sold crabs caught while lobster fishing. Eventually, the Jonah crab market expanded, and lobster harvesters began modifying fishing practices to target Jonah crabs. Landings have dramatically increased from nearly 3 million lb (1,361 mt) in 1994 to a high of over 17 million lb (7,711 mt) in 2015.

The Commission initiated management of Jonah crab out of concern for its future sustainability. Fishery managers became concerned by the rapid increase in Jonah crab landings, particularly because the impacts of the significantly increased fishing pressure are not clear. There is no stock assessment for Jonah crab and no biological reference points, so we do not know whether the stock is overfished or if overfishing is occurring. Managers fear that if overfishing does occur, that it could continue unabated, because the only regulatory protections for Jonah crabs are imposed by lobster fishery regulations. At present, the Jonah crab fishery is unregulated in Federal waters; any unpermitted vessel can fish for any amount of crabs, with unlimited amounts of gear. Prior to development of the Commission's Jonah Crab Plan, some states attempted to

implement some control over state Jonah crab harvesters (*e.g.,* limiting Jonah crab harvest to those with a valid lobster permit), but these regulations were often inconsistent between the states. The market provided some additional stock protection. Only crabs above a 5-inch (12.7-cm) carapace length were marketable and, thus, crabs with a smaller carapace width were not harvested and returned to the sea.

The Commission's American Lobster Management Board manages the Jonah crab fishery because of the link between the lobster and Jonah crab fisheries. The Commission approved an Interstate Fishery Management Plan for Jonah Crab in August 2015, following its public process for review and approval of management actions. The goal of the Commission's Jonah Crab Plan is ''to promote conservation, reduce the possibility of recruitment failure, and allow the full utilization of the resource by the industry.'' In general, the plan attempted to maintain the fishery as it existed prior to approval of the plan in 2015 and cap fishing effort at the 2015 levels. For example, this involved establishing a fishery that was limited to and prosecuted by lobster trap harvesters. Shortly after the Commission approved the plan, the Commission initiated and approved Addenda I and II, refining incidental catch limits and claw-only measures. These documents are available on the Commission's website at: *http://www.asmfc.org/species/jonah-crab.* The Commission formally recommended that the Secretary of Commerce implement complementary Federal measures to the Jonah Crab Plan on September 8, 2015. The Commission amended the Jonah Crab Plan to include additional measures and the Secretary to include those additional measures as part of the Federal rulemaking process on February 8, 2017.

Approved Measures

This rule approves the following measures (Table 1) which are consistent with the Commission's recommendations in the Jonah Crab Plan and its addenda. Measures are discussed in greater detail below.

Table 1 -- Approved Jonah Crab Measures

Sector	Management Measure	Requirement
Commercial	Vessel permitting	Landing requires a Federal Lobster permit
	Minimum size	4.75 inch (12.065 cm) carapace width
	Broodstock protection	Prohibit retention of egg-bearing females
	Incidental limit	Up to 1,000 crabs per trip
	Incidental definition	Up to 50 percent of weight onboard
	Dealer permitting and reporting	Federal deal permit required and mandatory Federal dealer reporting
Recreational	Broodstock protection	Prohibit retention of egg-bearing females
	Catch limit	50 crabs per day

Commercial Measures

1. Permitting

Only vessels with Federal lobster permits can fish for and harvest Jonah crab. As a result, there is no need to separately qualify or issue a Jonah crab-specific permit. Tying Jonah crab access to the lobster permits allows managers to take advantage of existing lobster regulations to protect Jonah crabs particularly because the Jonah crab fishery has historically been prosecuted by lobster permit holders using lobster traps. The Jonah crab fishery will have trap limits and gear configuration requirements because the pots used are considered lobster traps under our regulations at 50 CFR 697.2 and subject to all the restrictions required by our lobster regulations set forth in 50 CFR part 697.

This action is not expected to prevent historical Jonah crab harvesters from Jonah crab fishing in the future. Analysis of Federal and state harvest data completed during development of the Commission's plan identified that all Jonah crab trap harvesters held an American lobster permit. In multiple advance notices of proposed rulemaking (80 FR 31347, June 2, 2015; 81 FR 70658, October 13, 2016), we requested information to identify any Jonah crab harvesters that did not hold a lobster permit, which would inform our proposal to link Jonah crab harvest to the existing lobster permit structure. We received no comments in response to these notices identifying Jonah crab harvesters that did not have a lobster permit. Since that time, one state has identified Jonah crab-only harvesters in state waters, and there is no evidence that these Jonah crab-only harvesters participated in the fishery in federal waters. We concluded that linking Jonah crab harvest to the existing American lobster permitting structure is appropriate.

Commercial non-trap lobster permit holders may land an incidental amount of Jonah crabs (meeting both the incidental limit and incidental definition, discussed below) (see Table 1). As with trap harvesters, non-trap harvesters must comply with all applicable lobster regulations.

Charter/party-permitted vessels and recreational anglers may possess Jonah crabs but must comply with the recreational requirements (see Table 1). Finally, recreational anglers may not set trap gear.

2. Minimum Size

We are implementing a minimum carapace width size of 4¾ inches (12.065 cm). The purpose of a minimum size restriction is to protect crabs until they mature and have an opportunity to reproduce. This size restriction should

have a negligible impact on the fishing industry because Jonah crabs smaller than 4¾ inches (12.065 cm) have not been traditionally marketable and therefore, were not harvested. The Commission's Jonah Crab Plan Development Team (PDT) attempted to identify Jonah crab size at maturity and found that, ''data suggests that both sexes reach near 100 percent maturity by 3 35/64 inches (9.0 cm).'' We are implementing the Commission-recommended minimum carapace width because it has biological benefits (*i.e.,* ensures that the majority of crabs have the opportunity to reproduce) and is enforceable. Approving the same size restrictions in this action ensures consistent size restrictions in state and Federal waters.

3. Broodstock Protection

We are approving a prohibition on retaining egg-bearing female Jonah crabs. Approving this prohibition helps to align state and Federal regulations. We are also prohibiting the removal of eggs from an egg-bearing female Jonah crab. While not specifically considered by the Commission, this measure complements the Jonah Crab Plan by closing a potential enforcement loophole which could allow a harvester to circumvent the prohibition of possessing egg-bearing female Jonah crabs by removing the eggs. Finally, this prohibition has been an important and effective element of our lobster regulations, and therefore we think it is important to include a similar provision for Jonah crabs.

4. Incidental Catch Limit

We are implementing an incidental catch limit of up to 1,000 crabs per trip for commercial non-trap lobster permit holders, as recommended in Addendum I. The Commission originally approved an incidental catch limit of up to 200 crabs per day and up to 500 crabs per trip which largely mirrored the lobster incidental catch limit. The PDT reviewed available catch information and determined that the original Jonah Crab Plan limit would have restricted some past trips which landed more than 200 crabs per day or 500 crabs per trip. The PDT determined that a limit of 1,000 crabs per trip would cover the majority of past landings from non-trap gear.

Because of the PDT's findings, the Commission revised the Plan's incidental catch limit of up to 1,000 crabs per trip for both non-trap gear and non-lobster trap gear as part of Addendum I. Our catch data corroborate the Commission's basis for revising the incidental catch limit as only three trips between 2010 and 2014 landed more than 900 lb (408.2 kg). Therefore, a Federal incidental catch of up to 1,000 crabs provides consistency between Federal and state regulations.

5. Incidental Catch Definition

We are implementing a requirement that Jonah crabs cannot comprise more than 50 percent, by weight, of all species kept onboard a commercial non-trap permitted vessel. This is a second requirement governing the incidental possession of Jonah crabs that complements the maximum incidental catch limit of 1,000 crabs per trip. To further ensure that the incidental catch of Jonah crabs does not expand into a targeted fishery, the Commission developed and approved an incidental catch definition (called a ''bycatch definition'') as part of Addendum II.

Percentage-based incidental catch caps have been used in other regionally managed fisheries and are enforceable. Therefore, consistent with the Commission's recommendation and to complement state measures already in effect, we are approving a requirement that, in addition to the incidental catch limit, Jonah crabs cannot comprise more than 50 percent, by weight, of all species kept onboard a vessel.

6. Mandatory Dealer Reporting

We are approving a dealer-permitting requirement and a mandatory dealer-reporting requirement for any dealer purchasing Jonah crabs from federally permitted vessels, consistent with all other regionally managed species.

The Commission did not explicitly discuss a permitting program for dealers purchasing Jonah crabs. Permitting is necessary to successfully implement a mandatory dealer-reporting program. Therefore, we are approving a requirement that a dealer obtain a Federal Jonah crab dealer permit if that dealer wishes to purchase Jonah crabs from a federally permitted lobster permit holder. Due to the overlap of Jonah crab and lobster harvest, our analysis shows that the vast majority of dealers currently purchasing Jonah crabs already have Federal dealer permits due to the other species purchased, specifically lobster. Requesting an additional fishery in the annual renewal application is not expected to add any additional burden to an applicant. Dealers may begin requesting this permit once the rule is effective. It will be issued and begin being enforced on January 1, 2020.

We are also requiring that all federally permitted Jonah crab dealers submit dealer reports electronically, on a weekly basis, consistent with dealer reporting requirements for all other regionally managed commercial fisheries, including lobster. The Jonah Crab Plan specified information to be collected in dealer reports. We are approving the collection of the Commission's recommended information. We will require the same information currently required in other fisheries, as well as some additional information. These requirements include: Dealer name; dealer permit number; name and permit number or name and hull number (U.S. Coast Guard documentation number or state registration number, whichever is applicable) of the vessel from which fish are purchased; trip identifier (vessel trip report identification number for vessels with mandatory vessel trip reporting requirement); date of purchase; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. Finally, to facilitate reporting of all market categories, we are adding additional species market codes to the dealer report, which will help more accurately assess Jonah crab landings. While this dealer permitting and reporting program is more expansive than what is specified in the Jonah Crab Plan, it is consistent with the Commission's intent and will ensure consistency with the dealer reporting requirements for other federally managed fisheries.

Recreational Measures

1. Broodstock Protection

We are approving a prohibition on retaining egg-bearing female Jonah crabs in the recreational fishery, consistent with the Commission's recommendation. Development of this measure occurred in parallel to broodstock protection measures for the commercial fishery. For more background, please see *Broodstock Protection* under the Commercial Measures heading above.

2. Recreational Catch Limit

We are approving a recreational Jonah crab harvest limit of 50 whole crabs per person, per day. Consistent with the Commission's recommendation and to complement state measures already in effect, we are implementing a recreational catch limit of 50 whole crabs per person, per day. Consistent with the regulations for recreational harvest of American lobster, non-trap

gear must be used to harvest Jonah crab recreationally, including diving, charter/party trips, and personal angling. While little information exists on the recreational fishery, this limit balances recreational access to the fishery while restricting future expansion.

Other Measures Considered by the Commission but Not Implemented

1. Landing Disposition Requirements (i.e., Whole Crab vs. Claw Only Fishery)

We are not imposing a landing disposition requirement at this time. Landing disposition requirements, like the incidental landing limit, evolved during the development of the Jonah Crab Plan and its addenda. In a first attempt to capture regional harvesting differences in the Jonah Crab Plan, the Commission approved a whole crab fishery with an exemption for individuals who could prove a history of claw landings before the June 2, 2015, control date in the states of New Jersey, Delaware, Maryland, and Virginia. During the development of the Jonah Crab Plan, we advocated for a whole-crab fishery due to biological, enforcement, and for better coastwide management consistency.

The Commission reconsidered its claw fishery requirements as part of Addendum II. This effort included a thorough investigation of state and Federal landings data in an attempt to determine the extent of Jonah crab claw landings. The Jonah Crab PDT developed a range of potential management measures, including: (1) Status quo (a whole crab fishery with an exemption for southern states); (2) a whole crab fishery coastwide; and (3) a coastwide regulated claw fishery. Incidental volumetric measure claw limits such as a maximum of one 5-gallon (18.93 L) bucket were also discussed. During the development of Addendum II, we again advocated for a whole-crab fishery, but we supported options that would allow a small amount of claw-only landings. The Commission ultimately approved a measure that established a coastwide standard for claw harvest, allowing for an unlimited amount of claws to be harvested subject to a minimum claw length requirement.

In response, states have implemented a wide range of measures. Some allow the harvest of an unlimited amount of claws that meet the minimum size; others allow harvest of a maximum of one 5-gallon (18.93 L) bucket of claws, while others allow only whole crabs to be landed. The Commission recommended that we implement complementary claw fishery measures, but the variety of state regulations complicates our ability to create complementary Federal regulations. Specifically, it is challenging to issue a single Federal regulation that is consistent with state landing disposition requirements, when the state regulations themselves are inconsistent. Because the states can effectively regulate this matter on shore without complementary regulations, we are not issuing regulations for a landing disposition at this time. As such, states will regulate crab landing disposition shore-side. We will monitor the effectiveness of these state regulations to determine whether future Federal regulation will be necessary. Deferring action on this issue is expected to minimize disconnects between state and Federal regulations.

2. Mandatory Commercial Harvester Reporting

The Commission recommended a 100-percent mandatory harvester-reporting program as part of the Jonah Crab Plan but allowed jurisdictions requiring less than 100 percent of lobster harvester reporting to maintain their current programs and extend them to Jonah crab. The Jonah Crab Plan established specific information to be reported, including: A unique trip identification (link to dealer report); vessel number; trip start date; location (NMFS stat area); traps hauled; traps set; quantity (lb); trip length; soak time in hours and minutes; and target species. We intend to restrict Jonah crab harvest to Federal lobster permit holders, and at present, there is no mandatory harvester-reporting requirement for Federal lobster permit holders. Therefore, we do not intend to modify Federal lobster permit holder's reporting requirements through this action. This action, however, will add an additional species code to the vessel trip report to better capture the landings of Jonah crab claws in states that permit such activity.

In recent months, the Commission has given additional consideration to the reporting requirements in both the lobster and Jonah crab fisheries. In February 2018, the Commission approved Addendum XXVI to the Interstate Fishery Management Plan for American Lobster, which also serves as Addendum III to the Jonah Crab Plan. The intent of Lobster Addendum XXVI/Jonah crab Addendum III is to expand lobster harvester reporting requirements, enhance the spatial and effort data collections, and improve the amount and type of biological data collected in the offshore trap fishery. Given the offshore expansion of lobster trap effort in recent years, the Commission developed this addendum to address data gaps from inconsistent reporting and data collection requirements across state and Federal agencies. As a result, the recommended Jonah crab reporting will be subsumed by the lobster reporting requirements that the Commission already made as part of Addendum XXVI to the Lobster Plan/Addendum III to the Jonah Crab Plan. We are currently developing a proposed rule in a separate action to consider adopting these expanded lobster and Jonah crab harvester reporting recommendations. We expect the proposed measures to publish in late 2019 and the rule to implement requirements to occur in 2020.

Research Activities

Since the Commission's approval of the Jonah Crab Plan, several organizations have established Jonah crab research programs focused on the research needs identified in the Plan. Researchers from the Massachusetts Division of Marine Fisheries (MA DMF), the Commercial Fisheries Research Foundation (CFRF), and the University of Maryland have requested exempted fishing permits (EFPs), including exemptions from Jonah crab regulations, to conduct research on migration, growth rates, and maturity in Federal waters. Because no Federal regulations existed for Jonah crab, we advised researchers that they were free to conduct their research activities in Federal waters, but that exemptions from lobster regulations would be required.

We issued EFPs to MA DMF and CFRF, and the University of Maryland in 2019. These projects have centered on the collection of crabs and lobster using ventless traps and, to date, have received exemptions from the lobster trap regulations, including exemptions from escape vent, trap tagging, and number of allowable traps requirements. Several of these studies are also collecting information on lobsters, and therefore have exemptions from lobster possession provisions in regulations, including provisions on minimum and maximum size, egg-bearing females, etc.

This action expands the exemptions granted to these three research projects to include exemptions from the proposed Jonah crab regulations, as outlined in Table 2. New EFPs will be issued to these researchers, coinciding with the effective date of these measures. These exemptions do not expand the scope or scale of any existing research projects; they are intended to allow these research activities to continue without interruption.

TABLE 2—EXPANDED EXEMPTION PROPOSAL TO EXISTING RESEARCH PERMITS

Organization	Project title	Jonah crab exemptions
Commercial Fisheries Research Foundation	Southern New England Cooperative Ventless Trap Survey.	Minimum size.
Massachusetts Division of Marine Fisheries	Random Stratified Coastwide Ventless Lobster Trap Survey.	Minimum size. Prohibition on the possession of egg-bearing female Jonah crabs.
University of Maryland	Sexual maturity investigation of Jonah crabs	Minimum size.

Once approved, the applicants may request minor modifications and extensions to the EFP throughout the year. We may grant EFP modifications and extensions without further notice if the modifications and extensions are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP requests. The EFPs would prohibit any fishing activity conducted outside the scope of the exempted fishing activities. Finally, we invite any other organizations conducting Jonah crab research to contact us to discuss whether their research activities will require Federal permits.

Comments and Responses

Two documents solicited comment on this action: A control date advance notice of proposed rulemaking (80 FR 31347; June 2, 2015) and a notice of intent for the environmental impact statement (EIS)/advance notice of proposed rulemaking (81 FR 70658; October 13 2016). Comments were received from: The Atlantic Offshore Lobstermen's Association; the Center for Biological Diversity; and two members of the public. We published a proposed rule in the **Federal Register** on March 22, 2019 (84 FR 10756), soliciting public comment on the proposed Jonah Crab Plan measures. The comment period ended on April 22, 2019. We received eight letters from two fishery organizations, the New England Fishery Management Council, two Jonah crab harvesters, a group of environmental advocacy organizations, and two members of the public. Only comments that were applicable to the proposed measures are addressed below. Consolidated responses are provided to similar comments on the proposed measures.

Comment 1: The Atlantic Offshore Lobstermen's Association supported the establishment of a control date for the Jonah crab fishery, believing that it will discourage speculative entry into the fishery during the interim period before the states and NMFS published regulations to manage the fishery.

Response: We agree. A central purpose of the control date was to put harvesters on notice of the potential regulatory restrictions and prevent speculation. Available information suggests that speculative fishing was limited.

Comment 2: An anonymous comment opposed establishing a control date. The commenter argued that it was inappropriate for NMFS to issue a control date at the request of the Commission when the fishery takes place in Federal waters and the New England Fishery Management Council expressed interest in management, as Council management would take precedence over Commission management.

Response: We disagree. The control date provided notice to the public of potential future regulations and its purpose and value is independent of its origin from either the Commission or the Council. Here, the Commission's involvement makes sense given the overlap between the lobster fishery and Jonah crab fishery. Notwithstanding the Commission's role in developing its Jonah Crab Plan, the New England and Mid-Atlantic Councils have been consulted on this matter. Many members of the Commission's Lobster Board are also Council members and a New England Council member was invited to represent the Council's Jonah crab interests on the Lobster Board. The Council has participated in Commission decision-making and voted to adopt Commission's actions at the Lobster Board. Because of this, we feel that it was appropriate to issue a control date at the Commission's request.

Comment 3: During development of the rulemaking and EIS, the Center for Biological Diversity raised concern about large whale entanglements in Jonah crab traps and requested that the EIS consider impacts to large whales, specifically the north Atlantic right whale *(Eubalaena glacialis).*

Response: We are mindful of potential impacts between the Jonah crab fishery and large whales and analyzed trap impacts in Section 5 of the EIS. This analysis will be ongoing because this action folds the Jonah crab fishery into the lobster fishery. Before this action, any unpermitted individual could fish an unlimited number of traps in Federal waters for Jonah crab. Now Jonah crab fishing is restricted to lobster permit holders and any traps used to target Jonah crabs are considered lobster traps, subject to all lobster regulations. This new regulatory framework ensures that the fishery's impacts to whales will be analyzed in NMFS' ongoing fishery Biological Opinion, as well as the recommendations made by the Large Whale Take Reduction Team in April 2019, and all lobster reporting requirements in response to Commission Addendum XXVI.

Comment 4: During development of the rulemaking and EIS, the Center for Biological Diversity stated the spatial information should be included in the reporting requirements.

Response: We agree. NMFS is developing spatial information reporting requirements in a separate rulemaking that addresses the recommendations of Addendum XXVI to the Lobster Plan/Addendum III to the Jonah Crab Plan. This future rulemaking will also consider reporting needs from the Lobster and Jonah Crab Plan, which requires the following information as part of harvester reports: A unique trip ID (link to dealer report), vessel number, trip start date, location (statistical area), traps hauled, traps set, quantity (lb), trip length, soak time in hours and minutes, and target species. These requirements were intended to match the reporting requirements associated with the Interstate Fishery Management Plan for American Lobster, as these two fisheries are linked. Due to the overlap with North Atlantic right whales, the Atlantic Large Whale Take Reduction Team may recommend additional reporting requirements. Such requirements may be incorporated into this future rulemaking.

Comment 5: During development of the rulemaking and EIS, one individual opposed the development of Federal Jonah crab regulations, preferring that the fishery be closed to commercial harvest, stating that Jonah crabs are a food source for birds and marine mammals.

Response: The Commission developed the Jonah Crab Plan out of precaution and potential concern for the Jonah crab resource given the recent and rapid increase in landings. There is no stock assessment for Jonah crab, but the science does not presently support a complete closure of the fishery. The population has been able to sustain past increases in commercial landings, as described in Section 4.5.2 of the EIS. Fishing effort has been capped at such levels. We are taking action, as requested by the Commission, to implement complementary regulations in Federal waters. This action is expected to put some initial limits on Jonah crab harvest and implement reporting requirements, adding to our information and making a future stock assessment possible.

Comment 6: The Atlantic Offshore Lobstermen's Association commented in support of Federal rulemaking at multiple stages and highlighted the need for the commercial management measures approved in this rule. One commercial lobster harvester resubmitted a copy of a letter that was submitted to the Commission in 2014 supporting Jonah Crab Plan development. The Cape Cod Commercial Fishermen's Alliance generally supported proposed measures. All three letters supported linking Jonah crab harvest to the lobster permit structure.

Response: We agree and are developing regulations consistent with the Atlantic Coastal Fisheries Cooperative Management Act and the Commission's recommendations in the Jonah Crab Plan. For additional rationale, please refer to Approved Measures.

Comment 7: One harvester, who identified himself as a Jonah crab-only harvester without a lobster permit, disagreed with our proposal to link Jonah crab harvest to the lobster permit structure. Instead, the commenter proposed establishing a targeted Jonah crab permit to allow targeted harvesters to land an unlimited amount of crabs and 100 lobster per day as bycatch, arguing that the Jonah crab fishery has ''emerged as its own fishery separate from lobster.''

Response: The best available information suggests that the Jonah crab fishery is not separate from the lobster fishery. Landings data available during the development of the Jonah Crab Plan indicated that between approximately 91–99 percent of Cancer crabs (both Jonah crabs and rock crabs) were harvested from lobster permit holder in their trap gear. Data further suggests that the fishery began as unintentional catch; crabs now are increasingly a targeted catch from lobster traps. This obvious linkage is the basis for the American Lobster Board overseeing management and is a primary driver behind the recommendation to link Jonah crab harvest to the lobster permit structure.

There is no justification to qualify and issue Jonah crab-only permits. As discussed above, on several different occasions, we requested information to identify any Jonah crab harvesters that did not hold a lobster permit. One of these requests coincided with a 2015 control date, intended to promote awareness of possible future rulemaking, and discourage speculative entry into and/or investment in the Jonah crab fishery. We received no comments in response to these earlier requests for information. In addition, only one state has identified Jonah-crab only harvesters and only in state waters. As no other information has been presented that helps to identify Jonah crab harvesters without a lobster permit in Federal waters prior to the 2015 control date and the commenter indicated that his entry into the fishery occurred after the 2015 control date, which was designed to prevent such speculative entry, we are linking Jonah crab harvest to the lobster permit structure.

Finally, it would be problematic for NMFS to authorize additional effort in the lobster fishery without consulting the Commission, the American Lobster Board, and our partner states as it would create an inconsistency with the Lobster Plan and with state regulations. The Commission specifically endorsed linking Jonah crab harvest to the lobster permit structure. The Interstate Fishery Management Plan for American Lobster strictly controls harvest. Any additional effort in the fishery should be considered through the Commission's open and public process.

In sum, the administrative and enforcement efficiencies, as well as the biological benefits (to crabs, lobsters, and whales) weighed against the negative time and resources impacts and ineffectiveness caused by creating an inconsistent Federal Jonah crab-only fishery that would potentially benefit only one individual, all provide the basis for our linking the fisheries.

Comment 8: The Atlantic Offshore Lobstermen's Association, Cape Cod Commercial Fishermen's Alliance, and one industry member supported the proposed minimum size. The other industry member supported a 5-inch (12.7-cm) minimum size.

Response: We agree with the commenters and are approving a 4¾-inch (12.065-cm) minimum carapace width. Due to the significant overlap with the American lobster fishery, the Commission's American Lobster Board has overseen management, as recommended. The Board has developed many coastwide measures (*i.e.,* all but claw provisions that are state-by-state) that states have implemented, which will now be complemented in Federal waters through this action.

When developing measures for the fishery, Lobster Board considered a range of minimum sizes. These measures were included in the draft Jonah Crab Plan and taken out to public comment. As discussed in greater detail in the proposed rule, the Commission selected a minimum size of 4¾ inches (12.065 cm) because it balances market demands, biological concerns over the size at which crabs become mature, and industry concerns that enforcement officials would issue violations for crabs that are just under the market-preferred size in this high-volume fishery where measuring each crab may be difficult.

We considered and analyzed both 4¾-inch (12.065-cm) and 5-inch (12.7-cm) minimum sizes as alternatives in the accompanying EIS. While they are reasonable, approving a measure that is inconsistent with what the states have already promulgated would create a significant inconsistency between state and Federal regulations for this species. Any inconsistency increases the difficultly to achieve coordinated management, administrative and enforcement objectives, and creates additional confusion about applicable regulations for harvesters. Due to these potential negative effects, we have approved a minimum size that is consistent with Commission recommendations and state requirements.

Comment 9: The Atlantic Offshore Lobstermen's Association, the New England Fishery Management Council, and one member of the public supported the prohibition on the retention of egg-bearing female Jonah crabs. Both harvesters supported prohibiting the retention of all female Jonah crabs, with one identifying egg-bearing female Jonah crabs as needing specific protections.

Response: We agree with the associations and one member of the public that the approved broodstock protection measures will provide protections for the Jonah crab fishery, consistent with the Atlantic Coastal Fisheries Cooperative Management Act and the Commission's recommendations in the Jonah Crab Plan. When developing the Jonah Crab Plan, the Lobster Board considered protections

for egg bearing female crabs and all female crabs as management alternatives. Both alternatives help ensure that eggs are given the opportunity to hatch and add to the population and similar measures have been successfully used in the lobster fishery, under the Interstate Fishery Management Plan for American Lobster. Ultimately, the Commission selected to prohibit the possession of egg-bearing female crabs. The Jonah Crab Plan and the EIS both note that the vast majority of female crabs (96–98 percent) are smaller than the minimum size. As such, approving only a prohibition on egg-bearing female Jonah crabs is more targeted to the Commission's objective of giving eggs the opportunity to hatch and contribute to the overall crab population. Most states had already implemented regulations to prohibit possession of egg-bearing female crabs by June 1, 2016.

While both broodstock protection alternatives are reasonable, approving measures that are inconsistent with what the states have already promulgated would create a significant inconsistency between state and Federal regulations for this species. Due to the potential negative effects associated with inconsistencies, we have approved a prohibition on the retention of egg-bearing female Jonah crabs, consistent with Commission recommendations and state requirements.

Comment 10: The New England Council and one member of the public supported the incidental catch limit.

Response: We agree. The Commission spent several meetings establishing the incidental catch limit in the original Jonah Crab Plan and then perfected it in Addendum I. Ultimately, the Commission approved a new, expanded limit of up to 1,000 crabs per trip for both non-trap gear and non-lobster trap gear as part of Addendum I. The Commission expected that this revised limit would be more consistent with the maximum incidental catch that existed in 2015 prior to developing the Jonah Crab Plan while preventing future expansion of the incidental fishery into a larger or more targeted fishery. Our catch data corroborated the Commission's basis for revising the incidental catch limit as only 3 trips between 2010 and 2014 landed more than 900 lb (408.2 kg). A Federal incidental catch of up to 1,000 crabs provides consistency between Federal and state regulations, thereby avoiding negative impacts associated with inconsistency, as outlined in the response to Comment 8.

Comment 11: The Council, the Cape Cod Commercial Fishermen's Alliance, and one member of the public supported the proposed dealer requirements.

Response: We agree. Mandatory dealer reporting in the will provide much needed fishery information. Such information will inform future science and management of this species.

Comment 12: The Cape Cod Commercial Fishermen's Alliance supported ''measures to expand research in the fishery to fill gaps in knowledge,'' noting that such research could help refine management measures and encouraged that a stock assessment be conducted as soon as possible to ''ensure that overfishing is not likely to occur in this burgeoning fishery, allowing it to thrive for generations.''

Response: We agree that additional data and research is needed on this data-poor species. Mandatory dealer reporting in the immediate future and mandatory harvester reporting through a separate, future action should provide much needed fishery information. Such information will feed into a future stock assessment, which the Commission identified as a high priority need in the Jonah Crab Plan. The Plan already requires jurisdictions to collect the following information from port/sea sampling: Carapace width, sex, discard information, egg-bearing status, cull status, shell hardness, and whether the landings are whole crabs or parts. Together, this fishery dependent and independent data will be useful to measure the effectiveness of management measures, including the minimum size and to monitor the claw-only fishery in states where it is allowed. These data will inform a future stock assessment. In the interim, the Plan requires that the Lobster Board conduct an annual review of management measures, state data collections, and research needs, which helps to bridge the gap until a stock assessment is scheduled.

Additional research will be critical to answering some of the larger questions about this species. The Plan specifies biological, habitat, and economic research needs, which partner states have begun to address with and without research permits. We encourage additional research on this species and will consider exemptions to lobster and Jonah crab regulations to facilitate future research.

Comment 13: The Atlantic Offshore Lobstermen's Association noted, ''it may be appropriate to modify the language in [F]ederal code 50 CFR 697 to specify that those measures apply to both lobster and Jonah crab fisheries.''

Response: We appreciate the collaboration with and support of the Association in the development and approval of these measures. Staff involved in the management of American lobster and Jonah crab reviewed the existing lobster regulation found at 50 CFR part 697 for any needed revisions based on this rulemaking. Several changes to the lobster-specific regulations were proposed and are implemented by this final rule. No additional changes are necessary to 50 CFR part 697, as these measures are solely derived from Commission recommendations based on measures in the Interstate Fishery Management Plan for American Lobster, and further clarification is not necessary.

Comment 14: The group of environmental advocacy organizations supported the proposed management measures and recommended the following additional requirements:

1. A 100-percent catch reporting requirement at the trip-level for all limited-access American lobster permit holders;
2. A lost gear reporting requirement;
3. A requirement to report all data including fishing location by 10-minute squares (10nm x 10nm) or a finer spatial scale if available;
4. A requirement to report all data electronically;
5. A requirement for electronic vessel monitoring; and
6. A requirement to mark gear by fishery and statistical area fished on at least every 40 feet (12.2 m) of line.

In addition, the Atlantic Offshore Lobstermen's Association supported the expeditious approval of 100-percent Jonah crab and lobster harvester reporting. Similarly, the Cape Cod Commercial Fishermen's Alliance noted that additional reporting requirements, including harvester reporting and vessel monitoring systems/electronic tracking would improve data collection and be consistent with other fisheries.

Response: We agree. NMFS intends to propose joint Jonah crab/American lobster harvester reporting requirements in a rulemaking based upon Addendum XXVI to the American Lobster Plan/Addendum III to the Jonah Crab Plan. Harvester reporting was not added to this action for several reasons. First, substantial development of this Jonah-crab specific action had already taken place. Second, adding Jonah crab-specific reporting requirements would be a de-facto reporting requirement for the lobster industry which would have expanded the scope of this action. Third, a lobster-specific rulemaking was in development at a stage where lobster reporting could be easily considered. To that end, we published an advance notice of proposed rulemaking on June

14, 2018 (83 FR 27747), announcing our intent to consider expanded lobster and Jonah crab harvester reporting requirements and expect publication of a proposed rule later in 2019, with implementation targeted for 2020.

We agree that additional data elements will aid in the future management of the lobster fishery and in assessing impacts to protected species. To that end, we have committed to a multi-year overhaul of our fishery reporting systems which will include an increase in electronic reporting, more intuitive forms, and additional data fields that may be pertinent to specific fisheries or gear types. We look forward to engaging with all of our partners on this effort.

Comment 15: The group of environmental advocacy organizations stated, ''NMFS must ensure that the ASMFC's Interstate Fishery Management Plan for the Jonah crab fishery complies with the statutory and regulatory requirements of both the Endangered Species Act and the Marine Mammal Protection Act.'' The letter further noted that ''the existing Biological Opinion for the American lobster fishery is inadequate. . . therefore any new fishing authorized by the existing limited-access American lobster permit would be inherently unlawful until the new consultation is completed.'' Finally, the letter stated ''until fishing gear that does not include an unattended endline/buoyline is commercially available and legally required, NMFS must take every reasonable step to decrease the number of vertical lines in the water when North Atlantic right whales are present.''

Response: The comment contains legal argument that is the subject of ongoing litigation and is beyond the scope of detailed response in this document. We note, however, that this action restricts the Jonah crab fishery and its gear. Previously unregulated, the Jonah crab fishery will now be regulated as part of the lobster fishery because the fisheries coincide and are both prosecuted using the same lobster trap gear. The lobster fishery which is managed pursuant to the ASMFC's Interstate Lobster Fishery Management Plan, is undergoing endline/buoyline analysis and restriction as part of the Large Whale Take Reduction Team Process and Endangered Species Act Section 7 consultation reinitiation. Because the lobster and Jonah crab fisheries coincide and overlap, the 2014 Biological Opinion for the American lobster fishery analyzed the effect of this mixed lobster and Jonah crab fishery on endangered species and provides Endangered Species Act Section 7 coverage for the Jonah crab fishery. The agency has re-initiated Section 7 consultation on the lobster fishery, which will necessarily include analysis of the Jonah crab fishery.

Changes From the Proposed Rule

Minor corrections to improve technical accuracy and clarity of the regulatory text were made between proposed and final rules.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the Jonah crab fishery and that it is consistent with the Atlantic Coastal Fisheries Cooperative Management Act, applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

NMFS prepared a final EIS for this action. The final EIS was filed with the Environmental Protection Agency on June 4, 2019. A notice of availability was published on June 14, 2019 (84 FR 27777). NMFS issued a Record of Decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not contain policies with federalism implications as defined in E.O. 13132. NMFS has consulted with the states in the creation of the Jonah Crab Plan, which makes recommendations for Federal action. The approved measures are based upon the Jonah Crab Plan and its addenda, which were created by the Commission, and, as such, were created by, and are overseen by, the states. These measures are already in place at the state level. Additionally, these measures would not preempt state law and would not regulate the states.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. A final regulatory flexibility analysis (FRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), the relevant portions of the proposed rule describing the proposed management measures, the corresponding analysis in the EIS prepared for this action, and the responses to public comments included in this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

No public comments were received pertaining directly to the economic effects of this rule.

Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The action will implement regulations affecting commercial fishing activities (North American Industry Classification System (NAICS) code 11411), seafood dealers (NAICS code 424460), and operators of party/charter businesses (NAICS code 487210). Because each of these activities has their own size standard under the RFA, consideration of the number of regulated entities and the potential economic impacts of the action for each NAICS code is discussed below.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2014 through 2016.

Section 3 of the Small Business Act defines the term ''affiliation'' in its regulations. According to these regulations, affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

We applied the Small Business Administration's definition of affiliation to NMFS's 2016 vessel ownership data to determine the number of affiliated

regulated entities that were associated with at least one limited access lobster permit. During 2016, there were 2,377 limited access lobster permits included in the ownership database, of which 640 designated non-trap only, 1,597 designated trap only, and 140 designated both a trap and a non-trap gear. Table 8 summarizes the number of large and small entities after the principals of affiliation were applied. Note that the number of regulated entities is less than the number of permitted vessels because a small number affiliated ownership groups own more than one permit.

TABLE 3—SUMMARY, BY ENTITY SIZE, OF AVERAGE GROSS SALES, NUMBER OF REGULATED ENTITIES, AND LOBSTER SALES

	Number of entities	Mean gross sales ($1,000's)	Mean lobster and Jonah crab sales ($1,000's)
Large Entities	8	21,562	
Non-Participating Large Entities	4	21,729	
Participating Large Entities	4	21,395	6,984
Small Entities	2,018	387	
Non-Participating Small Entities	609	564	
Participating Small Entities	1,409	311	220

Dealer data are the primary source of data used to estimate gross receipts for purposes of size class determination. Although dealer data are the best available source of revenues earned from commercial fishing, it generally lacks gear information, which is needed to estimate the number of affected trap gear entities. For this reason, vessel trip reports (VTRs) are used to estimate the number of affected participating lobster trap gear entities. As previously noted, a significant number of vessel owners possess only a limited access lobster permit and are not subject to mandatory reporting. Despite this, the analysis, which is based on vessel owners that do possess at least one other permit for which VTRs are mandatory, is representative of the fleet of limited access lobster trap permit holders.

The number of permitted limited access trap vessels that reported one or more lobster trap trips from 2014–2016 ranged from 400 in 2014 to 412 in 2016. None of these vessels relied exclusively on Jonah crab. Percent of trips and vessels landing lobster-only, Jonah crab-only, or both is summarized in Table 4.

TABLE 4—SUMMARY OF LOBSTER TRAP EFFORT AND NUMBER OF AFFECTED ENTITIES

	2014	2015	2016
Trips:	Percent		
Lobster Only Effort	86.7	87.7	87.1
Jonah Crab Only Effort	0.5	0.4	0.4
Lobster and Jonah Crab Effort	12.8	11.9	12.5
Vessels:	Count		
Lobster Only Effort	252	251	258
Jonah Crab Only Effort	0	0	0
Lobster and Jonah Crab Effort	148	160	154

As previously noted, the ownership data used to determine the number of affected entities is based on aggregated dealer data. Because the action will affect limited access lobster non-trap permits, we used VTR data to determine the number of participating vessels that will be affected by the action. Analysis of data from 2010 through 2014 presented in Addendum I to the Jonah Crab Plan indicated only three trips would have exceeded the proposed trip limit. Table 6 summarizes the number of limited access lobster non-trap permit holders, trips, trips landings Jonah crabs, and trips exceeding the approved limit. While the incidental limit is defined in number of crabs, this analysis relies on lb landed, as weight of catch and counts of crabs is reported by harvesters and dealers. An assumption that a crab weighs one lb (0.45 kg) was used; however, this assumption may be an underestimate given that the market favors larger crabs. The median value of this distribution ranged from a high of 1,175 lb (533 kg) in 2014 to a low of 1,046 lb (474 kg) in 2015.

TABLE 5—AFFECTED REGULATED NON-TRAP PERMITS

	2014	2015	2016
Number of Reporting Permits	647	659	660
Number of Affected Permits	11	15	12
Number of trips	30,865	31,192	33,891
Trips Landing Jonah Crab	502	608	413
Jonah Crab Above Limit	115	180	139

Under existing regulations for other regulated species, NMFS requires a Federal dealer permit for the purchase of seafood from a federally permitted commercial vessel. NMFS regulations also require that dealers report all purchases of fish and/or shellfish from any vessel, including state-waters-only vessels. This means that any dealer issued a Federal dealer permit will be regulated under the action. During 2015, there were 750 Federal dealer permits issued to dealers in Greater Atlantic region states. According to 2015 County Business Patterns (CBP) data, there were 803 dealer establishments in Greater Atlantic Region states that employed 8,118 people. A summary of Federal permits, CBP establishments, CBP employment, and establishment by size class, by state, is provided in Table 7. Of note, for Maine, New Hampshire, Massachusetts, and Rhode Island, the CBP number of establishments ranged from 52 percent to 66 percent lower than the number of Federal permits issued to dealers in those states. By contrast, the number of establishments in the CBP data was approximately equal to the number of Federal permits in both Delaware and New Jersey, but the number of CBP establishments was substantially higher than the number of Federal permits in all other states in the Mid-Atlantic region. This disparity can arise for two reasons: (1) Not all dealers are active; and (2) CBP data classifies multi-activity establishments into only one NAICS code. Available data suggest that the seafood dealer sector is dominated by businesses that are considered small entities for purposes of the RFA.

TABLE 6—NUMBER OF REGULATED SEAFOOD DEALERS AND EMPLOYMENT SIZE DISTRIBUTION FOR 2015

State	Federal permits	CBP establishments	CBP employment	CBP number of establishments by employment size class						
				1–4	5–9	10–19	20–49	50–99	100–249	250–499
ME	221	146	1,123	89	28	13	13	2	1	0
NH	17	9	108	3	3	1	2	0	0	0
MA	204	129	1,808	57	26	17	20	7	2	0
RI	51	28	182	13	7	8	0	0	0	0
CT	12	20	211	9	2	5	4	0	0	0
NY	100	275	2,056	178	38	31	23	4	1	0
NJ	85	78	784	43	10	15	7	2	1	0
DE	6	6	54	4	0	1	1	0	0	0
NC	42	59	1,187	27	10	10	8	3	0	1

Reporting, Recordkeeping, and Other Compliance Requirements

This action contains several new reporting and recordkeeping requirements that will involve costs to dealers intending to land or purchase Jonah crabs, however, these costs are expected to be limited. Dealers wishing to purchase Jonah crabs will be required to obtain a Jonah crab designation on their dealer permit and report their purchases weekly, as required for other federally managed species. These approved measures will impose new compliance requirements; however, the measures are already in place for states and are, by design, intended to be consistent with past fishing practices and market requirements, thereby limiting costs.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

This action imposes minimal impacts on small entities. Due to the expected high rate of dual permitting and the fact that the states are already compliant with these measures, the majority of Federal vessels are already abiding by these requirements, and therefore will not be impacted by the measures in this proposed rule. For those vessels not dually permitted, several approved measures that regulate the harvest of Jonah crabs (minimum size, broodstock protections, etc.) can be expected to have a limited economic impact on permit holders, because existing market preferences encompass these measures. That is, long before the existence of any minimum size restrictions, harvesters threw back small crabs because dealers would not buy them. These smaller crabs were already protected from harvest due to market forces, and under the changes in this rule, these smaller crabs would be protected for conservation purposes. As such, there will be limited economic impact on the fishing industry from establishing the recommended minimum size. Furthermore, because the Jonah crab fishery has largely been prosecuted by lobster trap harvesters, the Jonah crab fishery remains restricted by effort control measures that already exist in the lobster regulations. Non-trap harvest limits approved in this rule were set in a manner to ensure that the vast majority of past trips would be accounted for under the approved limit. Because the measures in this final rule are consistent with Commission recommendations, current state regulations, and existing lobster fishery requirements, this final rule minimizes the economic impact on small entities. Further, if we had approved alternate measures, this would likely create inconsistencies and regulatory disconnects with the states, and, therefore, would likely worsen potential economic impacts.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which the Office of Management and Budget (OMB) approved under the OMB control numbers listed below. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated to average, as follows:

1. Initial Federal dealer permit application, OMB# 0648–0202, (15 minutes/response); and

2. Dealer report of landings by species, OMB# 0648–0229, (4 minutes/response).

Send comments on these or any other aspects of the collection of information to the Greater Atlantic Regional Fisheries Office at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 5, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.2(a):

■ a. Remove the definition for ''Berried female;''

■ b. Add definitions for ''Berried female Jonah crab'' and ''Berried female lobster'' in alphabetical order;

■ c. Remove the definition for ''Carapace length;'' and

■ d. Add definitions for ''Jonah crab,'' ''Jonah crab carapace width,'' and ''Lobster carapace length'' in alphabetical order.

The additions read as follows:

§ 697.2 Definitions.

(a) * * *

Berried female Jonah crab means a female Jonah crab bearing eggs attached to the abdomen.

Berried female lobster means a female American lobster bearing eggs attached to the abdominal appendages.

* * * * *

Jonah crab means *Cancer borealis.*

Jonah crab carapace width is the straight line measurement across the widest part of the shell including the tips of the posterior-most, longest spines along the lateral margins of the carapace.

* * * * *

Lobster carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

* * * * *

■ 3. In § 697.4, revise paragraph (a) introductory text to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) *Limited access American lobster permit.* Any vessel of the United States that fishes for, possesses, or lands American lobster or Jonah crab in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access lobster permit. The requirement in this paragraph (a) does not apply to: Charter, head, and commercial dive vessels that possess 6 or fewer American lobsters per person or 50 Jonah crab per person aboard the vessel if such lobsters or crabs are not intended for, nor used, in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster or Jonah crab.

* * * * *

■ 4. In § 697.5, revise paragraph (a) to read as follows:

§ 697.5 Operator permits.

(a) *General.* Any operator of a vessel issued a Federal limited access American lobster permit under § 697.4(a), or any operator of a vessel of the United States that fishes for, possesses, or lands American lobsters or Jonah crabs, harvested in or from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. The requirement in this paragraph (a) does not apply to: Charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if said lobsters are not intended for nor used in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

* * * * *

■ 5. In § 697.6, revise paragraphs (a), (n)(1) introductory text, (n)(1)(i), (n)(1)(ii)(B), (n)(2), and (s) to read as follows:

§ 697.6 Dealer permits.

(a) *General.* Any person who receives, for a commercial purpose (other than solely for transport on land), American lobster or Jonah crabs from the owner or operator of a vessel issued a valid permit under this part, or any person who receives, for a commercial purpose (other than solely for transport on land), American lobster or Jonah crabs, managed by this part, must have been issued, and have in his/her possession, a valid permit issued under this section.

* * * * *

(n) *Lobster and Jonah crab dealer recordkeeping and reporting requirements*—(1) *Detailed report.* All federally-permitted lobster dealers and Jonah crab dealers, and any person acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time periods specified in paragraph (q) of this section, or as specified in § 648.7(a)(1)(f) of this chapter, whichever is most restrictive, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a Federal lobster or Jonah crab dealer permit under this part must provide the following information, as well as any additional information as applicable under § 648.7(a)(1)(i) of this chapter: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are transferred, purchased or received for a commercial purpose; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under part 648 of this chapter with a mandatory vessel trip reporting requirement; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) * * *

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part (American lobster or Jonah crab), and part 648 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Greater Atlantic Region, which are not affected by this paragraph (n); and

* * * * *

(2) *System requirements.* All persons required to submit reports under paragraph (n)(1) of this section are required to have the capability to transmit data via the internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum

specifications identified by NMFS. New dealers will be notified of the minimum specifications via letter during the permitting process.

* * * * *

(s) *Additional dealer reporting requirements.* All persons issued a lobster dealer permit or a Jonah crab dealer permit under this part are subject to the reporting requirements set forth in paragraph (n) of this section, as well as §§ 648.6 and 648.7 of this chapter, whichever is most restrictive.

■ 6. In § 697.7, revise paragraphs (c)(1)(i), (iii), (iv), and (xxix) and add paragraph (h) to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(i) Retain on board, land, or possess at or after landing, whole American lobsters that fail to meet the minimum lobster carapace length standard specified in § 697.20(a). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

* * * * *

(iii) Retain on board, land, or possess any berried female lobster specified in § 697.20(d).

(iv) Remove eggs from any berried female lobster, land, or possess any such lobster from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

* * * * *

(xxix) Retain on board, land, or possess at or after landing, whole American lobsters that exceed the maximum lobster carapace length standard specified in § 697.20(b). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

* * * * *

(h) *Jonah crab.* (1) In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to do any of the following:

(i) Retain on board, land, or possess at or after landing, Jonah crabs that fail to meet the minimum Jonah crab carapace width standard specified in § 697.20(h)(1). All Jonah crabs will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses Jonah crabs for a commercial purpose.

(ii) Retain on board, land, or possess any berried female Jonah crabs specified in § 697.20(h)(2).

(iii) Remove eggs from any berried female Jonah crab, land, or possess any such Jonah crab from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 may land or possess any Jonah crab that has come in contact with any substance capable of removing crab eggs.

(iv) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any Jonah crabs, unless the dealer has a valid Federal Dealer's Permit issued under § 697.6.

(v) Fish for, take, catch, or harvest Jonah crabs on a fishing trip in or from the EEZ by a method other than traps, in excess of up to 1,000 crabs per trip, unless otherwise restricted by paragraph (h)(2)(i)(C) of this section.

(vi) Possess, retain on board, or land Jonah crabs by a vessel with any non-trap gear on board capable of catching Jonah crabs, in excess of up to 1,000 crabs per trip, unless otherwise restricted by paragraph (h)(2)(i)(C) of this section.

(vii) Transfer or attempt to transfer Jonah crabs from one vessel to another vessel.

(2) In addition to the prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraph (h)(1) of this section, it is unlawful for any person to do any of the following:

(i) Retain on board, land, or possess Jonah crabs unless:

(A) The Jonah crabs were harvested by a vessel that has been issued and carries on board a valid Federal limited access American lobster permit under § 697.4; or

(B) The Jonah crabs were harvested in state waters by a vessel without a valid Federal limited access American lobster permit; or

(C) The Jonah crabs were harvested by a charter boat, head boat, or commercial dive vessel that possesses 50 or fewer Jonah crabs per person on board the vessel (including captain and crew) and the Jonah crabs are not intended to be, or are not, traded, bartered, or sold; or

(D) The Jonah crabs were harvested for recreational purposes by a recreational fishing vessel; or

(E) The Jonah crabs were harvested by a vessel or person holding a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 697.24.

(ii) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any Jonah crabs from a vessel, unless the vessel has been issued a valid Federal limited access American lobster permit under § 697.4, or the Jonah crabs were harvested by a vessel without a valid Federal limited access American lobster permit that fishes for Jonah crabs exclusively in state waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and that is fishing under the provisions of and in the areas designated in § 697.24.

(iii) To be, or act as, an operator of a vessel fishing for or possessing Jonah crabs in or from the EEZ, or issued a Federal limited access American lobster permit under § 697.4, without having been issued and possessing a valid operator's permit under § 697.5.

(iv) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, Jonah crabs taken from or harvested by a fishing vessel issued a Federal limited access American lobster permit, unless in possession of a valid dealer's permit issued under § 697.6.

(v) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, Jonah crabs caught by a vessel other than one issued a valid Federal limited access American lobster permit under § 697.4, or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 697.24, unless the Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and that fishes for Jonah crabs exclusively in state waters.

(vi) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching,

harvesting, landing, purchase, sale, or transfer of any Jonah crabs.

(vii) Violate any provision of this part, the ACFCMA, the Magnuson-Stevens Act, or any regulation, permit, or notification issued under this part, the ACFCMA, or the Magnuson-Stevens Act.

(viii) Retain on board, land, or possess any Jonah crabs harvested in or from the EEZ in violation of § 697.20.

(ix) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live Jonah crabs in violation of § 697.20.

(x) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xi) Possess, deploy, fish with, haul, harvest Jonah crabs from, or carry aboard a vessel any lobster trap gear on a fishing trip in the EEZ on a vessel that fishes for, takes, catches, or harvests Jonah crabs by a method other than lobster traps.

(xii) Fish for, take, catch, or harvest Jonah crabs on a fishing trip in the EEZ by a method other than traps, in excess of up to 1,000 crabs per trip, unless otherwise restricted by paragraph (h)(2)(i)(C) of this section.

(xiii) Possess, retain on board, or land Jonah crabs by a vessel with any non-trap gear on board capable of catching lobsters, in excess of up to 1,000 crabs per trip, unless otherwise restricted by paragraph (h)(2)(i)(C) of this section.

(xiv) Transfer or attempt to transfer Jonah crabs from one vessel to another vessel.

(xv) Fail to comply with dealer record keeping and reporting requirements as specified in § 697.6.

(3) Any person possessing, or landing Jonah crabs at or prior to the time when those Jonah crabs are landed, or are received or possessed by a dealer for the first time, is subject to all of the prohibitions specified in paragraph (g) of this section, unless the Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and that fishes for Jonah crabs exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed 50 or fewer Jonah crabs per person aboard the vessel and the Jonah crabs are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

(i) Jonah crabs that are possessed, or landed at or prior to the time when the Jonah crabs are received by a dealer, or Jonah crabs that are possessed by a dealer, are presumed to have been harvested from the EEZ or by a vessel with a Federal limited access American lobster permit. A preponderance of all submitted evidence that such Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and fishing exclusively for Jonah crabs in state or foreign waters will be sufficient to rebut this presumption.

(ii) The possession of egg-bearing female Jonah crabs in violation of the requirements set forth in § 697.20(h)(1) or Jonah crabs that are smaller than the minimum sizes set forth in § 697.20(h)(2), will be prima facie evidence that such Jonah crabs were taken or imported in violation of these regulations. A preponderance of all submitted evidence that such Jonah crabs were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

■ 7. Section 697.17 is revised to read as follows:

§ 697.17 Non-trap harvest restrictions.

(a) *Non-trap lobster landing limits.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board capable of catching lobsters, or, that fishes for, takes, catches, or harvests lobster on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), or (b)(3)(ii) of this chapter or § 697.7(c)(2)(i)(C).

(b) *Trap prohibition for non-trap lobster harvesters.* All persons that fish for, take, catch, or harvest lobsters on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer American lobster from one vessel to another vessel.

(c) *Trap prohibition for non-trap lobster vessels.* Any vessel on a fishing trip in the EEZ that fishes for, takes, catches, or harvests lobster by a method other than traps may not possess on board, deploy, fish with, or haul back traps.

(d) *Non-trap Jonah crab landing limits.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board that fishes for, takes, catches, or harvests Jonah crabs on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of up to 1,000 Jonah crabs (or parts thereof), for each trip, unless otherwise restricted by § 697.7.

(e) *Restrictions on fishing for, possessing, or landing fish other than Jonah crabs.* Vessels are prohibited from possessing or landing Jonah crabs in excess of 50 percent, by weight, of all other species on board.

(f) *Trap prohibition for non-trap Jonah crab harvesters.* All persons that fish for, take, catch, or harvest Jonah crabs on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer Jonah crabs from one vessel to another vessel.

■ 8. In § 697.20, revise paragraph (a), (b), and (d), and add paragraph (h) to read as follows:

§ 697.20 Size, harvesting and landing requirements.

(a) *Minimum lobster carapace length.* (1) The minimum lobster carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3¼ inches (8.26 cm).

(2) The minimum lobster carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3 3¼ inches (8.26 cm).

(3) The minimum lobster carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3⅜ inches (8.57 cm).

(4) The minimum lobster carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3⅜ inches (8.57 cm).

(5) Through April 30, 2015, the minimum lobster carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3½ inches (8.89 cm).

(6) Through April 30, 2015, the minimum lobster carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3½ inches (8.89 cm).

(7) Effective May 1, 2015, the minimum lobster carapace length for all American lobsters harvested in or from

the Offshore Management Area 3 is 3 17/32 inches (8.97 cm).

(8) Effective May 1, 2015, the minimum lobster carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3 17/32 inches (8.97 cm).

(9) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (a) of this section.

(b) *Maximum lobster carapace length.* (1) The maximum lobster carapace length for all American lobster harvested in or from the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

(2) The maximum lobster carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

(3) The maximum lobster carapace length for all American lobster harvested in or from the EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(4) The maximum lobster carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in one or more of EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(5) The maximum lobster carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(6) The maximum lobster carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

* * * * *

(d) *Berried female lobsters.* (1) Any berried female lobster harvested in or from the EEZ must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42° 30′ North latitude, it must be v-notched before being returned to sea immediately.

(2) Any berried female lobster harvested or possessed by a vessel issued a Federal limited access lobster permit must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42° 30′ North latitude, it must be v-notched before being returned to sea immediately.

(3) No vessel, or owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may possess any berried female lobster.

(4) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female lobster as specified in paragraph (d) of this section.

* * * * *

(h) *Jonah crabs*—(1) *Minimum Jonah crab carapace width.* The minimum Jonah crab carapace width for all Jonah crabs harvested in or from the EEZ 4¾ inches (12.065 inches).

(2) *Berried female Jonah crabs.* (i) Any berried female Jonah crab harvested in or from the EEZ must be returned to the sea immediately.

(ii) No vessel, or owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may possess any berried female Jonah crab.

(iii) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female Jonah crab as specified in paragraph (d) of this section.

(3) *Removal of eggs.* (i) No person may remove, including, but not limited to, the forcible removal and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female Jonah crab.

(ii) No owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may remove, including but not limited to, the forcible removal, and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female Jonah crab.

(iii) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live Jonah crab that bears evidence of the removal of extruded eggs from its abdominal appendages as specified in paragraph (e) of this section.

[FR Doc. 2019–24429 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 219
Wednesday, November 13, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0727]

RIN 1625–AA00

Safety Zone; Port Valdez, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone in the navigable waters, from the surface to seabed, within a 150 yard radius of the fireworks launching point located at Sea Otter Park in position 61°07′22″ North and 146°21′13″ West in the vicinity of the mouth of the Small Boat Harbor, Port Valdez, Alaska, to limit access for the duration of the New Year's fireworks display. The purpose of the safety zone is to ensure the safety of mariners and vessels during the fireworks display. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before December 13, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0727 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call MST2 Chelsea Zimmerman, U.S. Coast Guard; telephone 907–835–7233, or email *Chelsea.M.Zimmerman@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On August 07, 2019, the City of Valdez notified the Coast Guard that it will be conducting a fireworks display from 10:00 p.m. to 10:30 p.m. on December 31, 2019, in celebration of the New Year. The fireworks are to be launched from land at Sea Otter Park, located near the mouth of the Valdez small boat harbor in Valdez, AK. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Coast Guard proposes to establish a Safety Zone to ensure the safety of vessels on the navigable waters within a 150 yard radius of the fireworks launch site before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).]

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9:30 p.m. to 11:00 p.m. on December 31st, 2019. The safety zone would cover all navigable waters within a 150 yard radius of where the fireworks will be launched at Sea Otter Park for the City of Valdez New Year's Eve Fireworks Display. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10:00 p.m. to 10:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The Coast Guard's enforcement of the proposed safety zone will be of short duration. Furthermore, vessels may be authorized to transit through the proposed safety zones with the permission of the Captain of the Port Prince William Sound, Alaska.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of Port Valdez in the vicinity of the Small Boat Harbor entrance during the period of enforcement of the proposed safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons; this rule will be enforced for a short duration and vessel traffic will be able to navigate safely around the proposed safety zone. Before and during the enforcement period, we will also issue maritime advisories widely available to the mariners that transit Port Valdez and Prince William Sound.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect 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. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone on the navigable waters of Port Valdez, in the vicinity of the Valdez Small Boat Harbor. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T17–0727 to read as follows:

§ 165.T17–0727 Safety Zone; City of Valdez New Year's Eve Fireworks, Port Valdez; Valdez, AK.

(a) *Location.* The following area is a safety zone: All navigable waters of Port Valdez within a 150 yard radius from a position of 61°07′22″ North and 146°21′13″ West. This includes the entrance to the Valdez small boat harbor.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via Channel 16 or (907) 835–7205. Those in the safety zone must comply with all lawful orders or

directions given to them by the COTP or the COTP's designated representative.

Dated: November 1, 2019.

M.R. Franklin,

Commander, U.S. Coast Guard, Captain of the Port Prince William Sound, Alaska.

[FR Doc. 2019–24442 Filed 11–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2019–OSERS–0025]

Proposed Priority and Requirements—Technical Assistance on State Data Collection—IDEA Data Management Center

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.373M.]

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) proposes a funding priority and requirements under the Technical Assistance on State Data Collection program. The Department may use the proposed priority and requirements for competitions in fiscal year (FY) 2020 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements of the Individuals with Disabilities Education Act (IDEA). This Data Management Center would help States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability by enhancing, streamlining, and integrating their IDEA Part B data into their State longitudinal data systems and would customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before January 27, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov*'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and requirements, address them to Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202–5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6028. Email: *Meredith.Miceli@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the notice of final priority and requirements, we urge you to identify clearly the specific section of the proposed priority or requirement that each comment addresses.

We are particularly interested in comments about whether the proposed priority or any of the proposed requirements would be challenging for new applicants to meet and, if so, how the proposed priority or requirements could be revised to address potential challenges and reduce burden.

Directed Question: The Department seeks input on whether the establishment of two centers (*i.e.,* one Center addressing the needs of Developed Capacity States, and another Center addressing the needs of Developing Capacity States) [1] would be an efficient and effective approach to meeting the diverse needs of States in integrating, reporting, analyzing, and using high-quality IDEA Part B data. The Secretary specifically invites comments on the potential impact of having two centers on the ease and efficiency of accessing TA services proposed in this notice, the differing levels of expertise needed to effectively deliver TA services to the two different groups of States, and the types of products that the two groups of States would need to achieve the outcomes proposed in this notice.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from this proposed priority and these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov.* You may also inspect the comments in person in Room 5010B, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

[1] ''Developed Capacity States'' are defined as States that can demonstrate that their data systems include linkages between special education data and other early childhood and K–12 data. Projects funded under this focus area would focus on helping such States utilize those existing linkages to report, analyze, and use IDEA Part B data.

''Developing Capacity States'' are defined as States that have a data system that does not include linkages between special education data and other early childhood and K–12 data. Projects funded under this focus area would focus on helping such States develop those linkages to allow for more accurate and efficient reporting, analysis, and use of IDEA Part B data.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i), where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 gives the Secretary authority to use funds reserved under section 611(c) to ''administer and carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA.'' Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of Public Law 115–245; 132 Stat. 3100 (2018).

To help ensure this program meets State needs, we invited the public to provide input on the Technical Assistance on State Data Collection program from April 24, 2018, through May 24, 2018, on the *ED.gov* OSERS Blog.[2] In response to this invitation, we received 63 relevant responses, all of which we considered in our development of this document. Sixty-two supported our continuing to fund TA centers; only one supported one of the other options we presented, specifically, to invite State educational agencies (SEAs) and State lead agencies (LAs) to directly apply for funds reserved under section 611(c) to purchase TA to improve their capacity to meet their IDEA Part B and Part C data collection requirements. A few commenters noted some concerns regarding overlap between centers and a need for cross-State collaboration. We addressed these concerns in the proposed priority by including a requirement for the center to offer cross-State TA collaboration opportunities.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of Public Law 115–245, Consolidated Appropriations Act, 2019; 132 Stat. 3100 (2018).

Applicable Program Regulations: 34 CFR 300.702.

Proposed Priority

The Assistant Secretary proposes the following priority for this program. We may apply this proposed priority in any year in which this program is in effect.

IDEA Data Management Center.

Background

The purpose of this proposed priority is to establish a TA center to provide TA to improve States' capacity to collect, report, analyze, and use high-quality IDEA Part B data (including IDEA section 618 Part B data and section 616 Part B data) by enhancing, streamlining, and integrating their IDEA Part B data into the State's longitudinal data systems.[3] The Data Management Center's work will comply with the privacy and confidentiality protections in the Family Educational Rights and Privacy Act (FERPA) and IDEA and will not provide the Department with access to child-level data.

A majority of States have State longitudinal data systems, but, until recently, very few of those systems integrated IDEA Part B data, a complex issue. Specifically, in the IDEA State Supplemental Survey in school year (SY) 2015–16, only 18 of 60 Part B reporting entities responded that all their special education data was in their statewide longitudinal data system, rising to 23 Part B reporting entities in SY 2018–19. Therefore, many Part B reporting entities are still not integrating their IDEA Part B data with their States' longitudinal data systems. This lack of integration reduces States' ability both to make full use of their data and to meet changing reporting needs. States are seeing the value of integrating IDEA Part B data into their State longitudinal data systems. Doing so allows States to standardize data collected across programs, assists in meeting Federal reporting requirements, provides additional information on the participation in other programs by children with disabilities, and supports program improvement.

Currently, most students with disabilities are educated in the same settings as students without disabilities; however, the majority of States continue to separate disability and special education related data from other data collected on students (*e.g.,* demographics, assessment data). Some States are using separate data collections to meet the reporting requirements under sections 616 and 618 of IDEA (*e.g.,* discipline, assessment, educational environments) rather than including all data elements needed for Federal reporting in their State longitudinal data systems. At the same time, various programs, districts, and SEAs are using different collection processes to gather data for their required data submissions, resulting in different degrees of reliability in the data collected.

These situations hinder the States' capacity both to collect and report valid and reliable data on children with disabilities to the Secretary and to the public, which is specifically required by IDEA sections 616(b)(2)(B)(i), 616(b)(2)(C)(ii), and 618(a), and to meet IDEA Part B data collection and reporting requirements under sections 616 and 618 of IDEA.

States with fragmented data systems are also more likely to have missing or duplicate data. For example, if a State collects and maintains data on disciplinary removals of students with disabilities in a special education data system but maintains data on the demographics of all students in another data system, the State may not be able to accurately match all data on disciplinary removals with the demographic data needed to meet IDEA Part B data collection and reporting requirements.

In addition, States with fragmented data systems often lack the capacity to cross-validate related data elements. For example, if the data on the type of statewide assessment in which students with disabilities participate is housed in one database and the grade in which students are enrolled is housed in another, the State may not be able to

[2] See *https://sites.ed.gov/osers/2018/04/use-of-part-b-program-funds-for-technical-assistance-to-states-on-idea-data-collection/.*

[3] A State's longitudinal data system is a State-managed repository of longitudinal, linked, unit record data with connections across programs and sectors to support a comprehensive, integrated view of students, schools, and programs, and may also refer to other statewide data systems.

accurately match the assessment data to the grade-level data to meet the Federal reporting requirements, including IDEA Part B reporting requirements under sections 616 and 618 of IDEA.

Finally, the demand from States for support from the currently funded Data Management Center to assist them in integrating their IDEA Part B data within the States' longitudinal data system far exceeds the number of States that could be served by the current center. Ten States have received support from the current center while 28 additional States have indicated interest in integrating their IDEA Part B data with their States' longitudinal data systems. In addition to the interest in integrating data, about 10 percent of States reported to the National Center for Education Statistics through the State longitudinal data program that they do not yet have non-ED*Facts* special education reporting and are interested in, or are working towards, this functionality. About one-third of States reported that they do not yet have IDEA Part B data integrated into their systems and are interested in or are working on developing this functionality.

In addition, we propose for this priority to include an indirect cost cap that is the lesser of the grantee's actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency and 40 percent of the grantee's modified total direct cost (MTDC) base. We believe this cap is appropriate as it maximizes the availability of funds for the primary TA purposes of this priority, which is to improve the capacity of States to meet the data collection and reporting requirements under Part B of IDEA and to ultimately benefit programs serving children with disabilities. The Department has done an analysis of the indirect cost rates for all current technical assistance centers funded under the Technical Assistance and Dissemination and Technical Assistance on State Data Collection programs as well as other grantees that are large, midsize, and small businesses and small nonprofit organizations and has found that, in general, total indirect costs charged on these grants by these entities were at or below 35 percent of total direct costs (TDC). We recognize that, dependent on the structure of the investment and activities, the MTDC base could be much smaller than the TDC, which would imply a higher indirect cost rate than those calculated here. The Department arrived at a 40 percent rate to address some of that variation. This would account for a 12 percent variance between TDC and MTDC. However, we note that, in the absence of a cap, certain entities would likely charge indirect cost rates in excess of 40 percent of MTDC. Based on our analysis, it appears that those entities would likely be for-profit and nonprofit organizations, but these organizations appear to be outliers when compared to the majority of other large businesses as well as the entirety of OSEP's grantees. Setting an indirect cost rate cap of 40 percent would be in line with the majority of applicants' existing negotiated rates with the cognizant Federal agency.

This proposed priority aligns with two priorities from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096): Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Improving Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents.

Projects must be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Proposed Priority

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate an IDEA Data Management Center (Data Management Center). The Data Management Center will respond to State needs as States integrate their IDEA Part B data required to meet the data collection requirements in section 616 and section 618 of IDEA, including information collected through the IDEA State Supplemental Survey, into their longitudinal data systems. This will improve the capacity of States to collect, report, analyze, and use high-quality IDEA Part B data to establish and meet high expectations for each child with a disability. The Data Management Center will help States address challenges with data management procedures and data systems architecture and better meet current and future IDEA Part B data collection and reporting requirements. The Data Management Center's work will comply with the privacy and confidentiality protections in FERPA and IDEA and will not provide the Department with access to child-level data.

The Data Management Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to integrate IDEA Part B data required under sections 616 and 618 of IDEA within their longitudinal data systems;

(b) Increased use of IDEA Part B data within States by developing products to allow States to report their special education data to various stakeholders through their longitudinal data systems;

(c) Increased number of States that use data governance and data management procedures to increase their capacity to meet the IDEA Part B reporting requirements under sections 616 and 618 of IDEA;

(d) Increased capacity of States to utilize their State longitudinal data systems to collect, report, analyze, and use high-quality IDEA Part B data (including data required under sections 616 and 618 of IDEA); and

(e) Increased capacity of States to use their State longitudinal data systems to analyze high-quality data on the participation and outcomes of children with disabilities across various Federal programs (*e.g.,* IDEA, Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) in order to improve IDEA programs and the outcomes of children with disabilities.

In addition, the Data Management Center must provide a range of targeted and general TA products and services for improving States' capacity to report high-quality IDEA Part B data required under sections 616 and 618 of IDEA through their State longitudinal data systems. Such TA should include, at a minimum—

(a) In partnership with the Department, supporting, as needed, the implementation of an existing open source electronic tool to assist States in building ED*Facts* data files and reports that can be submitted to the Department and made available to the public. The tool will utilize Common Education Data Standards (CEDS) and meet all States' needs associated with reporting the IDEA Part B data required under sections 616 and 618 of IDEA;

(b) Developing and implementing a plan to maintain the appropriate functionality of the open source electronic tool described in paragraph (a) as changes are made to data collections, reporting requirements, file specifications, and CEDS (such as links within the system to allow TA products developed by other Office of Special Education Programs (OSEP)/ Department-funded centers or contractors);

(c) Conducting TA on data governance to facilitate the use of the open source electronic tool and providing training to

State staff to implement the open source electronic tool;

(d) Revising CEDS ''Connections''[4] to calculate metrics needed to report the IDEA Part B data required under sections 616 and 618 of IDEA;

(e) Identifying other outputs (*e.g.,* reports, Application Programming Interface, new innovations) of an open source electronic tool that can support reporting by States of IDEA Part B data to different stakeholder groups (*e.g.,* local educational agencies (LEAs), legislative branch, parents);

(f) Supporting the inclusion of other OSEP/Department-funded TA centers' products within the open source electronic tool or building connections that allow the SEAs to pull IDEA Part B data efficiently into the other TA products;

(g) Supporting a user group of States that are using an open source electronic tool for reporting IDEA Part B data required under sections 616 and 618 of IDEA; and

(h) Developing products and presentations that include tools and solutions to challenges in data management procedures and data system architecture for reporting the IDEA Part B data required under sections 616 and 618 of IDEA.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

In addition to the programmatic requirements contained in the proposed priority, we propose that, to be considered for funding, applicants must meet the following requirements.

Proposed Requirements

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these proposed requirements in any year in which this program is in effect.

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges associated with State data management procedures, data systems architecture, and building ED*Facts* data files and reports for timely reporting of the IDEA Part B data to the Department and the public. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the difficulties that States have encountered in the collection and submission of valid and reliable IDEA Part B data;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to IDEA Part B data collections and ED*Facts* file specifications for the IDEA Part B data collections; and

(iii) Present information about the current level of implementation of integrating IDEA Part B data within State longitudinal data systems and the reporting of high-quality IDEA Part B data to the Department and the public.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices (EBPs).[5] To meet this requirement, the applicant must describe—

(i) The current research on data collection strategies, data management procedures, and data systems architecture; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on States' data management processes and data systems architecture;

(ii) Its proposed approach to universal, general TA,[6] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

[4] A Connection is a way of showing which CEDS data elements might be necessary for answering a data question. For users who have aligned their data systems to CEDS, States will be able to utilize these Connections via the Connect tool to see which data elements, in their own systems, would be needed to answer any data question.

[5] For purposes of these requirements, ''evidence-based practices'' means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[6] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

(iii) Its proposed approach to targeted, specialized TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of Developing Capacity States; and

(D) The process by which the proposed project will collaborate with other OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State; and

(iv) Its proposed approach to intensive, sustained TA,[8] which must identify—

(A) The intended recipients, which must be Developing Capacity States, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to address Developing Capacity States' challenges associated with integrating IDEA Part B data within State longitudinal data systems and to report high-quality IDEA Part B data to the Department and the public, which should, at a minimum, include providing on-site consultants to SEAs to—

(*1*) Model and document data management and data system integration policies, procedures, processes, and activities within the Developing Capacity State;

(*2*) Support the Developing Capacity State's use of an open source electronic tool and provide technical solutions to meet State-specific data needs;

(*3*) Develop a sustainability plan for the Developing Capacity State to maintain the data management and data system integration work in the future; and

(*4*) Support the Developing Capacity State's cybersecurity plan in collaboration, to the extent appropriate, with the Department's Privacy Technical Assistance Center;

(C) Its proposed approach to measure the readiness of the SEAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local district levels;

(D) Its proposed plan to prioritize Developing Capacity States with the greatest need for intensive TA to receive products and services;

(E) Its proposed plan for assisting Developing Capacity State LAs and SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part B data, as well as State data management procedures and data systems architecture for building ED*Facts* data files and reports for timely reporting of the IDEA Part B data to the Department and the public; and

(G) The process by which the proposed project will collaborate and coordinate with other OSEP-funded centers and other Department-funded TA investments, such as the Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, to develop and implement a coordinated TA plan; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[9] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the State Performance Plan/Annual Performance Report (SPP/APR) and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

[7] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[8] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[9] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and how funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (A) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (B) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget to provide intensive, sustained TA to at least 25 States.

Final Priority and Requirements

We will announce the final priority and requirements in a document in the **Federal Register**. We will determine the final priority and requirements after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities or requirements subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this proposed priority and one or more of these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and requirements would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent

permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Mark Schultz,

Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2019–24640 Filed 11–12–19; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0483; FRL–10001–97–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Administrative Revisions to Definitions, Remedies, and Enforcement Orders Sections and Incorporation by Reference of National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision formally submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County. These revisions include administrative amendments made to the Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control. Specifically, the revisions added a definition for ''County Council;'' deleted its current listing of ambient air quality standards and added, through incorporation by reference, all national ambient air quality standards (NAAQS) promulgated by EPA; revised references to the ''Board of County Commissioners'' to ''County Executive'' or ''County Council;'' added the ''Manager of the Air Quality Program or their respective designee'' as a signatory for enforcement orders; and revised a reference from the ''Bureau of Environmental Quality Division of Air Quality'' to ''Air Quality Program of the Department.'' This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 13, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0483 at *https://www.regulations.gov,* or via email to *Spielberger.Susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Erin Malone, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2190. Ms. Malone can also be reached via electronic mail at *malone.erin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 15, 2019, the Commonwealth of Pennsylvania formally submitted, on behalf of Allegheny County, a revision to the Pennsylvania SIP (Revision 73).[1] The revision consists of administrative and definition amendments, as well as incorporation by reference of the NAAQS to ACHD Rules and Regulations, Article XXI, Air Pollution Control. The revision was adopted by ACHD and became effective September 25, 2013.

II. Summary of SIP Revision and EPA Analysis

The February 15, 2019 submittal includes amended versions of ACHD Rules and Regulations, Article XXI, Air Pollution Control, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders. The amendment to section 2101.10 deleted ACHD's existing list of NAAQS and added, through incorporation by reference, all NAAQS promulgated by the EPA under the CAA at 40 CFR part 50. The amendment to section 2101.20 added the following definition for County Council, '''County Council' means the Council of Allegheny County, Pennsylvania.'' The amendments to section 2109.02 revised the reference to ''Board of County Commissioners'' to ''County Executive'' in paragraphs (a)(5) and (a)(6).

In section 2109.03, the amendments include revising references from ''Board of County Commissioners'' to ''County Council,'' as well as an additional signatory option for enforcement orders in paragraph (b)(1). The language in paragraph (b)(1) was revised from ''Be in written form and be signed by the Director or the Deputy Director, Bureau of Environmental Quality'' to ''Be in written form and be signed by the Director, the Deputy Director of the Bureau of Environmental Quality, or the Manager of the Air Quality Program, or their respective designee.'' Lastly, in the provisions of paragraph (d)(1), Hearings, the ''Bureau of Environmental Quality Division of Air Quality'' was revised to the ''Air Quality Program of the Department'' to specify that such hearings cannot be held before employees of the Department who are assigned to the Air Quality Program.

EPA's review of this material indicates the February 15, 2019 submittal is approvable as it meets requirements of the CAA under section 110(a) and contains the deletion/addition of language incorporating by reference all of the NAAQS promulgated by EPA and other administrative revisions to regulations that were previously included in the Pennsylvania SIP. None of these deletions, additions, or revisions affect emissions of air pollutants, and none of the deletions, additions, or revisions will interfere with any applicable requirement concerning attainment of reasonable further progress or any other applicable requirements in the CAA. Thus, EPA finds the revision approvable specifically for section 110(l) of the CAA.

A detailed summary of EPA's review and rationale for approving the February 15, 2019 submittal may be found in the technical support document (TSD) for this proposed rulemaking action, available online at *www.regulations.gov,* docket number EPA–R03–OAR–2019–0483.

III. Proposed Action

EPA's review of this material indicates the February 15, 2019 submittal is approvable as it meets the requirements of the CAA under section 110(a) and includes the deletion/addition of language incorporating by reference all of the NAAQS promulgated by EPA and other administrative

[1] On April 28, 2017, ACHD submitted Revision 73 to the Pennsylvania Department of Environmental Protection (PADEP). PADEP, on behalf of Allegheny County, also submitted a clarification letter dated June 24, 2019 to EPA to further clarify the revisions to sections 2101.10 and 2101.20 of Article XXI of ACHD's Rules and Regulations.

revisions to regulations that were previously included in the Pennsylvania SIP. EPA is proposing to approve the February 15, 2019 submittal, which includes administrative deletions, additions, and revisions to ACHD Rules and Regulations, Article XXI, Air Pollution Control, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders, as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final rulemaking action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the revisions to ACHD Rules and Regulations, Article XXI, Air Pollution Control, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders discussed in Section II of this preamble. Also, in this document, as described in the proposed amendments to 40 CFR part 52, EPA is proposing to remove provisions of the EPA-Approved Pennsylvania Regulations and Statutes from the Pennsylvania State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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, this proposed rule, proposing approval of administrative revisions to ACHD Rules and Regulations, Article XXI, Air Pollution Control, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 30, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2019–24575 Filed 11–12–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 84, No. 219

Wednesday, November 13, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 7, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725–17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by December 13, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Survey of Irrigation Organizations.

OMB Control Number: 0535–NEW.

Summary of Collection: On April 4, 2017, the USDA National Agricultural Statistics Service (NASS) and the Economic Research Service (ERS), signed a Memorandum of Understanding. This agreement is for the development and implementation of a survey of irrigation organizations—defined to include irrigation districts and other entities that supply water (primarily surface water) directly to agricultural users, as well as groundwater management districts that may influence the supply of groundwater for irrigation. The new survey of irrigation organizations will collect local, district-scale information, including the adoption of alternative types of water allocation institutions and conservation policies that impact farm-level drought resilience and adaptation to long-run water scarcity.

Need and Use of the Information: NASS will be collecting information on facilities, operation type, revenue, costs, and practices for irrigation organizations. The data obtained by the survey will complement farm-level data collections efforts, providing a more comprehensive look at the water situation and drought preparedness of the United States. The absence of the data would certainly affect irrigation policy decisions, Federal programs, legislation, and impact studies would be subject to greater uncertainty and error.

Description of Respondents: Businesses or other for-profit; Not for profit institutions.

Number of Respondents: 6,500.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5,644.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–24647 Filed 11–12–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for Inviting Applications for the Rural Economic Development Loan and Grant Programs for Fiscal Year 2020

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation for applications; Amendment

SUMMARY: The Rural Business-Cooperative Service (RBS) announces that the maximum loan amount awarded for applications competing in the Second, Third, and Fourth Quarter funding cycles of fiscal year (FY) 2020 will be $1 million.

FOR FURTHER INFORMATION CONTACT: The Rural Development office for the state in which the applicant is located. A list of Rural Development State Office contacts is provided at the following link: *http://www.rd.usda.gov/contact-us/state-offices.*

SUPPLEMENTARY INFORMATION: RBS published a Notice of Solicitation of Applications for the Rural Economic Development Loan and Grant Programs for FY 2020 on July 18, 2019, (FR Vol. 84, 34333) Section B states that: ''The Agency anticipates the following maximum amounts per award: Loans—$2,000,000; Grants—$300,000.''

Based on the total amount of loan applications submitted in FY 2019 far exceeding the available allocated funds and the number of submitted but unfunded applications that will be competing for funding in the First Quarter of FY 2020, the Agency has determined that lowering the maximum loan amount to $1 million for the Second, Third, and Fourth Quarter application periods would allow for additional project opportunities and a broader geographic distribution of Program funding.

The following are the deadlines for FY 2020 complete loan applications to be received in the USDA Rural

Development State Office no later than 4:30 p.m. (local time): Second Quarter, December 31, 2019; Third Quarter, March 31, 2020; and Fourth Quarter, June 30, 2020. Completed loan applications that exceed $1 million but are not funded in the FY 2020 First Quarter competition will be allowed to compete for Second Quarter funding with the submission of a revised scope of work plan and budget for a loan amount not to exceed $1 million.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019–24597 Filed 11–12–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Generic Clearance for Census Bureau Field Tests and Evaluations.

OMB Control Number: 0607–0971.

Form Number(s): TBD.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 294,738 per year (884,213 total).

Average Hours per Response: 10.56 minutes.

Burden Hours: 27,771 hours annually (83,313 hours total).

Needs and Uses: The U.S. Census Bureau is committed to conducting research towards census and survey operations that costs less while maintaining high quality results. The Census Bureau requests a reinstatement, with change, of our previous OMB approval to conduct a series of studies to research and evaluate how to improve data collection activities for data collection programs at the Census Bureau. These studies will explore how the Census Bureau can improve efficiency, data quality, and response rates and reduce respondent burden in future census and survey operations, evaluations and experiments. This research program is for respondent communication, questionnaire and procedure development and evaluation purposes. We will use data tabulations to evaluate the results of questionnaire testing.

Affected Public: Individuals and households.

Frequency: Once.

Respondent's Obligation: Voluntary.

Legal Authority: Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau sponsored surveys, and Title 13 and 15 for surveys sponsored by other Federal agencies.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–24590 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–183–2019]

Approval of Subzone Status; Patterson Pump Company; Toccoa, Georgia

On September 17, 2019, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting subzone status subject to the existing activation limit of FTZ 26, on behalf of Patterson Pump Company, in Toccoa, Georgia.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (84 FR 49717, September 23, 2019). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 26Q was approved on November 5, 2019, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 26's 2,000-acre activation limit.

Dated: November 5, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–24643 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–70–2019]

Foreign-Trade Zone (FTZ) 183—Austin, Texas; Notification of Proposed Production Activity; Flextronics America, LLC; (Automated Data Processing Machines); Austin, Texas

Flextronics America, LLC (Flextronics), submitted a notification of proposed production activity to the FTZ Board for its facility in Austin, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 3, 2019.

Flextronics already has authority to produce automated data processing machines within FTZ 183. The current request would add foreign status components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Flextronics from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status components noted below, Flextronics would be able to choose the duty rates during customs entry procedures that apply to automated data processing machines (duty-free). Flextronics would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components sourced from abroad include: Labels; corrugated pack boxes; print bundles—instruction manuals and start-up directions; caster wheel assemblies; keyboards; computer mice; trackpads; graphics processing modules; main logic boards; graphics performance enhancers; basic input/output system (BIOS) printed circuit boards; structural frames for automatic data processing machines; structural enclosures for automatic data processing machines; main logic board stiffener assemblies; internal component support units; and, power supply units (duty rate ranges

from duty-free to 5.8%). The request indicates that the following components are subject to an antidumping/countervailing duty (AD/CVD) order if imported from certain countries: labels; caster wheel assemblies; structural frames for automatic data processing machines; structural enclosures for automatic data processing machines; main logic board stiffener assemblies; and, internal component support units. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that certain components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 23, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: November 6, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–24641 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV125]

Fisheries of the Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scheduled SEDAR 65 Post Data Workshop Webinar for Highly Migratory Species Atlantic Blacktip Shark.

SUMMARY: The SEDAR 65 assessment of the Atlantic stock of Blacktip Shark will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review

DATES: The SEDAR 65-Post Data Workshop Webinar has been scheduled for Thursday, December 5, 2019, from 10 a.m. until 4 p.m., EDT.

ADDRESSES:

Meeting Address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/1146385310550424331.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Post Data workshop webinar are as follows:

Participants will finalize data recommendations from the Data Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–24591 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV127]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Southern Resident Killer Whale (SRKW) Workgroup (Workgroup) will host a webinar, which is open to the public.

DATES: The webinar meeting will be held Tuesday, December 10, 2019, from 9 a.m. to 3 p.m. (Pacific Standard Time) or until business for the day has been completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the webinar by visiting this link *https://www.gotomeeting.com/webinar* (click ''Join a Webinar'' in top right corner of page), (2) enter the Webinar ID: 672–213–339, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–415–655–0060 (not a toll-free number), (2) enter the attendee phone audio access code 680–970–929, and (3) enter the provided audio PIN after joining the webinar. You must enter this PIN for audio access. NOTE: We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 10, 8, 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps.*) You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the webinar will be to discuss data needs, analysis, document development, work plans, and progress made on assigned tasks, including the risk analysis. The Workgroup may also discuss and prepare for future Workgroup meetings and future meetings with the Pacific Council and its advisory bodies.

This is a public meeting and not a public hearing. Public comments will be taken at the discretion of the Workgroup co-chairs as time allows.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 7, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–24626 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV129]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scheduled SEDAR 59 Assessment Webinar II for Greater Amberjack.

SUMMARY: The SEDAR 59 assessment of the South Atlantic stock of Greater Amberjack will consist of a series of Data and Assessment webinars.

DATES: The SEDAR 59-Assessment Webinar II has been scheduled for December 16, 2019, from 9 a.m. to 12 p.m., EST.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/5352185512159200525.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Assessment webinar II are as follows:

- Continue discussion about model structure.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been

notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 7, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–24625 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV128]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surfclam and Ocean Quahog Committee (Committee) will hold a public meeting.

DATES: The meeting will be held on Monday, December 2, 2019, from 9 a.m. until 12:30 p.m.

ADDRESSES: The meeting will be held via webinar. Details on the proposed agenda, connection information, and briefing materials will be posted at the MAFMC's website: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Surfclam and Ocean Quahog Committee will meet to review the Atlantic Surfclam and Ocean Quahog Excessive Shares Amendment prior to formal action by the Council. In addition, if appropriate, the Committee will recommend preferred alternatives for the Council to consider. An agenda and background documents will be posted at the Council's website (*www.mafmc.org) prior to the meeting.* The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 7, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–24624 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before January 13, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Gabrielle Aberle, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. Telephone (907) 586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Regulations pertaining to gear markings are set forth at 50 CFR part 679 and in the annual management measures published in the **Federal Register** pursuant to 50 CFR 300.62. This information collection contains the following gear identification requirements for participants in the groundfish fisheries in the Exclusive Economic Zone off Alaska and for vessels using longline pot gear to fish for individual fishing quota (IFQ) sablefish in the Gulf of Alaska (GOA).

Marker Buoys

All hook-and line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under 50 CFR part 679 must be marked with the vessel's Federal Fisheries Permit number or Alaska Department of Fish and Game vessel registration number. Regulations that marker buoys be marked with identification information are essential to facilitate fisheries enforcement and actions concerning damage, loss, and civil proceedings. The ability to link fishing gear to the vessel owner or operator is crucial to enforcement of regulations.

Longline Pot Gear Vessel Registration and Tags

A vessel owner using longline pot gear to fish for IFQ sablefish in the GOA must annually register their vessel with the National Marine Fisheries Service (NMFS) and be assigned pot tags for that vessel. Each pot tag is printed with a unique serial number for identification, and is specific to the IFQ regulatory area to which the tag is registered and where the pot gear will be fished. A valid pot tag must be securely attached to each pot used to fish for IFQ sablefish in the GOA.

Vessel owners submit the form ''Vessel Registration and Request for IFQ Sablefish Pot Gear Tags'' to annually register their vessels and to request new pot tags if a vessel does not have previously issued tags. Tags assigned to a vessel in previous years are valid as long as the tag can be secured to a pot and the serial number is legible. Vessel owners submit the form ''Request for Replacement of Longline Pot Gear Tags'' if previously issued tags need to be replaced.

NMFS requires all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to complete logbooks (see OMB Control Numbers 0648–0213). When the number of pots

deployed by a vessel is self-reported through logbooks, the use of pot tags provides an additional enforcement tool to ensure that the pot limits are not exceeded. The use of pot tags allows at-sea enforcement and post-trip verification of the number of pots fished.

II. Method of Collection

The forms to request pot gear tags and register a vessel are available on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska* as fillable PDFs and may be downloaded and printed. These forms are submitted to NMFS by mail, fax, or delivery. Marker buoys are marked with identification information.

III. Data

OMB Control Number: 0648–0353.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 988.

Estimated Time per Response: Marking longline pot gear marker buoys, 15 minutes per buoy; marking groundfish hook-and-line marker buoys, 10 minutes per buoy; 15 minutes each for the Vessel Registration and Request for IFQ Sablefish Pot Gear Tags form and for the Request for Replacement of Longline Pot Gear Tags form. These estimates are based on the most recent supporting statement prepared for this information collection in 2017. This supporting statement is available on NOAA's Paperwork Reduction Act web page at *https://www.cio.noaa.gov/itmanagement/pdfs/0353ext2017.pdf.*

Estimated Total Annual Burden Hours: 1,841 hours.

Estimated Total Annual Cost to Public: $11,310 in recordkeeping and reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–24578 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Pro Bono Survey

ACTION: Notice of renewal of information collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed revision and extension of an existing information collection: 0651–0082 (Pro Bono Survey).

DATES: Written comments must be submitted on or before January 13, 2020.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0082 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Chief, Records and Information Governance Branch, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to James M. Silbermann, Senior Counsel for Enrollment and Intellectual Property Legal Services, Office of Enrollment and Discipline, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at (571) 272–4097; or by email to *James.Silbermann@uspto.gov* with ''0651–0082 comment'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Leahy-Smith America Invents Act (AIA), Public Law 112–29 § 32 (2011) directs the USPTO to work with and support intellectual property law associations across the country in the establishment of pro bono programs designed to assist financially under-resourced independent inventors and small businesses. To support this, the USPTO—in collaboration with various non-profit organizations—has established a series of autonomous regional hubs that act as matchmakers to help connect low-income inventors with volunteer patent attorneys across the United States. The regional hubs comprise law school IP clinics, bar associations, innovation/entrepreneurial organizations, and arts-focused lawyer referral services that are strategically located to provide access to patent pro bono services across all fifty states and the District of Columbia. Additionally, the Study of Underrepresented Classes Chasing Engineering and Science Success Act (SUCCESS Act), Public Law 115–273 (2018) directs the agency to provide recommendations on how to increase the number of women, minorities, and veterans who apply for and obtain patents.

To support the purposes described above, the pro bono survey would continue to collect information regarding the activity of the regional hubs. The USPTO has worked with the Pro Bono Advisory Council (PBAC) to determine what information is necessary to ascertain the effectiveness of each regional pro bono hub's matchmaking operations. PBAC is a well-established group of patent practitioners and patent pro bono regional hub administrators who have committed to provide support and guidance to patent pro bono programs across the country. The data presently gathered, and which would continue, provides USPTO with valuable information, including the number of inventor inquires, referral sources, number of applicants successfully matched with attorneys, and types of patent filing activity. PBAC, in conjunction with the regional hubs, is responsible for the collection of this information, which is collected on a quarterly basis. The information, at its highest level, will allow PBAC and the USPTO to ascertain whether the regional hubs are matching qualified low-income inventors with volunteer patent attorneys and help establish the total economic benefit derived by low-income inventors in the form of donated legal services. This information also helps the USPTO determine which

regional hubs are operating efficiently and which programs need additional support by ascertaining the effectiveness of each individual regional hub with respect to their matchmaking efforts.

Additionally, USPTO is proposing to revise the existing information collection to gather information regarding gender, ethnicity, race, and veteran status. Each regional hub will be requesting demographic information for those seeking assistance that will be self-identified by the applicant. This requested standardized demographic information will be part of the overall application materials that each independent inventor fills out when seeking pro bono assistance. This information will also be used to help determine the extent to which the pro bono program is helping women, minorities, and veterans apply for patents.

II. Method of Collection

This survey will be conducted electronically through a web form created to support this survey.

III. Data

OMB Number: 0651–0082.

IC Instruments and Forms: The individual instrument in this collection, as well as its associated form, is listed in the table below.

Type of Review: Extension of an existing information collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1106 total respondents. An estimated 20 regional hubs will provide quarterly responses to USPTO (the PBAC Administrator Survey). This results in 80 responses from regional hubs per year. In addition, an estimated 1026 applicants will provide demographic data in their applications directly to the regional hubs as part of their individual applications for pro bono assistance, resulting in 1026 responses from applicants per year.

Estimated Time per Response: The USPTO estimates that it will take two hours to complete the PBAC Administrator Survey, including time needed to gather the necessary information, enter it into the information collection instrument, and submit it. The USPTO estimates that it will take approximately one minute for applicants to answer the demographic questions.

Estimated Total Annual Respondent Burden Hours: 177.10 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $8,866.44.00. The USPTO expects that regional program administrators will complete these applications. The professional hourly rate for a regional program administrator is $50.11. The rate for administrators (BLS 11–0000) is based the BLS 2018 National Occupation and Employment and Wage Estimates. The hourly rate for the demographic survey uses the estimated rate for independent inventors (the average of mean rates for Engineers and Scientists). Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $8,866.44.00 per year.

IC No.	Information collection instrument	Estimated time for response (minutes) (a)	Estimated annual responses (b)	Estimated annual burden hours ((a × (b) / 60) = (c)	Rate ($/hr) (d)	Totals (c × d) = (e)
1	Regional Program Administrator Survey	120	80	160	$50.11	$8,017.60
2	Demographic survey	1	1,026	17.1	49.64	848.84
Total			1,106	177.1		8,866.44

Estimated Total Annual (Non-hour) Respondent Cost Burden: $26,666.66. There is a startup cost for each regional hub to update their data collection form to capture demographic data. The USPTO estimates that each regional hub (20) will require, on average, $4,000.00 to update their web collection form. A total one-time cost of $80,000.00 is annualized over a three (3) year collection period, for an annual cost of $26,666.66. There are no maintenance, or operating fees associated with this collection, nor are there postage costs, filing fees, or processing fees.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. USPTO invites public comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, e.g, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Marcie Lovett,

Director, Records and Information Governance Branch, Office of the Chief Administrative Officer, USPTO.

[FR Doc. 2019–24618 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Post Allowance and Refiling

ACTION: Notice of renewal of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension of an existing information collection: 0651–0033 (Post Allowance and Refiling).

DATES: Written comments must be submitted on or before January 13, 2020.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0033 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records and Information Governance Branch, Office

of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by email to *Raul.Tamayo@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information covers the submission of issue fee payments to the United States Patent and Trademark Office (USPTO). The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. If the fees are not paid within the designated time period, the application is abandoned (applicant may petition the Director to accept a delayed payment and revive the application with a statement that the delay was unintentional; the Petition for Revival of an Application for Patent Abandoned Unintentionally (Form PTO/SB/64) is approved under information collection 0651–0031). The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18 and 1.311–1.317.

This collection of information also covers several transactions that may be taken after issuance of a patent, pursuant to Chapter 25 of Title 35 U.S.C. A certificate of correction may be requested to correct an error or errors in the patent. If the USPTO determines that the request should be approved, the USPTO will issue a certificate of correction. For an original patent that is believed to be wholly or partly inoperative or invalid, the original patentee, or the current patent owner if there has been a subsequent assignment, may apply for reissue of the patent, which entails several formal requirements, including provision of an oath or declaration specifically identifying at least one error being relied upon as the basis for reissue and stating the reason for the belief that the original patent is wholly or partly inoperative or invalid (*e.g.,* a defective specification or drawing, or claiming more or less than the patentee had the right to claim in the patent). The rules outlining these procedures are found at 37 CFR 1.171–1.178 and 1.322–1.325.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO.

III. Data

OMB Number: 0651–0033.

Form Number(s): PTO/SB/44/50/51/51S/52/53/56/141, PTO/AIA/05/06/07, and PTOL–85B.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 392,149 responses per year. The USPTO estimates that approximately 25% (98,037) of these responses will be from small entities (22%) and micro entities (3%).

Estimated Time per Response: The USPTO estimates that it will take the public from 12 minutes (0.20 hours) to 5 hours to gather the necessary information, prepare the appropriate form or document, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 213,789.50 hours.

Estimated Total Annual Respondent Cost Burden: $37,691,207.50. The USPTO expects that the information in this collection will be prepared by attorneys at an estimated rate of $438 per hour, except for the Issue Fee Transmittal, which will be prepared by paraprofessionals at an estimated rate of $125 per hour. The attorney rates are found in the 2017 Report of the Economic Survey of the America Intellectual Property Law Association (AIPLA). The paraprofessional rate is found in the 2016 National Utilization and Compensation Survey Report published by the National Association of Legal Assistants (NALA). Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately $37,691,207.50 per year.

IC No.	Item	Estimated time for response (hr) (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b) = (c)	Rate ($/hr) (d)	Total cost burden ($/hr) (c) × (d) = (e)
1	Certificate of Correction (PTO/SB/44)	1	29,000	29,000.00	$438.00	$12,702,000.00
2	Petition to Correct Assignee After Payment of Issue Fee (37 CFR 3.81(b)) (PTO/SB/141).	0.50 (30 minutes)	800	400.00	438.00	175,200.00
3	Reissue Documentation	5	900	4,500.00	438.00	1,971,000.00
4	Reissue Patent Application Transmittal (PTO/SB/50)Office (RO/US) (PTO–1382).	0.20 (12 minutes)	900	180.00	438.00	78,840.00
5	Reissue Application Declaration by the Inventor or the Assignee (PTO/SB/51/52 and PTO/AIA/05/06) or Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. § 115(d) and 37 CFR 1.64) (PTO/AIA/07).	0.50 (30 minutes)	1,150	575.00	438.00	251,850.00
6	Supplemental Declaration for Reissue Patent Application to Correct ''Errors'' Statement (37 CFR 1.175) (PTO/SB/51S).	0.30 (18 minutes)	50	15.00	438.00	6,570.00
7	Reissue Application: Consent of Assignee; Statement of Non-assignment (PTO/SB/53).	0.20 (12 minutes)	950	190.00	438.00	83,220.00
8	Reissue Application Fee Transmittal Form (PTO/SB/56).	0.20 (12 minutes)	900	180.00	438.00	78,840.00
9	Issue Fee Transmittal (PTOL–85B)	0.50 (30 minutes)	35,750	17,875.00	125.00	2,234,375.00
10	Issue Fee Transmittal (electronic) (PTOL–85B)	0.50 (30 minutes)	321,749	160,874.50	125.00	20,109,312.50
Totals			392,149	213,789.50		37,691,207.50

Estimated Total Annual Non-hour Respondent Cost Burden: $305,708,615. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees and postage costs.

Filing Fees: There are filing fees associated with this collection. The items with filing fees are listed in the table below.

IC No.	Information collection instrument	Estimated annual responses (a)	Filing fee ($) (b)	Total non-hour cost burden (yr) (a) × (b) = (c)
1	Certificate of correction	10,395	$150.00	$1,559,250.00
3	Basic filing fee—Reissue (Large entity)	672	300.00	201,600.00
3	Basic filing fee—Reissue (Small entity)	225	150.00	33,750.00
3	Basic filing fee—Reissue (Micro entity)	11	75.00	825.00
3	Reissue Search Fee (Large entity)	669	660.00	441,540.00
3	Reissue Search Fee (Small entity)	226	330.00	74,580.00
3	Reissue Search Fee (Micro entity)	11	165.00	1,815.00
3	Reissue independent claims in excess of three (Large entity)	694	460.00	319,240.00
3	Reissue independent claims in excess of three (Small entity)	228	230.00	52,440.00
3	Reissue independent claims in excess of three (Micro entity)	10	115.00	1,150.00
3	Reissue claims in excess of 20 (Large entity)	5,374	100.00	537,400.00
3	Reissue claims in excess of 20 (Small entity)	1,588	50.00	79,400.00
3	Reissue claims in excess of 20 (Micro entity)	82	25.00	2,050.00
3, 4	Reissue Application Size Fee—for each additional 50 sheets that exceeds 100 sheets (Large entity).	41	400.00	16,400.00
3, 4	Reissue Application Size Fee—for each additional 50 sheets that exceeds 100 sheets (Small entity).	9	200.00	1,800.00
3, 4	Reissue Application Size Fee—for each additional 50 sheets that exceeds 100 sheets (Micro entity).	1	100.00	100.00
3	Reissue Examination Fee (Large entity)	670	2,200.00	1,474,000.00
3	Reissue Examination Fee (Small entity)	222	1,100.00	244,200.00
3	Reissue Examination Fee (Micro entity)	11	550.00	6,050.00
9, 10	Utility issue fee (Large entity)	248,775	1,000.00	248,775,000.00
9, 10	Utility issue fee (Small entity)	63,994	500.00	31,997,000.00
9, 10	Utility issue fee (Micro entity)	7,952	250.00	1,988,000.00
9, 10	Design issue fee (Large entity)	16,668	700.00	11,667,600.00
9, 10	Design issue fee (Small entity)	12,415	350.00	4,345,250.00
9, 10	Design issue fee (Micro entity)	2,586	175.00	452,550.00
9, 10	Plant issue fee (Large entity)	768	800.00	614,400.00
9, 10	Plant issue fee (Small entity)	650	400.00	260,000.00
9, 10	Plant issue fee (Micro entity)	15	200.00	3,000.00
9, 10	Reissue issue fee (Large entity)	463	1,000.00	463,000.00
9, 10	Reissue issue fee (Small entity)	132	500.00	66,000.00
9, 10	Reissue issue fee (Micro entity)	2	250.00	500.00
Total		375,559		305,679,890

Postage Costs: Customers may also incur postage costs when submitting the information in this collection by the USPTO by mail. The USPTO estimates the average USPS Priority Mail postage cost for a legal flat rate envelop is estimated to be $7.65 and that approximately 1% (3,755) of the submissions will be mailed to the USPTO per year, for a total estimated postage cost of $28,725 per year.

The total annual (non-hour) respondent cost burden for this collection is estimated to be approximately $305,708,615 per year.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

USPTO invites public comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, *e.g*, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Marcie Lovett,

Office of the Chief Administrative Officer, Records and Information Governance Branch, USPTO.

[FR Doc. 2019–24617 Filed 11–12–19; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2019–HQ–0030]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Network Enterprise Technology, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army, Network Enterprise Technology announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 13, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Headquarters, Network Enterprise Technology Command, Military Auxiliary Radio System, Salado, TX 76571, ATTN: Paul English, or call 254–947–3141.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application to Operate a Military Auxiliary Radio System (MARS) Station, Army MARS Form AM–1, OMB Control Number 0702–0140.

Needs and Uses: The information collection requirement is necessary to operate a Military Auxiliary Radio System (MARS) Station. The MARS program is a civilian auxiliary consisting primarily of licensed amateur radio operators who are interested in assisting the military with communications on a local, national, and international basis as an adjunct to normal communications and providing worldwide auxiliary emergency communications during times of need. The information collection requirement is necessary not only an application to join ARMY MARS, but to maintain an accurate roster of civilians enrolled in the program for the purpose of providing contingency communications support to the Department of Defense. Additionally, the collected information is used by the MARS program manager to determine an individual's eligibility for the program, as well as to initiate a background investigation should a security clearance be required; used to show the geographic dispersion of the members who participate in the global High Frequency radio network in support of the Department of Defense; and to ensure our radio spectrum authorizations cover the geographic areas from which our members will operate. The information is also used periodically to email informational updates about the MARS program.

Affected Public: Individuals and households.

Annual Burden Hours: 137.5.

Number of Respondents: 550.

Responses per Respondent: 1.

Annual Responses: 550.

Average Burden per Response: 15 minutes.

Frequency: On Occasion.

Dated: November 6, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–24589 Filed 11–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2019–HQ–0031]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers (USACE) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 13, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the USACE Infrastructure Team, ATTN: Sandra Stroud, CECW–I (3K87), 441 G Street NW, Washington, DC 20314, or by email to CW. *Infrastructure.Team@usace.army.mil.* Tel: (571) 515–0231.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Corps Water Infrastructure Financing Program (CWIFP) Preliminary Application and Application; OMB Control Number 0710–XXXX.

Needs and Uses: The Preliminary Application information collection requirement is necessary to (1) validate the eligibility of the prospective borrower and the proposed project, (2) perform a preliminary creditworthiness assessment, (3) perform a preliminary engineering and environmental feasibility assessment, and (4) evaluate the project against the selection criteria and identify which projects USACE will

invite to submit applications. The Preliminary Application addresses the CWIFP eligibility criteria, CWIFP selection criteria, and identifies other specific information that must be provided to USACE to be considered for credit assistance. The Preliminary Application provides USACE with sufficient information to make a project selection and invite prospective borrowers to submit applications. Based on evaluation of the Preliminary Application, USACE will invite to submit an Application only those eligible projects that it expects to proceed to closing. Only those entities who are invited by USACE to submit an Application should proceed with the Application process. The Application provides USACE with information to assess the creditworthiness of both the applicant and project, identify the project's engineering and financial risk, negotiate the terms and conditions of the credit assistance, and calculate the amount of budget authority that will be needed to fund the project(s).

Affected Public: Individuals & households.

Annual Burden Hours: 50.

Number of Respondents: 15.

Responses per Respondent: 1.

Annual Responses: 15.

Average Burden per Response: 3.33 Hours.

Frequency: On occasion.

Dated: November 6, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–24599 Filed 11–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2019–OS–0123]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 13, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Military Personnel Policy, Officer and Enlisted Personnel Management, ATTN: Lt Col Debra Lovette, USAF, 4000 Defense Pentagon, Washington, DC 20301–4000 or call (703) 697–4959.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Automated Repatriation Reporting System; DD Form 2585; OMB Control Number 0704–0334.

Needs and Uses: The information collection requirement is necessary for personnel accountability of all evacuees, regardless of nationality, who are processed through designated Repatriation Centers throughout the United States. The information obtained from the DD Form 2585 is entered into an automated system; a series of reports is accessible to DoD Components, Federal and State agencies and Red Cross, as required.

Affected Public: Individuals or Households.

Annual Burden Hours: 33.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: 20 Minutes.

Frequency: Annually.

Executive Order 12656 (Assignment of Emergency Preparedness Responsibilities) assigns Federal departments and agencies responsibilities during emergency situations. In its supporting role to the Departments of State and Health and Human Services (HHS), the Department of Defense will assist in planning for the protection, evacuation and repatriation of U.S. citizens in threatened areas overseas. The DD Form 2585, ''Repatriation Processing Center Processing Sheet,'' has numerous functions, but is primarily used for personnel accountability of all evacuees who process through designated Repatriation Centers. During processing, evacuees are provided emergency human services, including food, clothing, lodging, family reunification, social services and financial assistance through federal entitlements, loans or emergency aid organizations. The information, once collected, is input into the Automated Repatriation Reporting System, and is available to designated offices throughout Departments of Defense, State, Health and Human Services, the American Red Cross and State government emergency planning offices for operational inquiries and reporting and future planning purposes.

Dated: November 6, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–24609 Filed 11–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the November 14–16, 2019 Quarterly Board Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments related to the work of the Governing Board. Notice of this meeting is required under § 10(a) (2) of the Federal Advisory Committee Act

(FACA). This notice is being posted late because of challenges in ensuring the availability of members to constitute a quorum.

DATES: The Quarterly Board Meeting will be held on the following dates:

- November 14, 2019 from 4:00 p.m. to 6:00 p.m.
- November 15, 2019 from 8:30 a.m. to 5:30 p.m.
- November 16, 2019 from 7:30 a.m. to 12:00 p.m.

ADDRESSES: Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Pub. L. 107–279. Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

Written comments related to the work of the Governing Board may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above).

November 14–16, 2019—Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work based on agenda items planned for this Quarterly Board Meeting and follow-up items as reported in the Governing Board's committee meeting minutes available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.*

Detailed Meeting Agenda: November 14–16, 2019

November 14: Committee Meetings

Executive Committee: Open Session: 4:00 p.m. to 4:30 p.m.; Closed Session 4:30 p.m. to 6:00 p.m.

November 15: Full Governing Board and Committee Meetings

Full Governing Board: Open Session: 8:30 a.m. to 9:35 a.m. Closed Session: 12:00 p.m. to 2:15 p.m.; Open Session: 2:30 p.m. to 5:30 p.m.

Committee Meetings: 9:40 a.m. to 11:45 a.m.

Assessment Development Committee (ADC): Open Session: 9:45 a.m. to 11:45 a.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 9:45 a.m. to 10:30 a.m.; Closed Session: 10:30 a.m.–11:45 a.m.;

Reporting and Dissemination Committee (R&D): Open Session: 9:45 a.m. to 11:45 a.m.;

November 16: Full Governing Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m. to 8:15 a.m.

Full Governing Board: Open Session: 8:30 a.m. to 12:00 p.m.;

On Thursday, November 14, 2019, the Executive Committee will convene in open session from 4:00 p.m. to 4:30 p.m. and thereafter in closed session from 4:30 p.m. to 6:00 p.m. During the closed session, the Executive Committee will discuss the NAEP Assessment Schedule and budget implications for future NAEP assessments based on the approved NAEP Assessment Schedule and independent government cost estimates. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing detailed proprietary contract costs of current NAEP contractors to the public and disclose independent government cost estimates for future NAEP assessments. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

On Friday, November 15, 2019, the Governing Board will meet in open session from 8:30 a.m. to 9:35 a.m. to review and approve the November 15–16, 2019 Quarterly Board Meeting agenda and meeting minutes from the August 2019 Quarterly Board meeting. The Governing Board will be welcomed by the Governing Board Vice Chair who will then provide remarks and introduce new members. Thereafter, Secretary of Education, Betsy DeVos, will administer the oath of office to the new members and then address the Governing Board. Newly appointed members will then provide introductory remarks.

From 9:30 a.m. to 9:35 a.m., standing committee chairs will provide a preview of committee meeting agendas. At 9:35 a.m., the Governing Board will recess for a 10-minute break and meet thereafter in committee meetings from 9:45 a.m. to 11:45 a.m.

ADC and R&D will convene in open session from 9:45 a.m. to 11:45 a.m. to conduct regular business. COSDAM will meet in open session from 9:45 a.m. to 10:30 a.m. to discuss COSDAM priorities and current activities. From 10:30 a.m. to 11:45 a.m. COSDAM will meet in closed session to discuss plans for the design of 2021 NAEP assessments. The presentation contains secure materials from the Reading and Mathematics assessments. Public disclosure of secure materials would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b of Title 5 U.S.C.

Following the committee meetings, on Friday, November 15, 2019, the Governing Board will convene in closed session from 12:00 p.m. to 1:30 p.m. During this session, the Governing Board will receive a briefing and discuss the NAEP Budget vis-à-vis the NAEP Assessment Schedule, as well as discuss the status of the NAEP design and potential impact to the NAEP budget with long-term implications for the NAEP Assessment Schedule and Budget. The discussions will involve a briefing on confidential design change costs via-a-vis independent government cost estimates for assessing NAEP subjects on the recently approved NAEP Assessment Schedule. This meeting must be conducted in closed session as discussion of the independent government cost estimates for NAEP design changes that impact current and future NAEP contracts are confidential. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The Governing Board will take a 15-minute break and reconvene in closed session from 1:30 p.m. to 2:15 p.m. to receive an ethics briefing from the Office of General Counsel. This briefing will involve a question and answer session on Governing Board member

ethics matters. The discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

Following a 15 minute break, the Governing Board will meet in open session from 2:30 p.m. to 4:15 p.m. The Governing Board will receive an update on the NAEP Mathematics Framework and an overview of the NAEP Postsecondary Preparedness work. Following these sessions, the Governing Board will take a 15-minute recess and meet in small groups to discuss post-secondary preparedness from 4:30 p.m. to 5:30 p.m.

The November 15, 2019 session of the Governing Board meeting will adjourn at 5:30 p.m.

On Saturday, November 16, 2019, the Nominations Committee will meet from 7:30 a.m. to 8:15 a.m. in closed session to discuss a briefing on applications received and reviewed for the 2020 nominations cycle for Governing Board appointments for terms that will begin October 1, 2020. The discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

On November 16, 2019, the Governing Board will meet in open session from 8:30 a.m. to 12:00 p.m. From 8:30 a.m. to 9:00 a.m. the Governing Board will discuss highlights from the prior day's breakout group meetings and engage in discussion on post-secondary preparedness. From 9:00 a.m. to 9:20 a.m., the Governing Board will receive an update on a proposed statement of the intended meaning of NAEP results. From 9:20 a.m. to 10:00 a.m., the Governing Board will receive an update on the work of the Achievement Levels working Group, following which the Governing Board will recess for a 15 minutes break.

From 10:15 a.m. to 10:45 a.m., Executive Director, Lesley Muldoon will provide an update on the Governing Board's work. Committee reports will be provided from 10:45 a.m. to 11:15 a.m. with an action item submitted by the Assessment Development Committee to approve the 2025 NAEP Mathematics Framework.

From 11:15 a.m. to 11:45 a.m. the Governing Board has set aside time for open discussion on Governing Board priorities and topics that members will bring up for future discussions. From 11:45 a.m. to 12:00 p.m. Governing Board member Dana Boyd will provide a preview of the upcoming March 2020 Governing Board meeting scheduled to be held in El Paso, Texas.

The November 16, 2019 session of the Governing Board meeting will adjourn at 12:00 p.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* beginning on November 11, 2019, by 10:00 a.m. EST. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than Monday, November 11, 2019.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U. S. Department of Education.

[FR Doc. 2019–24637 Filed 11–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register.**

DATE: Tuesday, December 3, 2019; 8:30 a.m.–4:30 p.m.

ADDRESSES: Canopy by Hilton–The Wharf, 975 7th Street Southwest, Washington, District of Columbia 20024.

FOR FURTHER INFORMATION CONTACT: David Borak, EMAB Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; Phone: (202) 586–9928; email: *david.borak@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda Topics

- Technology Development Update
- Waste Disposition and Regulatory Affairs Update
- Budget and Planning Update
- Discussion of EMAB Subcommittee Report—*Accelerating Cleanup Completion and Closure Across the EM Complex by Facilitating Workforce/Community Engagement and Transition*
- Public Comment
- Board Business

Public Participation: The meeting is open to the public. The EMAB welcomes the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed

either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/em/listings/emab-meetings.*

Signed in Washington, DC, on November 7, 2019

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–24650 Filed 11–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[EERE–2013–BT–NOC–0005]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting and webinar.

SUMMARY: This notice announces a public meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act (FACA), requires that agencies publish notice of an advisory committee meeting in the **Federal Register.**

DATES: DOE will hold a public meeting on December 5, 2019 from 10 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See the Public Participation section of this notice for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the National Renewable Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024. Please see the Public Participation section of this notice for additional information on attending the public meeting.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121, email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The primary focus of this meeting will be the discussion and prioritization of topic areas that ASRAC can assist the Appliance and Equipment Standards Program with. DOE plans to hold this public meeting to gather advice and recommendations to the Energy Department on the development of standards and test procedures for residential appliances and commercial equipment. (The final agenda will be available for public viewing at *https://www.regulations.gov/docket?D=EERE-2013-BT-NOC-0005.*)

Public Participation

Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the ASRAC staff at *asrac@ee.doe.gov.*

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at *https://www.dhs.gov/real-id-enforcement-brief.* A driver's license from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

Participants are responsible for ensuring their systems are compatible with the webinar software.

Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Conduct of Public Meeting

ASRAC's Designated Federal Officer will preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other

participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other relevant matters. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

In addition, any person may buy a copy of the transcript from the transcribing reporter.

Signed in Washington, DC, on November 4, 2019.

Alex N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–24645 Filed 11–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 15, 2020; 4:00 p.m.

ADDRESSES: Valley Electric Association, Valley Conference Center, 800 East Highway 372, Pahrump, Nevada 89041.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 100 North City Parkway, Suite 1750, Las Vegas, Nevada 89106. Phone: (702) 523–0894; Fax (702) 724–0981 or Email: *nssab@emcbc.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Educational Session: DOE and Nuclear Regulatory Commission (NRC) Waste Classification Systems
2. Briefing for Waste Verification Strategy—Work Plan Item #1
3. Follow-up to Audit Determination Process—Work Plan Item from Fiscal Year 2019

Public Participation: The meeting is open to the public. The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following website: *http://www.nnss.gov/NSSAB/pages/MM_FY20.html.*

Signed in Washington, DC, on November 7, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–24652 Filed 11–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Petroleum Council

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, December 12, 2019; 9:00 a.m. to 12:00 p.m.

ADDRESSES: Willard Intercontinental Washington, DC, 1401 Pennsylvania Avenue NW, Washington, DC 20004, Room: Grand Ballroom.

FOR FURTHER INFORMATION CONTACT: Nancy Johnson, U.S. Department of Energy, Office of Oil and Natural Gas (FE–30), Washington, DC 20585; telephone (202) 586–5600 or facsimile (202) 586–6221; email: *info@npc.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, or the oil and natural gas industries.

Tentative Agenda:

- Call to Order and Introductory Remarks
- Remarks by the Department of Energy
- Report from the NPC Committee on U.S. Oil and Natural Gas Transportation Infrastructure
- Report from the NPC Committee on Carbon Capture, Use, and Storage
- Administrative Matters
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Adjournment

Public Participation: The meeting is open to the public. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Nancy Johnson at the address or telephone number listed above. Request for oral statements must be received at least three days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to *info@npc.org.* Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Transcripts: Transcripts of the meeting will be available by contacting Ms. Johnson at the address above, or *info@npc.org.*

Signed in Washington, DC, on November 7, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–24639 Filed 11–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Wednesday, December 4, 2019; 8:30 a.m.–4:30 p.m.; Thursday, December 5, 2019; 8:30 a.m.–4:30 p.m.

ADDRESSES: Best Western Plus, 1515 George Washington Way, Richland, WA 99354.

FOR FURTHER INFORMATION CONTACT: JoLynn Garcia, Federal Coordinator, U.S. Department of Energy, Office of River Protection, P.O. Box 450, H6–60, Richland, WA 99354; Phone: (509) 376–6244; or Email: *jolynn_m_garcia@orp.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Potential Draft Hanford Advisory Board Advice
  - Consider Draft Advice on 100 B/C Proposed Plan
- Potential Draft EM SSAB Chairs' Recommendation(s)
  - Vote on Recommendation(s) from October 2019 Meeting
- Discussion Topics
  - Tri-Party Agreement Agencies' Updates
  - Presentation on 324 Building Progress
  - Presentation on Workforce Recruitment, Retention and Transition
  - Hanford Advisory Board Committee Reports
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact JoLynn Garcia at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact JoLynn Garcia at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling JoLynn Garcia's office at the address or telephone number listed above. Minutes will also be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signed in Washington, DC, on November 7, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–24648 Filed 11–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–319–000]

Kimball Wind LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Kimball Wind LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 26, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24631 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP20–9–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Abbreviated Application for Abandonment of Service for City of Danville, Virginia of Transcontinental Gas Pipe Line Company, LLC.

Filed Date: 10/31/19.

Accession Number: 20191031–5048.

Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: RP20–204–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Compliance filing Abandon Rate Schedule X–45 Compliance Filing CP19–510 to be effective 1/1/2020.
Filed Date: 11/5/19.
Accession Number: 20191105–5046.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: RP20–205–000.
Applicants: National Fuel Gas Supply Corporation.
Description: Tariff Cancellation: Cancellation of the X–9 Rate Schedule to be effective 12/5/2019.
Filed Date: 11/5/19.
Accession Number: 20191105–5113.
Comments Due: 5 p.m. ET 11/18/19.

Docket Numbers: RP20–206–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Firm Transportation Service Options to be effective 12/5/2019.
Filed Date: 11/5/19.
Accession Number: 20191105–5140.
Comments Due: 5 p.m. ET 11/18/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24628 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–14–000.
Applicants: Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Prairie Breeze Wind Energy II LLC, et al.
Filed Date: 11/5/19.
Accession Number: 20191105–5187.
Comments Due: 5 p.m. ET 11/26/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–22–000.
Applicants: Sun Streams 2, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sun Streams 2, LLC.
Filed Date: 11/5/19.
Accession Number: 20191105–5159.
Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: EG20–23–000.
Applicants: Sun Streams 4, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sun Streams 4, LLC.
Filed Date: 11/5/19.
Accession Number: 20191105–5161.
Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: EG20–24–000.
Applicants: Sun Streams PVS, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sun Streams PVS, LLC.
Filed Date: 11/5/19.
Accession Number: 20191105–5164.
Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: EG20–25–000.
Applicants: Sun Streams Expansion, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sun Streams Expansion, LLC.
Filed Date: 11/5/19.
Accession Number: 20191105–5167.
Comments Due: 5 p.m. ET 11/26/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1987–003.
Applicants: Ontario Power Generation Energy Trading, Inc.
Description: Notice of Change in Status of Ontario Power Generation Energy Trading, Inc.
Filed Date: 11/5/19.
Accession Number: 20191105–5190.
Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: ER10–2126–005.
Applicants: Idaho Power Company.
Description: Second Supplement to June 21, 2019 Updated Market Power Analysis for the Northwest Region of Idaho Power Company.
Filed Date: 11/5/19.
Accession Number: 20191105–5178.
Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: ER19–2907–001.
Applicants: ISO New England Inc., Emera Maine.
Description: Tariff Amendment: Tariff Record Reserved For Future Use to be effective 10/1/2019.
Filed Date: 11/6/19.
Accession Number: 20191106–5023.
Comments Due: 5 p.m. ET 11/27/19.

Docket Numbers: ER20–318–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPS/SA No. 4380; Queue No. AB1–043 to be effective 11/12/2019.
Filed Date: 11/5/19.
Accession Number: 20191105–5141.
Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: ER20–319–000.
Applicants: Kimball Wind LLC.
Description: Baseline eTariff Filing: Kimball Wind LLC MBR Application to be effective 11/6/2019.
Filed Date: 11/5/19.
Accession Number: 20191105–5143.
Comments Due: 5 p.m. ET 11/26/19.

Docket Numbers: ER20–320–000.
Applicants: ISO New England Inc., Emera Maine.
Description: § 205(d) Rate Filing: First Revised Amendment of TSA–EMERA–18–01 to be effective 10/1/2019.
Filed Date: 11/6/19.
Accession Number: 20191106–5024.
Comments Due: 5 p.m. ET 11/27/19.

Docket Numbers: ER20–321–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2019–11–06_SA 3028 Ameren IL-Prairie Power Project#19 Griggsville to be effective 1/6/2020.
Filed Date: 11/6/19.
Accession Number: 20191106–5054.
Comments Due: 5 p.m. ET 11/27/19.

Docket Numbers: ER20–322–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA/SA No. 4381; Queue No. AB1–044 to be effective 11/12/2019.
Filed Date: 11/6/19.
Accession Number: 20191106–5065.
Comments Due: 5 p.m. ET 11/27/19.

Docket Numbers: ER20–323–000.
Applicants: Helix Ravenswood LLC, Ravenswood Development LLC.
Description: Request for Limited Waiver of Helix Ravenswood, LLC, et al.
Filed Date: 11/6/19.
Accession Number: 20191106–5082.
Comments Due: 5 p.m. ET 11/27/19.

Docket Numbers: ER20–324–000.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA/SA No. 4382; Queue No. AB1–045 to be effective 11/12/2019.

Filed Date: 11/6/19.

Accession Number: 20191106–5106.

Comments Due: 5 p.m. ET 11/27/19.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–3–000.

Applicants: Ontario Power Generation Inc.

Description: Ontario Power Generation Inc. submits FERC 65–B Waiver Notification under PH20–3.

Filed Date: 11/6/19.

Accession Number: 20191106–5104.

Comments Due: 5 p.m. ET 11/27/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24634 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–479–000]

Northern Natural Gas Company; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Proposed Bushton to Clifton A-Line Abandonment Project

On July 15, 2019, the Federal Energy Regulatory Commission (FERC or Commission) issued in Docket No. CP19–479–000 a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Bushton to Clifton A-line Abandonment Project* (NOI). In its application, Northern Natural Gas Company (Northern) filed a proposal to abandon in-place Northern's A-line facilities consisting of approximately 92.76 miles of 26-inch-diameter pipeline, 15.74 miles of 24-inch-diameter pipeline, and other appurtenant facilities in Clay, Cloud, Ellsworth, Lincoln, Ottowa and Rice Counties, Kansas. The proposed Bushton to Clifton A-line Abandonment Project (Project) also involves construction and operation of compression facilities by Northern in Ottawa County, Kansas. Following Northern's proposed abandonment activities, including the restoration of disturbed land, Northern indicates that the abandoned pipeline will be purchased and removed by a third-party salvage company.

As indicated in the previous NOI, the FERC staff will prepare an environmental assessment (EA) to address the environmental impacts of the Project. The Commission will use the EA in its decision-making process to determine whether to authorize the Project. We prepared this supplemental NOI to notify property owners along the proposed A-line abandonment whose land could be involved in the planned salvage operation who were inadvertently excluded from the July 15, 2019 NOI environmental mailing list. This Supplemental NOI opens a new 30-day scoping period for interested parties to file comments on environmental issues specific to the proposed action. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00pm Eastern Time on December 6, 2019.

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. You can make a difference by submitting your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

This notice is being sent to the Commission's current environmental mailing list for the Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

Northern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference

the project docket number (CP19–479–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

Summary of the Proposed Project

Northern is proposing to abandon in-place the A-line facilities consisting of approximately 92.76 miles of 26-inch-diameter pipeline on Northern's M640A and M630A and 15.74 miles of 24-inch-diameter pipeline on its M640J pipeline systems and other appurtenant facilities. The Project would consist of the following pipelines and facilities:

- *The M640A and M630A-Lines*

The M640 A-line in Kansas consists of abandonment of approximately 45.64 miles of 26-inch-diameter pipeline beginning at Northern's Bushton Compressor Station located in Ellsworth County, Kansas, and ending near the Tescott Compressor Station in Ottawa County, Kansas. The M630 A-line in Kansas consists of abandonment of approximately 47.12 miles of 26-inch-diameter pipeline beginning at the Tescott Compressor Station in, Ottawa County, Kansas, and ending at Northern's Clifton Compressor Station located in Clay County, Kansas.

- *The M640 J-Line*

The M640 J-line in Kansas consists of abandonment of approximately 15.74 miles of 24-inch-diameter pipeline beginning at Block Valve JBJ04 located in Ellsworth County, Kansas, and ending near Block Valve JXA07 located in Ottawa County, Kansas.

- *Tescott Compressor Station*

Northern proposes to construct and operate an additional natural gas-driven ISO rated 11,152 horsepower Solar Mars turbine unit (Unit No. 6) at the existing Tescott Compressor Station located in Ottawa County, Kansas. The unit will tie into station piping that is connected to Northern's existing mainlines. Approximately 85 feet of 24-inch-diameter station piping, approximately 40 feet of 36-inch-diameter station piping, and approximately 80 feet of 8-inch-diameter station piping will be removed to accommodate tie-ins.

After abandonment, Northern states that the abandoned pipeline will be purchased and removed by a third-party salvage company. Northern will continue to operate the other pipelines in its right-of-way and maintain its pipeline easements with the exception of a segment of J-line that will be abandoned in place. The general location of the Project facilities is shown in appendix 1.

Land Requirements for Construction

Construction disturbance associated with discrete locations to disconnect the abandoned pipelines and at the proposed compressor station upgrade would disturb about 55.4 acres, including 54.5 acres of land for temporary work space and about 0.9 acre for access roads. Two of the pipeline disconnect locations are located inside existing compressor station facilities which is owned by Northern, and the remaining disconnect locations are located along the A-line which is collocated with other Northern pipelines. No new land would be obtained or required for the Project.

The EA Process

The EA will discuss impacts that could occur as a result of the abandonment, construction, and operation of the proposed Project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [1] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[2] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[3] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors along Northern's existing pipeline system, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the

[1] For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP19–479–000. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: November 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24629 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–8–000]

Notice of Application; ANR Pipeline Company

Take notice that on October 28, 2019, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, filed an abbreviated application under sections 7(c) and 7(b) of the Natural Gas Act and Part 157, Subpart A, of the Commission's regulations, requesting authorization to construct, own, and operate the Grand Chenier XPress Project (Project). Specifically, ANR's Project consist of: (i) Modifications to the existing Eunice and Grand Chenier Compressor Stations, (ii) construction and operation of a new compressor station (Mermentau Compressor Station), (iii) modifications to ANR's Mermentau River GCX Meter Station,[1] and (iv) installation of various appurtenant and auxiliary facilities. The Project will provide open access firm transportation service on 400,000 dekatherms per day (Dth/d) of incremental capacity from ANR's Southeast Head station to the Mermentau River GCX Meter Station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to Dave Hammel, Director, Commercial and Regulatory Law, ANR Pipeline Company, 700 Louisiana Street Suite 700, Houston, Texas 77002–2700, by telephone at (832) 320–5583, or by email at *daniel_humble@tcenergy.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[2] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[3]

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on November 27, 2019.

Dated: November 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24633 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

[1] ANR states that the Mermentau River GCX Meter Station will be installed pursuant to the automatic provisions of its blanket certificate.

[2] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[3] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2386–004; 2387–003; 2388–004]

City of Holyoke Gas and Electric Department; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for licenses for the Holyoke Number 1, Holyoke Number 2, and Holyoke Number 3 Hydroelectric Projects, located on the Holyoke Canal System in the City of Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the projects.

The EA contains the staff's analysis of the potential environmental impacts of the projects and concludes that licensing the projects would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include the relevant docket number(s): P–2386–004, P–2387–003, and/or P–2388–004.

For further information, contact Kyle Olcott at (202) 502–8963.

Dated: November 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24632 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC19–32–000, IC19–33–000, and IC19–40–000]

Commission Information Collection Activities; Requests for Emergency Extensions for FERC–725M, FERC–516A, and FERC–539

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of requests for emergency extensions.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) has solicited public comments on three information collections: FERC–725M (Mandatory Reliability Standard: FAC–003–4, Vegetation Management), FERC–516A (Standardization of Small Generator Interconnection Agreements and Procedures), and FERC–539 (Gas Pipeline Certificates: Import and Export Related Applications). FERC submitted requests to the Office of Management and Budget (OMB) for short-term emergency extensions for the three information collections to ensure they remain active while FERC completes the pending PRA renewal processes. No changes are being made to the reporting and recordkeeping requirements.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION: The PRA renewal process for each of the three information collections is ongoing. To ensure that OMB approvals of the current information collections remain active during the PRA renewal process, FERC has submitted requests to the OMB for short-term emergency extensions.

Title: FERC–725M, Mandatory Reliability Standard: FAC–003–4, Vegetation Management (OMB Control No. 1902–0263).

Docket No. for Ongoing PRA Renewal: IC19–32.

An emergency extension request and justification (for three additional months) were electronically submitted to OMB on September 20, 2019. OMB disapproved the emergency extension request and collection on October 2, 2019. FERC then submitted a formal request to OMB on October 8, 2019,[1] for an emergency reinstatement and three-month extension. The request is still pending at OMB.

Titles: FERC–516A, Standardization of Small Generator Interconnection Agreements and Procedures (OMB Control No. 1902–0203); and FERC–539, Gas Pipeline Certificates: Import and Export Related Applications (OMB Control No. 1902–0062).

Docket Nos. for Ongoing PRA Renewals: IC19–40 (for FERC–516A) and IC19–33 (for FERC–539).

FERC submitted formal requests to OMB on October 29, 2019, for emergency three-month extensions (to January 31, 2020). On October 31, 2019, OMB approved two-month extensions to December 31, 2019, for FERC–516A and FERC–539.

Dated: November 1, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24615 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order

	Docket Nos.
Marion County Solar Farm I LLC.	EL20–6–000
Marion County Solar Farm I LLC.	QF20–83–001
Marion County Solar Farm II LLC.	QF20–84–001
Taylor County Solar LLC	QF20–85–001
Plum Solar Farm LLC	QF20–123–001
Stillmore Solar Farm LLC	QF20–121–001
Plum Solar Farm LLC	QF20–122–001
Taylor Solar LLC	QF20–86–001
Taylor Solar LLC	QF20–87–001
Taylor Solar LLC	QF20–88–001
Taylor Solar LLC	QF20–89–001
Taylor Solar LLC	QF20–90–001
Taylor Solar LLC	QF20–91–001
Taylor Solar LLC	QF20–92–001
Taylor Solar LLC	QF20–93–001
Taylor Solar LLC	QF20–94–001
Taylor Solar LLC	QF20–95–001
Taylor Solar LLC	QF20–96–001
Taylor Solar LLC	QF20–97–001
Taylor Solar LLC	QF20–98–001
Taylor Solar LLC	QF20–99–001

[1] The letter is dated October 7, 2019.

	Docket Nos.
Taylor Solar LLC	QF20–100–001
Taylor Solar LLC	QF20–101–001
Taylor Solar LLC	QF20–102–001
Taylor Solar LLC	QF20–103–001
Taylor Solar LLC	QF20–104–001
Taylor Solar LLC	QF20–105–001
Fulton Mill Solar Farm LLC	QF20–125–001
Fulton Mill Solar Farm LLC	QF20–124–001
Fulton Mill Solar Farm LLC	QF20–126–001
Cook Solar LLC	QF20–106–001
Cook Solar LLC	QF20–107–001
Cook Solar LLC	QF20–108–001
Cook Solar LLC	QF20–109–001
Cook Solar LLC	QF20–110–001
Cook Solar LLC	QF20–111–001
Cook Solar LLC	QF20–112–001
Cook Solar LLC	QF20–113–001
Cook Solar LLC	QF20–114–001
Cook Solar LLC	QF20–115–001
Cook Solar LLC	QF20–116–001
Cook Solar LLC	QF20–117–001
Cook Solar LLC	QF20–118–001
Cook Solar LLC	QF20–119–001
Cook Solar LLC	QF20–120–001

Take notice that on November 5, 2019, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, Marion County Solar Farm I LLC, Marion County Solar Farm II LLC, Taylor County Solar LLC, Plum Solar Farm LLC, Stillmore Solar Farm LLC, Taylor Solar LLC, Fulton Mill Solar Farm LLC, and Cook Solar LLC, (jointly, Petitioners) filed a petition for a declaratory order seeking limited waiver of the filing requirements applicable to small power production facilities set forth in section 292.203(a)(3) of the Commission's regulations for varying time periods beginning when these facilities were placed in service up to October 21, 2019 when Petitioners filed FERC Form 556s, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on December 5, 2019.

Dated: November 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–24630 Filed 11–12–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10002–08–OW]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a meeting of the National Drinking Water Advisory Council (NDWAC or Council) as authorized under the Safe Drinking Water Act. The purpose of the meeting is to allow the EPA to present an overview of the Agency's Safe Drinking Water Act programs for the fiscal year 2020 and to consult with the NDWAC on a National Primary Drinking Water Regulation for perchlorate and on revisions to the Lead and Copper Rule.

DATES: The meeting will be held on December 4, 2019, from 8:30 a.m. to 5:00 p.m., eastern time; and on December 5, 2019, from 8:30 a.m. to 12:30 p.m., eastern time.

ADDRESSES: The U.S. Environmental Protection Agency, 1201 Constitution Avenue NW, WJC South, Room 6226, ARS NETI Training Room, Washington, DC 20004.

SUPPLEMENTARY INFORMATION:

Details about Attending the Meeting: The meeting is open to the general public. If you wish to attend the meeting, you may register by sending an email to Elizabeth Corr, the NDWAC Designated Federal Officer (DFO), at: *corr.elizabeth@epa.gov.* The email subject line should read: ''NDWAC 2019 Attendee.'' Your email should include your name, address, and telephone number.

Members of the public attending the meeting must present an unexpired, government-issued photo identification (ID) that comports with requirements of the REAL ID Act, be screened through security equipment, sign in, and be verified/met in the lobby by an EPA employee. *Please Note:* Driver's licenses from some states may not be compliant with the REAL ID Act and, therefore, will not be accepted; alternative ID documents will be necessary in those cases. Foreign national visitors are strongly encouraged to provide advance notice of attendance, must present a valid passport for entry, and must meet all pre-clearance requirements. All members of the public attending the meeting are reminded to allow time for the security screening and sign-in process when entering the building.

The EPA will allocate one hour for the public to present comments at the meeting on December 4, 2019. Oral statements will be limited to five minutes per person during the public comment period. It is preferred that only one person present a statement on behalf of a group or organization. Individuals or organizations interested in presenting an oral statement should notify Elizabeth Corr, the NDWAC DFO, by email at: *corr.elizabeth@epa.gov,* no later than November 22, 2019. Any person who wishes to file a written statement can do so before or after the Council meeting. Send written statements to: Elizabeth Corr, NDWAC DFO, Office of Ground Water and Drinking Water (Mail Code 4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; or email at: *corr.elizabeth@epa.gov.*

Written statements intended for the meeting must be received before November 22, 2019, to be distributed to all members of the Council for their consideration. Statements received on or after the date specified will become part of the permanent file for the meeting and will be forwarded to the Council members after conclusion of the meeting.

Special Accommodations: For information on access or services for individuals with disabilities, please contact Elizabeth Corr at: (202) 564–3798 or by email at: *corr.elizabeth@epa.gov.* To request an accommodation for a disability, please contact Elizabeth Corr at least 15 days prior to the meeting date to allow the EPA as much time as possible to attend to your request.

National Drinking Water Advisory Council: The NDWAC was created by

Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NDWAC was established under the SDWA to provide practical and independent advice, consultation, and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA.

Dated: November 5, 2019.

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2019–24680 Filed 11–12–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 26, 2019.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *The John W. Dwyer CFB Irrevocable Trust, Daniel S. Baird, Baltimore, Maryland, as trustee;* to acquire voting shares of Capital Funding Bancorp, Inc., Baltimore, Maryland, and thereby indirectly acquire voting shares of CFG Community Bank, Lutherville, Maryland.

Board of Governors of the Federal Reserve System, November 6, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–24607 Filed 11–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 6, 2019.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *The Old Fort Banking Company Employee Stock Ownership and 401(k) Plan, Old Fort, Ohio;* to acquire additional voting shares of Gillmor Financial Services, Inc., and thereby indirectly acquire additional voting shares of The Old Fort Banking Company, both of Old Fort, Ohio.

Board of Governors of the Federal Reserve System, November 6, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–24608 Filed 11–12–19; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice AD–2019–01; Docket No. 2019–0002; Sequence No. 29]

Notice of 2020 Presidential Transition Directory

AGENCY: Presidential Transition; General Services Administration (GSA).

ACTION: Notice of availability of the GSA 2020 Presidential Transition Directory.

SUMMARY: The Presidential Transition Directory website is designed to help candidates in the 2020 Presidential election get quick and easy access to key resources about the federal government structure and key policies related to Presidential Transition. The creation of the Presidential Transition Directory is mandated by the Presidential Transition Act of 1963, as amended.

DATES: Applicable: November 13, 2019.

FOR FURTHER INFORMATION CONTACT: The GSA Presidential Transition Team at *presidentialtransition2020@gsa.gov.*

SUPPLEMENTARY INFORMATION: The Presidential Transition Directory (*presidentialtransition.gsa.gov*) website is designed to help candidates in the 2020 Presidential election get quick and easy access to key resources about the federal government structure and key policies related to Presidential Transition.

The creation of the Presidential Transition Directory is mandated by the Presidential Transition Act of 1963, as amended. Connecting resources from the Office of Personnel Management, National Archives and Records Administration, U.S. Office of Government Ethics and others, the site will also help future political appointees better understand key aspects of their roles and some of the key policies and aspects of federal service.

The site will be continuously updated as new information becomes available to help ensure candidates and their staffs have access to the best information possible.

Dated: October 31, 2019.

Mary D. Gibert,

Director, Presidential Transition, General Services Administration.

[FR Doc. 2019–24596 Filed 11–12–19; 8:45 am]

BILLING CODE 6820–AZ–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086; Docket No. 2019–0001; Sequence No. 9]

General Services Administration Acquisition Regulation; Submission for OMB Review; Proposal To Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement for Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217.

DATES: Submit comments on or before: December 13, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217.

Instructions: Please submit comments only and cite Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, General Services Acquisition Policy Division, 202–969–4066 or via email at *christina.mullins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition, management, and disposal of real and personal property. These mission responsibilities include developing requirements, solicitation of lease offers and the award of real property lease contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to (1) evaluate whether the physical attributes of offered properties meet the Government's requirements and (2) evaluate the owner/offeror's price proposal. The approval requested includes four versions of the GSA Form 1364; GSA Forms 1364, 1364A, 1364A–1, and 1364WH. These forms are used to obtain information for offer evaluation and lease award purposes regarding property being offered for lease to house Federal agencies. This includes financial aspects of offers for analysis and negotiation, such as real estate taxes, adjustments for vacant space, and offeror construction overhead fees.

A total of seven lease contract models have been developed to meet the needs of the national leased portfolio. Three of these lease models require offerors to complete a GSA Form 1364 and two require a GSA Form 1217. The GSA Form 1364 versions require the submission of information specifically aligned with certain leasing models and avoids mandating submission of information that is not required for use in evaluation and award under each model. The GSA Form 1217 requires the submission of information specific to the services and utilities of a building in support of the pricing detailed under GSA Form 1364. The forms relate to individual lease procurements and no duplication exists.

The Global Lease model uses the GSA Form 1364. The 1364 captures all rental components, including the pricing for the initial tenant improvements. The global nature of the 1364 provides flexibility in capturing tenant improvement pricing based on either allowance or turnkey pricing, as required by the solicitation.

The Simplified Lease Model uses the GSA Forms 1364A and 1364A–1. This model obtains a firm, fixed price for rent, which includes the cost of tenant improvement construction. Therefore, leases using the Simplified model do not include post-award tenant improvement cost information on the form. The 1364A includes rental rate components and cost data that becomes part of the lease contract and that is necessary to satisfy GSA pricing policy requirements.

The 1364A–1 is a checklist that addresses technical requirements as referenced in the Request for Lease Proposals. The 1364A–1 is separate from the proposal itself and is maintained in the lease file; it does not become an exhibit to the lease. The 1364A–1 may contain proprietary offeror information that cannot be released under the Freedom of Information Act.

The Warehouse Lease Model uses GSA Form 1364WH. This model is specifically designed to accommodate the special characteristics of warehouse space and is optimized for space whose predominant use is for storage, distribution, or manufacturing. The 1364WH captures building characteristics unique to warehouse facilities and allows for evaluation of offers based on either area or volume calculations.

The Global and Warehouse Lease Models use the GSA Form 1217. GSA Form 1217 captures the estimated annual cost of services and utilities and the estimated costs of ownership, exclusive of capital charges. These costs are listed for both the entire building and the area proposed for lease to the Government, broken down into specific categories.

B. Annual Reporting Burden

Respondents: 426.

Responses per Respondent: 3.36 (weighted average).

Total Responses: 1,430.

Hours per Response: 4.11 (weighted average).

Total Burden Hours: 5,877.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 84 FR 44306 on August 23, 2019. No comments were

received. Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division, 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–24621 Filed 11–12–19; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[Notice–WSCC–2019–05; Docket No. 2019–0004; Sequence No. 5]

Women's Suffrage Centennial Commission; Notification of Public Meeting

AGENCY: Women's Suffrage Centennial Commission, General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the December 3, 2019, telephonic meeting of the Women's Suffrage Centennial Commission (Commission), and the March 3, 2020, in-person meeting of the Commission. These meetings are open to the public.

DATES: The telephonic meeting will be held on Tuesday, December 3, 2019, beginning at 1:00 p.m., ET (Eastern Time) and ending no later than 3:00 p.m., ET. The in-person meeting will be held on Tuesday, March 3, 2020, beginning at 9:30 a.m., ET and ending no later than 4:00 p.m., ET.

ADDRESSES: The December 3rd meeting will be telephonic. The public may dial into the meeting by calling 1–510–338–9438 Meeting number (access code): 791 307 540.

The March 3rd meeting will be held at the Library of Congress—Thomas Jefferson Building Room 119, 10 First St. SE, Washington, DC 20540. The public may also dial into the meeting by calling 1–510–338–9438 Meeting number (access code): 793 954 344.

FOR FURTHER INFORMATION CONTACT: Stephanie Marsellos, Designated Federal Officer, Women's Suffrage Centennial Commission, P.O. Box 2020, Washington, DC 20013; phone: 202–707 0106; email: *stephanie@womensvote100.org.*

SUPPLEMENTARY INFORMATION:

Background

Congress passed legislation to create the Women's Suffrage Centennial Commission Act, a bill, ''to ensure a suitable observance of the centennial of the passage and ratification of the 19th Amendment of the Constitution of the United States providing for women's suffrage.''

The duties of the Commission, as written in the law, include: (1) To encourage, plan, develop, and execute programs, projects, and activities to commemorate the centennial of the passage and ratification of the 19th Amendment; (2) to encourage private organizations and State and local Governments to organize and participate in activities commemorating the centennial of the passage and ratification of the 19th Amendment; (3) to facilitate and coordinate activities throughout the United States relating to the centennial of the passage and ratification of the 19th Amendment; (4) to serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of the passage and ratification of the 19th Amendment; and (5) to develop recommendations for Congress and the President for commemorating the centennial of the passage and ratification of the 19th Amendment.

Meeting Agenda for December 3, 2019

- ☐ Call to Order, Opening Remarks, Roll Call
- ☐ Housekeeping Announcement
- ☐ Approval of Meeting Minutes
- ☐ Executive Director Update
- ☐ Communications Update
- ☐ Subcommittee Updates
- ☐ Public Comment
- ☐ Wrap Up/Next Steps
- ☐ Adjourn

Meeting Agenda for March 3, 2020

- ☐ Call to Order, Opening Remarks, Roll Call
- ☐ Housekeeping Announcement
- ☐ Approval of Meeting Minutes
- ☐ Executive Director Update
- ☐ Presentation
- ☐ Communications Update
- ☐ Subcommittee Updates
- ☐ Lunch Break (*Presentation*)
- ☐ Public Comment
- ☐ Wrap Up/Next Steps
- ☐ Adjourn

The meetings are open to the public, but pre-registration is required. Any individual who wishes to attend the meeting should register via email at *stephanie@womensvote100.org* or telephone 202–707–0106.

Interested persons may choose to make a public comment at the meeting during the designated time for this purpose. Public comments shall be limited by minutes based on the number of participants signed up to comment for the allotted time, and subject to agenda time changes based on the speed of the commission's work through the agenda. Speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements up to 30 days after the meeting.

Members of the public may also choose to submit written comments by mailing them to Stephanie Marsellos, Designated Federal Officer, P.O. Box 2020, Washington, DC 20013, or via email at *stephanie@womensvote100.org.* Please contact Ms. Marsellos at the email address above to obtain meeting materials. All written comments received will be provided to the Commission. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Individuals requiring special accommodations to access the public meeting should contact Ms. Marsellos at least five business days prior to each meeting, so that appropriate arrangements can be made.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time.

While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Dated: October 31, 2019.

Anna Laymon,

Acting Executive Director, Women's Suffrage Centennial Commission.

[FR Doc. 2019–24593 Filed 11–12–19; 8:45 am]

BILLING CODE 3420–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8071–N]

RIN 0938–AT76

Medicare Program; CY 2020 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts

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

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2020 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2020, the inpatient hospital deductible will be $1,408. The daily coinsurance amounts for CY 2020 will be: $352 for the 61st through 90th day of hospitalization in a benefit period; $704 for lifetime reserve days; and $176 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: The deductible and coinsurance amounts announced in this notice are effective on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Yaminee Thaker, (410) 786–7921 for general information. Gregory J. Savord, (410) 786–1521 for case-mix analysis.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires the Secretary of the Department of Health and Human Services (the Secretary) to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

II. Computing the Inpatient Hospital Deductible for CY 2020

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, adjusted by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect changes in real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i)(XX) of the Act, the percentage increase used to update the payment rates for FY 2020 for hospitals paid under the inpatient prospective payment system is the market basket percentage increase, otherwise known as the market basket update, reduced by an adjustment based on changes in the economy-wide productivity (the multifactor productivity (MFP) adjustment) (see section 1886(b)(3)(B)(xi)(II) of the Act). Under section 1886(b)(3)(B)(viii) of the Act, for FY 2020, the applicable percentage increase for hospitals that do not submit quality data as specified by the Secretary is reduced by one quarter of the market basket update. We are estimating that after accounting for those hospitals receiving the lower market basket update in the payment-weighted average update, the calculated deductible will not be affected, since the majority of hospitals submit quality data and receive the full market basket update. Section 1886(b)(3)(B)(ix) of the Act requires that any hospital that is not a meaningful electronic health record (EHR) user (as defined in section 1886(n)(3) of the Act) will have three-quarters of the market basket update reduced by 100 percent for FY 2017 and each subsequent fiscal year. We are estimating that after accounting for these hospitals receiving the lower market basket update, the calculated deductible will not be affected, since the majority of hospitals are meaningful EHR users and are expected to receive the full market basket update.

Under section 1886 of the Act, the percentage increase used to update the payment rates (or target amounts, as applicable) for FY 2020 for hospitals excluded from the inpatient prospective payment system is as follows:

- The percentage increase for long term care hospitals is the market basket percentage increase reduced by the MFP adjustment (see section 1886(m)(3)(A) of the Act). In addition, these hospitals may also be impacted by the quality reporting adjustments and the site-neutral payment rates (see sections 1886(m)(5) and 1886(m)(6) of the Act).
- The percentage increase for inpatient rehabilitation facilities is the market basket percentage increase reduced by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. In addition, these hospitals may also be impacted by the quality reporting adjustments (see section 1886(j)(7) of the Act).
- The percentage increase used to update the payment rate for inpatient psychiatric facilities is the market basket percentage increase reduced by 0.75 percentage points and the MFP adjustment (see sections 1886(s)(2)(A)(i), 1886(s)(2)(A)(ii), and 1886(s)(3)(E) of the Act). In addition, these hospitals may also be impacted by the quality reporting adjustments (see section 1886(s)(4) of the Act).
- The percentage increase used to update the target amounts for other types of hospitals that are excluded from the inpatient prospective payment system and that are paid on a reasonable cost basis, subject to a rate-of-increase ceiling, is the inpatient prospective payment system operating market basket percentage increase, which is described at section 1886(b)(3)(B)(ii)(VIII) of the Act and 42 CFR 413.40(c)(3). These other types of hospitals include cancer hospitals, children's hospitals, extended neoplastic disease care hospitals, and hospitals located outside the 50 states, the District of Columbia, and Puerto Rico.

The inpatient prospective payment system market basket percentage increase for FY 2020 is 3.0 percent and the MFP adjustment is 0.4 percentage point, as announced in the final rule that appeared in the **Federal Register** on August 16, 2019 entitled, ''Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2020 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid

Promoting Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals'' (84 FR 42343). Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system that submit quality data and are meaningful EHR users is 2.6 percent (that is, the FY 2020 market basket update of 3.0 percent less the MFP adjustment of 0.4 percentage point). The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 2.44 percent. This average includes long term care hospitals, inpatient rehabilitation facilities, and other hospitals excluded from the inpatient prospective payment system. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2020 is 2.58 percent.

To develop the adjustment to reflect changes in real case-mix, we first calculated an average case-mix for each hospital that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare inpatient prospective payment system in FY 2019 compared to FY 2018. (We excluded from this calculation hospitals whose payments are not based on the inpatient prospective payment system because their payments are based on alternate prospective payment systems or reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2019. These bills represent a total of about 7.1 million Medicare discharges for FY 2019 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2019 is 0.6 percent. Based on these bills and past experience, we expect the overall case mix change to be 1.0 percent as the year progresses and more FY 2019 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real. Real case-mix is that portion of case-mix that is due to changes in the mix of cases in the hospital and not due to coding optimization. Over the past several years, we have observed total case mix increases of about 0.5 percent per year and have assumed that they are real. Thus, since we do not have further information at this time, we expect that 0.5 percent of the 1.0 percent change in average case-mix for FY 2019 will be real.

Thus as stated above, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 2.58 percent, and the real case-mix adjustment factor for the deductible is 0.5 percent. Therefore, using the statutory formula as stated in section 1813(b) of the Act, we calculate the inpatient hospital deductible for services furnished in CY 2020 to be $1,408. This deductible amount is determined by multiplying $1,364 (the inpatient hospital deductible for CY 2019 (83 FR 52459)) by the payment-weighted average increase in the payment rates of 1.0258 multiplied by the increase in real case-mix of 1.005, which equals $1,406.19 and is rounded to $1,408.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2020

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. The increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2020, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $352 (one-fourth of the inpatient hospital deductible as stated in section 1813(a)(1)(A) of the Act); the daily coinsurance for lifetime reserve days will be $704 (one-half of the inpatient hospital deductible as stated in section 1813(a)(1)(B) of the Act); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility (SNF) in a benefit period will be $176 (one-eighth of the inpatient hospital deductible as stated in section 1813(a)(3) of the Act).

IV. Cost to Medicare Beneficiaries

The Table below summarizes the deductible and coinsurance amounts for CYs 2019 and 2020, as well as the number of each that is estimated to be paid.

PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2019 AND 2020

Type of cost sharing	Value		Number paid (in millions)	
	2019	2020	2019	2020
Inpatient hospital deductible	$1,364	$1,408	6.98	7.01
Daily coinsurance for 61st–90th Day	341	352	1.62	1.63
Daily coinsurance for lifetime reserve days	682	704	0.81	0.81
SNF coinsurance	170.50	176.00	32.05	32.17

The estimated total increase in costs to beneficiaries is about $590 million (rounded to the nearest $10 million) due to: (1) The increase in the deductible and coinsurance amounts; and (2) the increase in the number of deductibles and daily coinsurance amounts paid. We determine the increase in cost to beneficiaries by calculating the difference between the 2019 and 2020 deductible and coinsurance amounts multiplied by the estimated increase in the number of deductible and coinsurance amounts paid.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA). Section 1871(a)(2) of the Act provides that no rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under Medicare shall take effect unless it is promulgated through notice and comment rulemaking. Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary of the Department of Health

and Human Services (the Secretary) to provide for notice of a proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment before establishing or changing a substantive legal standard regarding the matters enumerated by the statute. Similarly, under 5 U.S.C. 553(b) of the APA, the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect. Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule, subject to exceptions. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the advance notice and comment requirement and the delay in effective date requirements. Sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the notice and 60-day comment period and the 30-day delay in effective date. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act expressly authorize an agency to dispense with notice and comment rulemaking for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest.

The annual inpatient hospital deductible and the hospital and extended care services coinsurance amounts announcement set forth in this notice does not establish or change a substantive legal standard regarding the matters enumerated by the statute or constitute a substantive rule which would be subject to the notice requirements in section 553(b) of the APA. However, to the extent that an opportunity for public notice and comment could be construed as required for this notice, we find good cause to waive this requirement.

Section 1813(b)(2) of the Act requires publication of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts between September 1 and September 15 of the year preceding the year to which they will apply. Further, the statute requires that the agency determine and publish the inpatient hospital deductible and hospital and extended care services coinsurance amounts for each calendar year in accordance with the statutory formulae, and we are simply notifying the public of the changes to the deductible and coinsurance amounts for CY 2020. We have calculated the inpatient hospital deductible and hospital and extended care services coinsurance amounts as directed by the statute; the statute establishes both when the deductible and coinsurance amounts must be published and the information that the Secretary must factor into the deductible and coinsurance amounts, so we do not have any discretion in that regard. We find notice and comment procedures to be unnecessary for this notice and we find good cause to waive such procedures under section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act, if such procedures may be construed to be required at all. Through this notice, we are simply notifying the public of the updates to the inpatient hospital deductible and the hospital and extended care services coinsurance amounts, in accordance with the statute, for CY 2020. As such, we also note that even if notice and comment procedures were required for this notice, for the reasons stated above, we would find good cause to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Act. Publication of this notice is consistent with section 1813(b)(2) of the Act, and we believe that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Impact Analysis

A. Statement of Need

Section 1813(b)(2) of the Act requires the Secretary to publish, between September 1 and September 15 of each year, the amounts of the inpatient hospital deductible and hospital and extended care services coinsurance applicable for services furnished in the following CY.

B. Overall Impact

We have examined the impacts of this notice in accordance with Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Although we do not consider this notice to constitute a substantive rule, this notice is economically significant under section 3(f)(1) of Executive Order 12866. As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $590 million due to: (1) The increase in the deductible and coinsurance amounts; and (2) the increase in the number of deductibles and daily coinsurance amounts paid.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small

Business Administration's definition of a small business (having revenues of less than $7.5 million to $38.5 million in any 1 year). Individuals and states are not included in the definition of a small entity. This annual notice announces the Medicare Part A deductible and coinsurance amounts for CY 2020 and will have an impact on the Medicare beneficiaries. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This annual notice announces the Medicare Part A deductible and coinsurance amounts for CY 2020 and will have an impact on the Medicare beneficiaries. As a result, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This notice does not impose mandates that will have a consequential effect of $154 million or more on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This notice will not have a substantial direct effect on state or local governments, preempt state law, or otherwise have federalism implications.

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this notice is a transfer notice that does not impose more than de minimis costs and thus is not a regulatory action for the purposes of E.O. 13771.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Consistent with the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), this notice has been transmitted to the Congress and the Comptroller General for review.

Although this notice does not constitute a substantive rule, we nevertheless prepared this Impact Analysis section in the interest of ensuring that the impacts of this notice are fully understood.

Dated: October 24, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 28, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–24441 Filed 11–8–19; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8072–N]

RIN 0938–AT77

Medicare Program; CY 2020 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

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

ACTION: Notice.

SUMMARY: This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2020. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the ''uninsured aged'') and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2020 for these individuals will be $458. The premium for certain other individuals as described in this notice will be $252.

DATES: The premium announced in this notice is effective on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Yaminee Thaker, (410) 786–7921.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance Program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors, and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. These ''uninsured aged'' individuals are uninsured under the OASDI program or the Railroad Retirement Act, because they do not have 40 quarters of coverage under Title II of the Act (or are/were not married to someone who did). (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for Medicare Part A.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium for certain disabled individuals who have exhausted other entitlement. These are individuals who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, but who are no longer entitled to disability benefits and free Medicare Part A coverage because they have gone back to work and their earnings exceed the statutorily defined ''substantial gainful activity'' amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d)(1) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the upcoming calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act

to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A of the Act). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month:

- Had at least 30 quarters of coverage under Title II of the Act;
- Was married, and had been married for the previous 1 year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2020 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

Section 1818(g) of the Act requires the Secretary, at the request of a state, to enter into a Part A buy-in agreement with a state to pay Medicare Part A premiums for Qualified Medicare Beneficiaries (QMBs). Under the QMB program, state Medicaid agencies must pay the Medicare Part A premium for those not eligible for premium-free Part A. (Entering into a Part A buy-in agreement would permit a state to avoid any Medicare late enrollment penalties that the individual may owe and would allow states to enroll persons in Part A at any time of the year (without regard to Medicare enrollment periods)).

II. Monthly Premium Amount for CY 2020

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2020, is $458. The monthly premium for the individuals eligible under section 1818(d)(4)(B) of the Act, and therefore, subject to the 45 percent reduction in the monthly premium, is $252.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2020 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Medicare Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2020 on—(1) current historical data; and (2) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2020 Budget.

We estimate that in CY 2020, 53,313,570 people aged 65 years and over will be entitled to (enrolled in) benefits (without premium payment) and that they will incur about $292.967 billion in benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $457.93 and the monthly premium is $458. Subsequently, the full monthly premium reduced by 45 percent is $252.

IV. Costs to Beneficiaries

The CY 2020 premium of $458 is approximately 4.8 percent higher than the CY 2019 premium of $437. We estimate that approximately 691,000 enrollees will voluntarily enroll in Medicare Part A, by paying the full premium. We estimate that over 90 percent of these individuals will have their Part A premium paid for by states, since they are enrolled in the QMB program. Furthermore, the CY 2020 reduced premium of $252 is approximately 5.0 percent higher than the CY 2019 premium of $240. We estimate an additional 80,000 enrollees will pay the reduced premium. Therefore, we estimate that the total aggregate cost to enrollees paying these premiums in CY 2020, compared to the amount that they paid in CY 2019, will be about $186 million.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA). Section 1871(a)(2) of the Act provides that no rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under Medicare shall take effect unless it is promulgated through notice and comment rulemaking. Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary of the Department of Health and Human Services (the Secretary) to provide for notice of a proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment before establishing or changing a substantive legal standard regarding the matters enumerated by the statute. Similarly, under 5 U.S.C. 553(b) of the APA, the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect. Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule, subject to exceptions. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the advance notice and comment requirement and the delay in effective date requirements. Sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the notice and 60-day comment period and the 30-day delay in effective date. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act expressly authorize an agency to dispense with notice and comment rulemaking for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest.

The annual Part A premium announcement set forth in this notice does not establish or change a substantive legal standard regarding the matters enumerated by the statute or constitute a substantive rule which would be subject to the notice requirements in section 553(b) of the APA. However, to the extent that an opportunity for public notice and comment could be construed as required for this notice, we find good cause to waive this requirement.

Section 1818(d) of the Act requires the Secretary during September of each year to determine and publish the amount to be paid, on an average per capita basis, from the Federal Hospital Insurance Trust Fund for services incurred in the impending CY (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. Further, the statute requires that the agency

determine the applicable premium amount for each calendar year in accordance with the statutory formula, and we are simply notifying the public of the changes to the Medicare Part A premiums for CY 2020. We have calculated the Part A premiums as directed by the statute; the statute establishes both when the premium amounts must be published and the information that the Secretary must factor into the premium amounts, so we do not have any discretion in that regard. We find notice and comment procedures to be unnecessary for this notice and we find good cause to waive such procedures under section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act, if such procedures may be construed to be required at all. Through this notice, we are simply notifying the public of the updates to the Medicare Part A premiums, in accordance with the statute, for CY 2020. As such, we also note that even if notice and comment procedures were required for this notice, for the reasons stated above, we would find good cause to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Act. Publication of this notice is consistent with section 1818(d) of the Act, and we believe that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Impact Analysis

A. Statement of Need

Section 1818(d) of the Act requires the Secretary of the Department of Health and Human Services (the Secretary) during September of each year to determine and publish the amount to be paid, on an average per capita basis, from the Federal Hospital Insurance Trust Fund for services incurred in the impending CY (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A.

B. Overall Impact

We have examined the impacts of this notice in accordance with Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Although we do not consider this notice to constitute a substantive rule, this notice is economically significant under section 3(f)(1) of Executive Order 12866. As stated in section IV of this notice, we estimate that the overall effect of the changes in the Part A premium will be a cost to voluntary enrollees (section 1818 and section 1818A of the Act) of about $186 million.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration's definition of a small business (having revenues of less than $7.5 million to $38.5 million in any 1 year). Individuals and states are not included in the definition of a small entity. This annual notice announces the Medicare Part A premiums for CY 2020 and will have an impact on certain Medicare beneficiaries. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This annual notice announces the Medicare Part A premiums for CY 2020 and will have an impact on certain Medicare beneficiaries. As a result, we are not preparing an analysis for section 1102(b) of the Act, because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This notice does not impose mandates that will have a consequential effect of $154 million or more on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This notice will not have a substantial direct effect on state or local

governments, preempt state law, or otherwise have federalism implications.

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this notice is a transfer notice that does not impose more than de minimis costs and thus is not a regulatory action for the purposes of E.O. 13771.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Consistent with the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), this notice has been transmitted to the Congress and the Comptroller General for review.

Although this notice does not constitute a substantive rule, we nevertheless prepared this Impact Analysis section in the interest of ensuring that the impacts of this notice are fully understood.

Dated: October 24, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 28, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–24439 Filed 11–8–19; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8073–N]

RIN 0938–AT78

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible Beginning January 1, 2020

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

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2020. In addition, this notice announces the monthly premium for aged and disabled beneficiaries, the deductible for 2020, and the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2020 are $283.20 for aged enrollees and $343.60 for disabled enrollees. The standard monthly Part B premium rate for all enrollees for 2020 is $144.60, which is equal to 50 percent of the monthly actuarial rate for aged enrollees (or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees) plus $3.00 repayment amount required under current law. (The 2019 standard premium rate was $135.50, which included the $3.00 repayment amount.) The Part B deductible for 2020 is $198.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, he or she will have to pay a total monthly premium of about 35, 50, 65, 80 or 85 percent of the total cost of Part B coverage plus a repayment amount of $4.20, $6.00, $7.80, $9.60 or $10.20 respectively.

DATES: The monthly actuarial rates, premium rates, and annual deductible announced in this notice are effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: M. Kent Clemens, (410) 786–6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services; outpatient hospital services; certain home health services; services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities; and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens and to aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as described in 42 CFR part 407, subpart B, and part 408, respectively. The premiums paid by (or on behalf of) all enrollees fund approximately one-fourth of the total incurred costs, and transfers from the general fund of the Treasury pay approximately three-fourths of these costs.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half of the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half of the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110, section 629 of the MMA (amending section 1833(b) of the Act) required that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2020 Part B deductible is calculated by multiplying the 2019 deductible by the ratio of the 2020 aged actuarial rate to the 2019 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal-year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II Social Security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget

Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were one-sixth for 1998, one-third for 1999, one-half for 2000, two-thirds for 2001, and five-sixths for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that one-seventh of the cost be transferred in 1998, two-sevenths in 1999, three-sevenths in 2000, four-sevenths in 2001, five-sevenths in 2002, and six-sevenths in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the MMA, which amended section 1839 of the Act, requires that, starting on January 1, 2007, the Part B premium a beneficiary pays each month be based on his or her annual income. Specifically, if a beneficiary's modified adjusted gross income is greater than the legislated threshold amounts (for 2020, $87,000 for a beneficiary filing an individual income tax return and $174,000 for a beneficiary filing a joint tax return), the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25-percent premium, these beneficiaries now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, depending on income and tax filing status, a beneficiary can now be responsible for 35, 50, 65, 80, or 85 percent of the estimated total cost of Part B coverage, rather than 25 percent. Section 402 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10) modified the income thresholds beginning with 2018, and section 53114 of the Bipartisan Budget Act of 2018 (BBA of 2018) (Pub. L. 115–123) further modified the income thresholds beginning with 2019. For years beginning with 2019, the BBA of 2018 established a new income threshold. If a beneficiary's modified adjusted gross income is greater than or equal to $500,000 for a beneficiary filing an individual income tax return and $750,000 for a beneficiary filing a joint tax return, the beneficiary is responsible for 85 percent of the estimated total cost of Part B coverage. The BBA of 2018 specified that these new income threshold levels will be inflation-adjusted beginning in 2028. The end result of the higher premium is that the Part B premium subsidy is reduced, and less general revenue financing is required, for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy continues to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but it will be reduced for beneficiaries with income above these thresholds. The MMA specified that there be a 5-year transition period to reach full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171) modified the transition to a 3-year period.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2015, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates for these years. Section 211 of MACRA permanently extended this expenditure, which is included in the calculation of the Part B actuarial rates for 2016 and subsequent years.

Another provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) of the Act made by MCCA 88.) Section 1839(f) of the Act, referred to as the ''hold-harmless'' provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premium deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's Social Security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the

increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. The hold-harmless provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but December's Part B premium has been deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, the reduced premium for the individual for that January and for each of the succeeding 11 months is the greater of either—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

Section 1839 of the Act, as amended by section 601(a) of the Bipartisan Budget Act of 2015 (Pub. L. 114–74), specified that the 2016 actuarial rate for enrollees age 65 and older be determined as if the hold-harmless provision did not apply. The premium revenue that was lost by using the resulting lower premium (excluding the foregone income-related premium revenue) was replaced by a transfer of general revenue from the Treasury, which will be repaid over time to the general fund.

Starting in 2016, in order to repay the balance due (which includes the transfer amount and the foregone income-related premium revenue), the Part B premium otherwise determined will be increased by $3.00. These repayment amounts will be added to the Part B premium otherwise determined each year and paid back to the general fund of the Treasury and will continue until the balance due is paid back.

High-income enrollees pay the $3 repayment amount plus an additional $1.20, $3.00, $4.80, $6.60, or $7.20 in repayment as part of the income-related monthly adjustment amount (IRMAA) premium dollars, which reduce (dollar for dollar) the amount of general revenue received by Part B from the general fund of the Treasury. Because of this general revenue offset, the repayment IRMAA premium dollars are not included in the direct repayments made to the general fund of the Treasury from Part B in order to avoid a double repayment. (Only the $3.00 monthly repayment amounts are included in the direct repayments).

These repayment amounts will continue until the total amount collected is equal to the beginning balance due. (In the final year of the repayment, the additional amounts may be modified to avoid an overpayment.) The repayment amounts (excluding the repayment amounts for high-income enrollees) are subject to the hold-harmless provision. The beginning balance due was $9,066,409,000, consisting of $1,625,761,000 in foregone income-related premium revenue plus a transfer amount of $7,440,648,000. An estimated $4,804,297,000 will have been collected for repayment to the general fund by the end of 2019.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2020 are $283.20 for enrollees age 65 and over and $343.60 for disabled enrollees under age 65. In section II.B. of this notice, we present the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for all enrollees for 2020 is $144.60.

The following are the 2020 Part B monthly premium rates to be paid by (or on behalf of) beneficiaries who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year), or joint tax returns.

Beneficiaries who file individual tax returns with income	Beneficiaries who file joint tax returns with income	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $87,000	Less than or equal to $174,000	$0.00	$144.60
Greater than $87,000 and less than or equal to $109,000.	Greater than $174,000 and less than or equal to $218,000.	57.80	202.40
Greater than $109,000 and less than or equal to $136,000.	Greater than $218,000 and less than or equal to $272,000.	144.60	289.20
Greater than $136,000 and less than or equal to $163,000.	Greater than $272,000 and less than or equal to $326,000.	231.40	376.00
Greater than $163,000 and less than $500,000	Greater than $326,000 and less than $750,000	318.10	462.70
Greater than or equal to $500,000	Greater than or equal to $750,000	347.00	491.60

In addition, the monthly premium rates to be paid by (or on behalf of) beneficiaries who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are as follows:

Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $87,000	$0.00	$144.60
Greater than $87,000 and less than $413,000	318.10	462.70
Greater than or equal to $413,000	347.00	491.60

The Part B annual deductible for 2020 is $198.00 for all beneficiaries.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2020

The actuarial assumptions and bases used to determine the monthly actuarial rates and the monthly premium rates for Part B are established by the Centers for Medicare & Medicaid Services Office of the Actuary. The estimates underlying these determinations are prepared by actuaries meeting the qualification standards and following the actuarial standards of practice established by the Actuarial Standards Board.

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under section 1839 of the Act, the starting point for determining the standard monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The premium rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. The three most important of these factors are (1) the difference from prior years between the actual performance of the program and estimates made at the time financing was established; (2) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the establishment of financing for that year; and (3) the expected relationship between incurred and cash expenditures. These factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2018 and 2019.

TABLE 1—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing period ending	Assets (in millions)	Liabilities (in millions)	Assets less liabilities (in millions)
December 31, 2018	$96,343	$30,102	$66,241
December 31, 2019	98,497	32,752	65,746

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for: (1) The projected cost of benefits; and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2020 is determined by first establishing per enrollee costs by type of service from program data through 2018 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2017 through December 31, 2020 are shown in Table 2.

As indicated in Table 3, the projected per enrollee amount required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2020 is $281.31. Based on current estimates, the assets associated with the aged Medicare beneficiaries at the end of 2019 are not fully sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed. The monthly actuarial rate of $283.20 provides an adjustment of $4.08 for a contingency margin and −$2.19 for interest earnings.

The contingency margin for 2020 is affected by several factors. Starting in 2011, manufacturers and importers of brand-name prescription drugs pay a fee that is allocated to the Part B account of the SMI trust. For 2020, the total of these brand-name drug fees is estimated to be $2.8 billion. The contingency margin has been reduced to account for this additional revenue.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should represent between 15 and 20 percent of the following year's total incurred expenditures. To accomplish this goal, a 17-percent reserve ratio, which is a fully adequate contingency reserve level, has been the normal target used to calculate the Part B premium. Assets at the end of 2019 are expected to be below the fully adequate level. The financing rates for 2020 are set to restore the asset level in the Part B account to the fully adequate level by the end of 2020 under current law. The actuarial rate of

$283.20 per month for aged beneficiaries, as announced in this notice for 2020, reflects that combined effect of the factors previously described and the projected assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a manner parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected per enrollee amount required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2020 is $347.33. The monthly actuarial rate of $343.60 also provides an adjustment of −$2.83 for interest earnings and −$0.90 for a contingency margin, reflecting the same factors described previously for the aged actuarial rate at magnitudes appropriate to the disabled rate determination. Based on current estimates, the assets associated with the disabled Medicare beneficiaries at the end of 2020 are sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. A negative contingency margin is needed to maintain assets at an appropriate level.

The actuarial rate of $343.60 per month for disabled beneficiaries, as announced in this notice for 2020, reflects the combined net effect of the factors described previously for aged beneficiaries and the projection assumptions listed in Table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative cost growth rate assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are higher and, therefore, more pessimistic than the current estimate. The other set represents increases that are lower and, therefore, more optimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of $73,860 million by the end of December 2020 under the cost growth rate assumptions shown in Table 2 and assuming that the provisions of current law are fully implemented. This result amounts to 17.0 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $15,880 million by the end of December 2020 under current law, which amounts to 3.3 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $132,071 million by the end of December 2020, or 34.7 percent of the estimated total incurred expenditures for the following year.

The sensitivity analysis indicates that the premium and general revenue financing established for 2020, together with existing Part B account assets, would be adequate to cover estimated Part B costs for 2020 under current law should actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined in accordance with section 1839 of the Act, the following are the 2020 Part B monthly premium rates to be paid by beneficiaries who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year), or joint tax returns.

Beneficiaries who file individual tax returns with income	Beneficiaries who file joint tax returns with income	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $87,000	Less than or equal to $174,000	$0.00	$144.60
Greater than $87,000 and less than or equal to $109,000.	Greater than $174,000 and less than or equal to $218,000.	57.80	202.40
Greater than $109,000 and less than or equal to $136,000.	Greater than $218,000 and less than or equal to $272,000.	144.60	289.20
Greater than $136,000 and less than or equal to $163,000.	Greater than $272,000 and less than or equal to $326,000.	231.40	376.00
Greater than $163,000 and less than $500,000	Greater than $326,000 and less than $750,000	318.10	462.70
Greater than or equal to $500,000	Greater than or equal to $750,000	347.00	491.60

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are as follows:

Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $87,000	$0.00	$144.60
Greater than $87,000 and less than $413,000	318.10	462.70
Greater than or equal to $413,000	347.00	491.60

TABLE 2—PROJECTION FACTORS [1]

12-Month Periods Ending December 31 of 2017–2020

[In percent]

Calendar year	Physicians' services	Durable medical equipment	Carrier lab [2]	Physician-administered drugs	Other carrier services [3]	Outpatient hospital	Home health agency	Hospital lab [4]	Other intermediary services [5]	Managed care
Aged:										
2017	1.2	−5.5	4.0	6.8	4.3	7.4	−2.0	1.1	4.8	2.8
2018	1.7	17.9	11.2	12.3	2.4	8.7	3.3	−0.9	7.7	7.5
2019	3.7	6.1	2.3	10.8	2.4	7.1	4.3	−3.2	5.8	7.4
2020	1.9	−1.3	−2.1	8.8	2.4	8.3	4.0	−2.3	4.7	5.5
Disabled:										
2017	0.6	0.0	−0.7	5.4	10.1	6.1	−2.0	−0.3	9.3	3.9
2018	2.0	18.5	6.1	10.9	4.7	7.6	2.6	1.3	9.1	7.7
2019	4.9	6.6	8.2	11.7	4.9	12.0	6.5	−0.8	10.5	7.1
2020	1.9	−1.6	−2.2	8.7	2.4	8.4	5.6	−2.4	5.8	5.8

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[3] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[4] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[5] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2017 THROUGH DECEMBER 31, 2020

	CY 2017	CY 2018	CY 2019	CY 2020
Covered services (at level recognized):				
Physician fee schedule	$73.34	$72.32	$73.14	$73.63
Durable medical equipment	5.29	6.06	6.27	6.12
Carrier lab [1]	3.96	4.27	4.26	4.13
Physician-administered drugs	14.74	16.08	17.37	18.69
Other carrier services [2]	9.39	9.35	9.33	9.46
Outpatient hospital	46.96	49.62	51.81	55.53
Home health	8.97	9.00	9.15	9.42
Hospital lab [3]	2.26	2.17	2.05	1.98
Other intermediary services [4]	17.81	18.64	19.22	19.91
Managed care	89.57	100.73	112.29	120.27
Total services	272.27	288.24	304.89	319.14
Cost sharing:				
Deductible	−6.47	−6.41	−6.48	−6.94
Coinsurance	−27.99	−28.63	−28.77	−29.39
Sequestration of benefits	−4.75	−5.06	−5.39	−5.65
HIT payment incentives	−0.17	0.16	0.00	0.00
Total benefits	232.89	248.30	264.25	277.16
Administrative expenses	4.50	3.98	4.23	4.15
Incurred expenditures	237.39	252.28	268.48	281.31
Value of interest	−1.61	−1.80	−2.02	−2.19
Contingency margin for projection error and to amortize the surplus or deficit	26.12	11.42	−1.56	4.08
Monthly actuarial rate	261.90	261.90	264.90	283.20

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2017 THROUGH DECEMBER 31, 2020

	CY 2017	CY 2018	CY 2019	CY 2020
Covered services (at level recognized):				
Physician fee schedule	$76.62	$74.87	$74.06	$72.41
Durable medical equipment	10.97	12.41	12.40	11.69
Carrier lab [1]	5.66	5.83	5.95	5.58
Physician-administered drugs	14.23	15.19	15.97	16.64
Other carrier services [2]	12.51	12.65	12.52	12.33
Outpatient hospital	64.96	66.98	69.93	72.67
Home health	7.08	6.93	6.89	6.94
Hospital lab [3]	2.73	2.67	2.50	2.34

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2017 THROUGH DECEMBER 31, 2020—Continued

	CY 2017	CY 2018	CY 2019	CY 2020
Other intermediary services [4]	47.21	52.09	53.28	53.58
Managed care	90.59	106.01	125.96	141.72
Total services	332.57	355.64	379.44	395.91
Cost sharing:				
Deductible	−6.21	−6.15	−3.53	−4.21
Coinsurance	−41.93	−43.18	−46.89	−44.44
Sequestration of benefits	−5.68	−6.12	−6.57	−6.94
HIT payment incentives	−0.18	0.16	0.00	0.00
Total benefits	278.57	300.34	322.45	340.32
Administrative expenses	5.38	4.82	6.84	7.01
Incurred expenditures	283.94	305.16	329.29	347.33
Value of interest	−3.01	−2.75	−2.82	−2.83
Contingency margin for projection error and to amortize the surplus or deficit	−26.74	−7.41	−11.07	−0.90
Monthly actuarial rate	254.20	295.00	315.40	343.60

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2020

As of December 31,	2018	2019	2020
Actuarial status (in millions):			
Assets	$96,343	$98,497	$108,114
Liabilities	$30,102	$32,752	$34,253
Assets less liabilities	$66,241	$65,746	$73,860
Ratio [1]	17.8%	16.5%	17.0%
Low-cost projection:			
Actuarial status (in millions):.			
Assets	$96,343	$117,416	$164,412
Liabilities	$30,102	$30,650	$32,341
Assets less liabilities	$66,241	$86,766	$132,071
Ratio [1]	18.9%	24.1%	34.7%
High-cost projection:			
Actuarial status (in millions):.			
Assets	$96,343	$79,283	$51,985
Liabilities	$30,102	$34,887	$36,105
Assets less liabilities	$66,241	$44,396	$15,880
Ratio [1]	16.9%	10.1%	3.3%

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

III. Collection of Information Requirements

This document does not impose information collection requirements—that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Analysis

A. Statement of Need

Section 1839 of the Act requires us to annually announce (that is, by September 30th of each year) the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. We also announce the Part B annual deductible because its determination is directly linked to the aged actuarial rate.

B. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism

(August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notices with economically significant effects ($100 million or more in any one year). The 2020 standard Part B premium of $144.60 is $9.10 higher than the 2019 premium of $135.50. We estimate that this premium increase, for the approximately 57 million Part B enrollees in 2020, will have an annual effect on the economy of $100 million or more. As a result, this notice is economically significant under section 3(f)(1) of Executive Order 12866 and is a major action as defined under the Congressional Review Act (5 U.S.C. 804(2)).

As discussed earlier, this notice announces that the monthly actuarial rates applicable for 2020 are $283.20 for enrollees age 65 and over and $343.60 for disabled enrollees under age 65. It also announces the 2020 monthly Part B premium rates to be paid by beneficiaries who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year), or joint tax returns.

Beneficiaries who file individual tax returns with income	Beneficiaries who file joint tax returns with income	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $87,000	Less than or equal to $174,000	$0.00	$144.60
Greater than $87,000 and less than or equal to $109,000.	Greater than $174,000 and less than or equal to $218,000.	57.80	202.40
Greater than $109,000 and less than or equal to $136,000.	Greater than $218,000 and less than or equal to $272,000.	144.60	289.20
Greater than $136,000 and less than or equal to $163,000.	Greater than $272,000 and less than or equal to $326,000.	231.40	376.00
Greater than $163,000 and less than $500,000	Greater than $326,000 and less than $750,000	318.10	462.70
Greater than or equal to $500,000	Greater than or equal to $750,000	347.00	491.60

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are also announced and listed in the following chart:

Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $87,000	$0.00	$144.60
Greater than $87,000 and less than $413,000	318.10	462.70
Greater than or equal to $413,000	347.00	491.60

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and states are not included in the definition of a small entity. This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under 65) beneficiaries enrolled in Part B of the Medicare SMI program beginning January 1, 2020. Also, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As we discussed previously, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant effect on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. Part B enrollees who are also enrolled in Medicaid have their monthly Part B premiums paid by Medicaid. The cost to each state Medicaid program from the 2020 premium increase is estimated to be less than the threshold. This notice does not impose mandates that will have a consequential effect of the threshold amount or more on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has federalism implications. We have determined that this notice does not significantly affect the rights, roles, and

responsibilities of states. Accordingly, the requirements of Executive Order 13132 do not apply to this notice.

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this notice is a transfer notice that does not impose more than de minimis costs and thus is not a regulatory action for the purposes of E.O. 13771.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA). Section 1871(a)(2) of the Act provides that no rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under Medicare shall take effect unless it is promulgated through notice and comment rulemaking. Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary of the Department of Health and Human Services (the Secretary) to provide for notice of a proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment before establishing or changing a substantive legal standard regarding the matters enumerated by the statute. Similarly, under 5 U.S.C. 553(b) of the APA, the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect. Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule, subject to exceptions. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the advance notice and comment requirement and the delay in effective date requirements. Sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the notice and 60-day comment period and the 30-day delay in effective date. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act expressly authorize an agency to dispense with notice and comment rulemaking for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest.

The annual updated amounts for the Part B monthly actuarial rates for aged and disabled beneficiaries, the Part B premium, and Part B deductible set forth in this notice do not establish or change a substantive legal standard regarding the matters enumerated by the statute or constitute a substantive rule which would be subject to the notice requirements in section 553(b) of the APA. However, to the extent that an opportunity for public notice and comment could be construed as required for this notice, we find good cause to waive this requirement.

Section 1839 of the Act requires the Secretary to determine the monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium (including the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts) for each calendar year in accordance with the statutory formulae, in September preceding the year to which they will apply. Further, the statute requires that the agency promulgate the Part B premium amount, in September preceding the year to which it will apply, and include a public statement setting forth the actuarial assumptions and bases employed by the Secretary in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older. We include the Part B annual deductible, which is established pursuant to a specific formula described in section 1833(b) of the Act, because the determination of the amount is directly linked to the rate of increase in actuarial rate under section 1839(a)(1) of the Act. We have calculated the monthly actuarial rates for aged and disabled beneficiaries, the Part B deductible, and the monthly Part B premium as directed by the statute; the statute establishes both when the monthly actuarial rates for aged and disabled beneficiaries and the monthly Part B premium must be published and the information that the Secretary must factor into those amounts, so we do not have any discretion in that regard. We find notice and comment procedures to be unnecessary for this notice and we find good cause to waive such procedures under section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act, if such procedures may be construed to be required at all. Through this notice, we are simply notifying the public of the updates to the monthly actuarial rates for aged and disabled beneficiaries, the Part B deductible, as well as the monthly Part B premium amounts and the income-related monthly adjustment amounts to be paid by certain beneficiaries, in accordance with the statute, for CY 2020. As such, we also note that even if notice and comment procedures were required for this notice, for the previously stated reason, we would find good cause to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Act. Publication of this notice is consistent with section 1839 of the Act, and we believe that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

Dated: October 24, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 28, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–24440 Filed 11–8–19; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Clinical Care Commission

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Clinical Care Commission (the Commission) will conduct its fifth meeting on Friday, November 22, 2019. The Commission is charged to evaluate and make recommendations to the U.S. Department of Health and Human Services (HHS) Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to awareness and clinical care for complex metabolic or autoimmune diseases that result from issues related to insulin that represent a significant disease burden in the United States, which may include complications due to such diseases.

DATES: The meeting will take place on Friday, November 22, 2019, from 8:00 a.m. to approximately 4:00 p.m. Eastern Time (ET).

ADDRESSES: The public meeting will be held at the Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Rd., Rockville, MD 20852; 301–822–9200. The meeting will also be held online via webcast. To pre-register to attend the meeting, please visit the registration website at *https://events.kauffmaninc.com/events/nccc5/*.

FOR FURTHER INFORMATION CONTACT: Linda Harris, Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. Email: *OHQ@hhs.gov.*

SUPPLEMENTARY INFORMATION: The National Clinical Care Commission Act (Pub. L. 115–80) requires the HHS Secretary to establish the National Clinical Care Commission. The Commission consists of representatives of specific federal agencies and non-federal individuals and entities who represent diverse disciplines and views. The Commission will evaluate and make recommendations to the HHS Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to awareness and clinical care for complex metabolic or autoimmune diseases that result from issues related to insulin that represent a significant disease burden in the United States, which may include complications due to such diseases. During this fifth meeting, the Commission will hear from informants from selected federal agencies about programs related to diabetes prevention, treatment and discuss potential topics for the Commission's final report. The final meeting agenda will be available prior to the meeting at *https://health.gov/hcq/national-clinical-care-commission.asp.*

Public Participation at Meeting: The Commission invites public comment on issues related to the Commission's charge either in-person at the meeting or in writing. In-person attendees who plan to provide oral comments at the Commission meeting during a designated time must submit their comments to *OHQ@hhs.gov* on or before November 15, 2019 and must check-in on-site. To accommodate as many individuals as possible, the time for each comment will be limited to three minutes. If more requests are received than can be accommodated, speakers will be randomly selected. The nature of the comments will not be considered in making this selection.

Written comments are welcome throughout the entire development process of the Commission's recommendation and may be emailed to *OHQ@hhs.gov, or by mail to the following address: Public Commentary, National Clinical Care Commission,* 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. Written comments should not exceed three pages in length. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate the special accommodation when registering online or by notifying Jennifer Gillissen at *jennifer.gillissen@kauffmaninc.com* by November 15.

Authority: The National Clinical Care Commission is required under the National Clinical Care Commission Act (Pub. L. 115–80). The Commission is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: November 5, 2019.

Donald Wright,

Deputy Assistant Secretary for Health, Disease Prevention and Health Promotion.

[FR Doc. 2019–24636 Filed 11–12–19; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cancer Health Disparities.

Date: December 5–6, 2019.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *sizemoren@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: December 5–6, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, (301) 435–5575, *hamannkj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: December 5–6, 2019.

Time: 9:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, (301) 451–8754, *tuoj@nei.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology Lifespan Development.

Date: December 5, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elia E. Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, (301) 827–7189, *femiaee@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration, Myelination and Glia.

Date: December 5, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular and Hematology Research Enhancement Award Application Review.

Date: December 5, 2019.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, (301) 435–1206, *komissar@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Toxicology and Pharmacology.

Date: December 5, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, (301) 435–1198 *sahaia@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 6, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–24614 Filed 11–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) Drug Testing Advisory Board (DTAB) will convene via in person and web conference on December 3rd, 2019, from 9:30 a.m. EST to 4:30 p.m. EST, and December 4th, 2019, from 9:00 a.m. EST to 4:00 p.m. EST.

The board will meet in open-session in-person on December 3rd, 2019, from 9:30 a.m. EST to 4:30 p.m. EST to discuss the Mandatory Guidelines for Federal Workplace Drug Testing Programs (urine and oral fluid specimens) with updates from the Department of Transportation, Nuclear Regulatory Commission, and the Department of Defense. Other discussion topics include the impact of cannabis laws on drug testing and standard variables. There will be additional presentations from the Division of Workplace Programs' staff on urine, oral fluid, hair Mandatory Guidelines; and the electronic chain of custody. The board will meet in closed-session in-person on December 4th, 2019, from 9:00 a.m. EST to 4:00 p.m. EST to discuss confidential issues surrounding the proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs (hair), HHS drug panel review, preliminary and unpublished studies from the Johns Hopkins University Behavioral Pharmacology Research Unit (BPRU); recommendations to the Assistant Secretary for Mental Health and Substance Use regarding additional drugs (fentanyl and methadone) that may be tested for in the future, and lastly, program financials. Therefore, the December 4th, 2019, from 9:00 a.m. EST to 4:00 p.m. EST, meeting is closed to the public, as determined by the Assistant Secretary for Mental Health and Substance Use, SAMHSA, in accordance with 5 U.S.C. 552b(c)(4) and (9)(B), and 5 U.S.C. App. 2, Section 10(d).

Meeting registration information can be completed at *http://snacregister.samhsa.gov/MeetingList.aspx.* Web conference and call information will be sent after completing registration. Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees website, *https://www.samhsa.gov/about-us/advisory-councils/meetings* or by contacting the Designated Federal Officer, Jennifer Fan.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: December 3, 2019, from 9:30 a.m. to 4:30 p.m. EST: OPEN. December 4, 2019, from 9:00 a.m. to 4:00 p.m. EST: CLOSED.

Place: Substance Abuse and Mental Health Services Administration, 5th Floor Pavilion A, B, 5600 Fishers Lane, Rockville, MD 20857.

Contact: Jennifer Fan, Senior Pharmacist, Center for Substance Abuse Prevention, 5600 Fishers Lane, Room 16N06D, Rockville, Maryland 20857, Telephone: (240) 276–1759, email: *jennifer.fan@samhsa.hhs.gov.*

Anastasia Marie Donovan,

Policy Anayst.

[FR Doc. 2019–24649 Filed 11–12–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Subcommittee Meetings for the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC)

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice of subcommittee meetings (virtual).

SUMMARY: The Secretary of Health and Human Services (Secretary) announces subcommittee meetings of the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC). The meetings are open to the public and can be accessed via telephone only. Agenda with call-in information will be posted on the SAMHSA website prior to the meetings at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.* The meetings will include information on the following focus areas: Data, Access, Treatment and Recovery, Justice, and Finance.

Committee Name: Interdepartmental Serious Mental Illness Coordinating Committee (subcommittee meetings).

Date/Time/Type:

December 4, 2019/9:00 a.m.–10:30 a.m. (EST)/OPEN/Focus Area 3: Treatment and Recovery

December 4, 2019/10:45 a.m.–12:15 p.m. (EST)/OPEN/Focus Area 1: Data

December 4, 2019/10:45 a.m.–12:15 p.m. (EST)/OPEN/Focus Area 4: Justice

December 4, 2019/1:00 p.m.–2:30 p.m. (EST)/OPEN/Focus Area 2: Access and Engagement

December 4, 2019/1:00 p.m.–2:30 p.m. (EST)/OPEN/Focus Area 5: Finance

ADDRESSES: The meetings will be held virtually.

Substantive meeting information and a roster of Committee members is available at the Committee's website *https://www.samhsa.gov/about-us/advisory-councils/smi-committee.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The ISMICC was established on March 15, 2017, in accordance with section 6031 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to report to the Secretary, Congress, and any other relevant federal department or agency on advances in serious mental illness (SMI) and serious emotional disturbance (SED), research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of SMIs, SEDs, and advances in access to services and support for adults with SMI or children with SED. In addition, the ISMICC will evaluate the effect federal programs related to serious mental illness have on public health, including public health outcomes such as (A) rates of suicide, suicide attempts, incidence and prevalence of SMIs, SEDs, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria as may be determined by the Secretary. Finally, the ISMICC will make specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with SMI or children with SED. Not later than 1 (one) year after the date of enactment of the 21st Century Cures Act, and 5 (five) years after such date of enactment, the ISMICC shall submit a report to Congress and any other relevant federal department or agency.

II. Membership

This ISMICC consists of federal members listed below or their designees, and non-federal public members.

Federal Membership: Members include, The Secretary of Health and Human Services; The Assistant Secretary for Mental Health and Substance Use; The Attorney General; The Secretary of the Department of Veterans Affairs; The Secretary of the Department of Defense; The Secretary of the Department of Housing and Urban Development; The Secretary of the Department of Education; The Secretary of the Department of Labor; The Administrator of the Centers for Medicare and Medicaid Services; and The Commissioner of the Social Security Administration.

Non-federal Membership: Members include, 14 non-federal public members appointed by the Secretary, representing psychologists, psychiatrists, social workers, peer support specialists, and other providers, patients, family of patients, law enforcement, the judiciary, and leading research, advocacy, or service organizations. The ISMICC is required to meet at least twice per year.

FOR FURTHER INFORMATION CONTACT: Pamela Foote, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 14E53C, Rockville, MD 20857; telephone: 240–276–1279; email: *pamela.foote@samhsa.hhs.gov.*

Dated: November 6, 2019.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2019–24598 Filed 11–12–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2019–N149; FVHC98220410150–XXX–FF04H00000]

Deepwater Horizon Oil Spill Draft Restoration Plan #1.3 and Environmental Assessment: Rabbit Island Restoration and Shoreline Protection at Jean Lafitte Historical National Park and Preserve; Louisiana Trustee Implementation Group

AGENCY: Department of the Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and the Consent Decree, the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared the *Louisiana Trustee Implementation Group Draft Restoration Plan/Environmental Assessment #1.3:Rabbit Island Restoration and Shoreline Protection at Jean Lafitte Historical National Park and Preserve* (Phase 2 RP/EA #1.3). The Phase 2 RP/EA #1.3 proposes construction activities to help restore injured resources under two restoration types identified in the Final PDARP/PEIS:

- Birds
- Habitat projects on federally managed lands

The above resources were injured in the Louisiana Restoration Area as a result of the *Deepwater Horizon* (DWH) oil spill. The two projects were approved for engineering and design (E&D) in a 2017 restoration plan entitled *Louisiana Trustee Implementation Group Final Restoration Plan #1: Restoration of Wetlands, Coastal, and Nearshore Habitats; Habitat Projects on Federally Managed Lands; and Birds* (Phase 1 RP #1). The Phase 2 RP/EA #1.3 analyzes design alternatives for the two projects and proposes a preferred design alternative for construction of each. We invite comments on the draft Phase 2 RP/EA #1.3.

DATES: *Submitting Comments:* We will consider public comments on the draft Phase 2 RP/EA #1.3 received on or before December 20, 2019.

Public Webinar: The LA TIG will host a public webinar on December 2, 2019, at 4:00 p.m. Central. The public may register for the webinar at *https://attendee.gotowebinar.com/register/576465552592329228.* After registering, participants will receive a confirmation email with instructions for joining the webinar. Instructions for commenting will be provided during the webinar. Shortly after the webinar is concluded, the presentation material will be posted on the web at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*

ADDRESSES: *Obtaining Documents:* You may download the draft Phase 2 RP/EA #1.3 from either of the following websites:

- *https://www.doi.gov/deepwaterhorizon*
- *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana*

Alternatively, you may request a CD of the draft Phase 2 RP/EA #1.3 (see **FOR FURTHER INFORMATION CONTACT**). A hard copy of the Phase 2 RP/EA #1.3 is also available for review during the public comment period at the locations listed in the following table.

Library	Address	City	Zip
St. Tammany Parish Library	310 W. 21st Avenue	Covington	70433
Terrebonne Parish Library	151 Library Drive	Houma	70360
New Orleans Public Library, Louisiana Division	219 Loyola Avenue	New Orleans	70112

Library	Address	City	Zip
East Baton Rouge Parish Library	7711 Goodwood Boulevard	Baton Rouge	70806
Jefferson Parish Library, East Bank Regional Library	4747 W. Napoleon Avenue	Metairie	70001
Jefferson Parish Library, West Bank Regional Library	2751 Manhattan Boulevard	Harvey	70058
Plaquemines Parish Library	8442 Highway 23	Belle Chasse	70037
St. Bernard Parish Library	1125 E. St. Bernard Highway	Chalmette	70043
St. Martin Parish Library	201 Porter Street	St. Martinville	70582
Alex P. Allain Library	206 Iberia Street	Franklin	70538
Vermilion Parish Library	405 E. St. Victor Street	Abbeville	70510
Martha Sowell Utley Memorial Library	314 St. Mary Street	Thibodaux	70301
South Lafourche Public Library	16241 E. Main Street	Cut Off	70345
Calcasieu Parish Public Library Central Branch	301 W. Claude Street	Lake Charles	70605
Iberia Parish Library	445 E. Main Street	New Iberia	70560
Mark Shirley, LSU AgCenter	1105 West Port Street	Abbeville	70510

Submitting Comments: You may submit comments on the draft Phase 2 RP/EA #1.3 by one of the following methods:

- *Via the Web: http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. To be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.
- *During the public webinar:* Written comments may be provided by the public during the webinar. Webinar information is provided in **DATES**.

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, via email at *nanciann_regalado@fws.gov,* via telephone at 678–296–6805, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the DWH oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist if the spill had not occurred). This includes the loss of use and services provided by those resources from the time of injury until the completion of restoration.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP arising from the DWH oil spill: *United States* v. *BPXP et al.,* Civ. No. 10–4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (*http://www.justice.gov/enrd/deepwater-horizon*). Pursuant to the Consent Decree, restoration projects in the Louisiana Restoration Area are chosen and managed by the LA TIG. The LA TIG is composed of the following Trustees: State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Departments of Environmental Quality, Wildlife and Fisheries, and Natural Resources; DOI; NOAA; EPA; and USDA.

Background

The Final PDARP/PEIS provides for TIGs to propose phasing restoration projects across multiple restoration plans. A TIG may propose in a draft restoration plan conceptual projects to fund for an information-gathering planning phase, such as E&D (phase 1). This allows TIGs to develop information needed to fully consider a subsequent implementation phase in a later restoration plan (phase 2). In the final Phase 1 RP #1, the LA TIG selected six conceptual projects for E&D, using funds from the wetlands, coastal and nearshore habitats; birds; and habitat projects on federally managed lands restoration types, as provided for in the DWH Consent Decree. Two of those projects that were selected for E&D in the final Phase I RP #1 are the Rabbit Island Restoration project (Rabbit Island project), under the birds restoration type, and the Shoreline Protection at Jean Lafitte Historical National Park and Preserve (Jean Lafitte project) under the projects on federally managed lands restoration type. The design alternatives developed during E&D are currently at a stage where proposed construction activities may be analyzed under OPA and NEPA. Therefore, in the draft Phase

2 RP/EA #1.3, the Louisiana TIG is proposing to finalize and implement their preferred design alternatives to construct the Rabbit Island and Jean Lafitte projects.

Overview of the LA TIG Draft Phase 2 RP/EA #1.3

The draft Phase 2 RP/EA #1.3 is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–1508, the Final PDARP/PEIS, and the Consent Decree. The Phase 2 RP/EA #1.3 provides OPA and NEPA analyses for a reasonable range of design alternatives for the Rabbit Island and Jean Lafitte projects, and identifies the LA TIG's preferred design alternatives.

The proposed Rabbit Island project would meet the goal of restoring and conserving birds by restoring 87.8 acres of the island's original 200-acre footprint for bird habitat. This would be done by raising the elevation of Rabbit Island using dredged fill material from the Calcasieu Ship Channel as the borrow source area.

The proposed Jean Lafitte project would implement a nearly continuous rock breakwater, with rock elbows protecting fish gaps along the eastern shorelines of Lake Cataouche, Lake Salvador, and Bayou Bardeaux in the Jean Lafitte National Historical Park and Preserve. Implementation is proposed in two increments, the northern and the southern portions of the project area. In the Phase 2 RP/EA #1.3, the LA TIG is proposing at this time to implement only the southern portion.

Next Steps

As described above in **DATES**, the Trustees will host a public webinar to facilitate the public review and comment process. After the public comment period ends, the Trustees will consider and address the comments received before issuing a final Phase 2 RP/EA #1.3.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Administrative Record

The documents comprising the Administrative Record for the Phase 2 RP/EA #1.3 can be viewed electronically at *https://www.doi.gov/deepwater horizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

Mary Josie Blanchard,

Director of Gulf of Mexico Restoration, Department of Interior.

[FR Doc. 2019–24644 Filed 11–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR06250000, 20XR0680A1, RN.07694998.0000600]

Notice of Intent To Prepare an Environmental Impact Statement and Public Scoping Comment Period for the Eastern North Dakota Alternate Water Supply Project, Burleigh, Kidder, Sheridan, and Wells Counties, North Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent; request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to prepare an Environmental Impact Statement (EIS) on the Eastern North Dakota Alternate Water Supply Project. Reclamation is requesting public comment to identify significant issues or other alternatives to be addressed in the EIS.

DATES: Submit comments on the scope of the EIS on or before December 13, 2019.

ADDRESSES: Provide written scoping comments and requests to be added to the mailing list to Mr. Damien Reinhart, EIS Team Lead, Bureau of Reclamation, Dakotas Area Office, 304 East Broadway Avenue, Bismarck, ND 58501; or email *ENDAWS.EIS@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Damien Reinhart, Bureau of Reclamation, Dakotas Area Office, 304 East Broadway Avenue, Bismarck, ND 58501; telephone (701) 202–1275; facsimile (701) 250–4326; email *ENDAWS.EIS@usbr.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FedRelay) at 1–800–877–8339 TTY/ASCII to contact the above individual during normal business hours or to leave a message or question after hours. You will receive a reply during normal business hours. Information on this project may also be found at: *https://www.usbr.gov/gp/dkao/index.html.*

SUPPLEMENTARY INFORMATION: Reclamation is issuing this notice pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.;* the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR parts 1500 through 1508; and the Department of the Interior's NEPA regulations, 43 CFR part 46.

Background

Reclamation will prepare an EIS for the funding and construction of the Eastern North Dakota Alternate Water Supply Project (ENDAWS). This is a bulk water supply project which would deliver an alternate water supply to the State of North Dakota's Red River Valley Water Supply Project. Reclamation is authorized under the Dakota Water Resources Act of 2000 to work with the state of North Dakota to plan, design, and construct municipal, rural, and industrial water supply projects.

Garrison Diversion Conservancy District, on behalf of the State of North Dakota, requested Reclamation consider issuing a contract for up to 165 cubic feet per second of water from Garrison Diversion Unit facilities. This would include the use of Reclamation's Snake Creek Pumping Plant, an intake and pump station located along the McClusky Canal, and a bulk transmission pipeline to deliver water to the main transmission pipeline of North Dakota's Red River Valley Water Supply Project. Reclamation's potential actions include:

- Construction of ENDAWS project features,
- Issuance of a water repayment contract for Garrison Diversion Unit facilities, and
- Issuance of permits to construct and maintain ENDAWS facilities on Reclamation rights-of-way.

Reclamation anticipates the depletion of Missouri River water to supply ENDAWS will be an issue of concern. The evaluation of this will be a coordinated effort between Reclamation and the U.S. Army Corps of Engineers due to their knowledge, expertise, and management responsibilities of the Missouri River Mainstem System. Another key issue to be evaluated is the

potential risk and consequences of transferring aquatic invasive species from the Missouri River basin to the Hudson Bay basin, as a result of ENDAWS operations. Based on previous analyses of this issue, the following potential microorganisms of concern may be included in the analysis:

- Cyanobacteria
- Protozoa
- Fungi
- Bacteria
- Viruses
- Animal parasites
- Mollusk larvae

Reclamation requests any information relative to these issues or other potential issues be submitted during the scoping period to assist in determining their significance. Reclamation intends to complete an EIS for ENDAWS pursuant to NEPA to study the potential environmental effects of the proposal and a reasonable range of alternatives designed to respond to the purpose and need for the ENDAWS, as well as a no-action alternative. The scoping process is intended to inform the public about ENDAWS and to request public and agency comment to identify significant issues or alternatives to be addressed in the EIS. Three scoping open houses were held between October 22–24, 2019 in Bismarck, Jamestown, and Fargo, North Dakota. These open house meetings were held prior to the publication of this Notice as a means of gathering public input early in the process per NEPA Implementing Regulations (40 CFR 1501.7(b)(4)). Written comments received by December 15, 2019, and input received during the open houses will be given the same consideration.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

John Soucy,

Deputy Regional Director, Great Plains Region.

[FR Doc. 2019–24611 Filed 11–12–19; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1183]

Certain Foldable Reusable Drinking Straws and Components and Accessories Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 9, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of The Final Co. LLC of Santa Fe, New Mexico. An amended complaint was filed on October 29, 2019. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foldable reusable drinking straws and components and accessories thereof by reason of infringement of certain claims of U.S. Patent No. 10,123,641 (''the '641 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For Further Information Contact: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 5, 2019, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–12, 14–17, and 20 of the '641 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''individual foldable reusable drinking straws and components thereof, cases used to store the foldable reusable drinking straws, and tools used for cleaning the foldable reusable drinking straws'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

The Final Co. LLC, 1703½ Quapaw Street, Santa Fe, NM 87505.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Huizhou Sinri Technology Company Limited, 3rd Floor, Plant A, Yiyuan Sci-Tech Industry Park, Cangkeng Section, Tianduan Village, Xikeng, Huihuan, Zhongkai High-Tech Zone, Huizhou, Guangdong, China 516006.

Hebei Serun Import and Export Trade Co., Ltd., Shenhou Shenqi Tingyuan, High And New Technology Industrial Development Zone, Luquan, Shijiazhuang, Hebei, China (Mainland), 050200.

Dongguan Stirling Metal Products Co., Ltd., 3–201, Xinhe Ind. Zone, Xiaobian, Chang'an Town, Dongguan, Guangdong, China 523853.

Ningbo Wwpartner Plastic Manufacture Co., Ltd. Apt. 501–48, No. 50, Lane 578, South Tiantong Road, Yinzhou District, Ningbo, Zhejiang, China 315199.
Shenzhen Yuanzhen Technology Co., Ltd. 805, Block B, Fuquan Building, Qingquan Road, Longhua District, Shenzhen, China 518000.
Jiangmen Boyan Houseware Co., Ltd. No. 18–1–107, Zhongxin South Road, Huicheng, Xinhui Dist., Jiangmen, Guangdong, China 529100.
Shanghai Rbin Industry And Trade Co., Ltd. Room D4003, Bldg. 1, No. 888, Huaxu Road, Qingpu Dist., Shanghai, China 201702.
Jiangmen Shengke Hardware Products Co., Ltd. Cunqian House, Wubian Land, Heping Group, Xinjian Village, Siqian Town, Xinhui District, Jiangmen, Guangdong, China 529000.
Funan Anze Trading Co., Ltd. No. 104–16, Jiaoyang Road, Lucheng Town, Funan County, Fuyang, Anhui, China 236300.
Hangzhou Keteng Trade Co., Ltd. C533, Floor 5, Bldg. 3–C, No. 8, Xiyuan 9th Road, Xihu Dist., Hangzhou, Zhejiang, China 310030.
Hunan Jiudi Shiye Import And Export Trading Co., Ltd. Room 1654, Building 4, Dameiyuan, No. 577, Yulan Road, Wangchengpo Street, Yuelu District, Changsha, Hunan, China (Mainland) 410205.
Shenzhen Yaya Gifts Co., Ltd. No. 2, Lane 3, East Of Henglingtang, Pingshan Street, Pingshan New Dist., Shenzhen, Guangdong, China 518118.
Ningbo Weixu International Trade Co., Ltd. A27, Floor 5, Nongxin Bldg., Ningbo, Zhejiang, China (Mainland) 315600.
Ningbo Beland Commodity Co., Ltd. 14–6, No. 51, Bldg. 12, Xintiandi East Zone, Yinzhou Dist., Ningbo, Zhejiang, China 315040.
Xiamen One X Piece Imp.&Exp. Co., Ltd. 601, Bldg. 73, Jimei Zhongxin Garden, Xiamen, Fujian, China 36100.
Hunan Champion Top Technology Co., Ltd. No. 600, Wanfu North Road, Yuhua area, Changsha city, Hunan province, China 410000.
Yiwu Lizhi Trading Firm Unit 3, Building 42, Xiawang New Village Third District, Jiangdong Street, Yiwu, Jinhua, Zhejiang, China 322000.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 6, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–24612 Filed 11–12–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al v. Deutsche Telekom AG; T-Mobile US, Inc.; SoftBank Group Corp.; and Sprint Corp. Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the Response to Public Comments on the Proposed Final Judgment in *United States et al.* v. *Deutsche Telekom AG; T-Mobile US, Inc.; SoftBank Group Corp.; and Sprint Corp.,* Civil Action No. 1:19–cv–02232–TJK, which was filed in the United States District Court for the District of Columbia on November 6, 2019, together with copies of the 32 comments received by the United States.

Pursuant to the Court's November 5, 2019 order, comments were published electronically and are available to be viewed and downloaded at the Antitrust Division's website, at: *https://www.justice.gov/atr/us-and-plaintiff-states-v-deutsche-telekom-ag-et-al-index-comments.* A copy of the United States' response to the comments is also available at the same location. Copies of the comments and the United States' response are available for inspection at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may also be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Amy R. Fitzpatrick,

Counsel to the Senior Director for Investigations and Litigation.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America et al, Plaintiffs, v. *Deutsche Telekom AG et al,* Defendants

Case No. 1:19–cv–02232–TJK

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENT

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I. Introduction

As required by the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States hereby responds to the public comments received about the proposed Final Judgment in this case regarding the proposed merger between T-Mobile US, Inc. (''T-Mobile'') and Sprint Corporation (''Sprint''). For the reasons set forth below, the remedy the United States obtained addresses the competitive harm alleged in this action and is in the public interest. Accordingly, the United States recommends no modifications to the proposed Final Judgment.

This remedy, now adopted by the Attorneys General of eight states who have joined this lawsuit [1] and endorsed by two more through comments in this proceeding, promises to expand output in the mobile wireless market and be a boon for American consumers. The Federal Communications Commission has concluded that the proposed transaction, as modified by the FCC's own set of conditions, would be in the public interest.[2] In reaching this conclusion, the FCC recognized the significant benefits that the proposed Final Judgment would yield. Commenters in this proceeding recognize these benefits as well—the United States received 32 comments regarding the settlement, the majority of which were supportive of the merger and/or the proposed Final Judgment.

The proposed Final Judgment provides for a substantial divestiture which, when combined with the mobile wireless spectrum already owned by DISH Network Corp. (''DISH''), will enable DISH to enter the market as a new 5G mobile wireless services provider and a fourth nationwide facilities-based wireless carrier. T-Mobile and Sprint must divest to DISH Sprint's prepaid businesses, including more than 9 million Boost Mobile, Virgin Mobile, and Sprint-branded prepaid subscribers, and make available to DISH more than 400 employees currently running these businesses. The proposed settlement also provides for the divestiture of certain spectrum assets to DISH, and it requires T-Mobile and Sprint to make available to DISH at least 20,000 cell sites and hundreds of retail locations. T-Mobile must also provide DISH with robust access to the T-Mobile network for a period of seven years while DISH builds out its own 5G network.

The United States expects the proposed Final Judgment will provide substantial long-term benefits for American consumers by ensuring that large amounts of currently unused or underused spectrum are made available to American consumers in the form of advanced 5G networks that this proposed Final Judgment will help facilitate. Under commitments made to the FCC that have been incorporated into the proposed Final Judgment, DISH, which has been joined as a defendant in this action, is required to bring its existing spectrum resources online in a nationwide, greenfield 5G wireless network or risk substantial penalties at the FCC and in this Court. Under T-Mobile's commitments to the FCC, which are also incorporated into the proposed Final Judgment, the merged firm will combine T-Mobile's and Sprint's existing complementary spectrum resources and build out a 5G network to deliver network capacity that exceeds the sum of what either carrier could achieve on its own. Additionally, T-Mobile, Sprint, and DISH must support remote SIM provisioning and eSIM technology, which have the potential to lower barriers to entry and increase the options available to consumers.

The proposed Final Judgment also includes several temporary provisions to protect against a decline in near-term competition during the transition period. To facilitate DISH's transition to an independent wireless network, the proposed Final Judgment requires T-Mobile and Sprint to enter into a full mobile virtual network operator agreement (''Full MVNO Agreement'') with DISH at extremely favorable terms. This agreement will enable DISH to operate as a Full MVNO, initially using the T-Mobile network to carry its subscribers' traffic and shifting this traffic to its own network facilities as it deploys them. The unprecedented required divestitures and related obligations in the proposed Final Judgment are intended to ensure that DISH can begin to offer competitive services and become an independent and vigorous competitor in the retail mobile wireless service market in which the proposed merger would otherwise lessen competition. Finally, the proposed Final Judgment requires that T-Mobile and Sprint extend certain current Mobile Virtual Network Operator (''MVNO'') agreements until the expiration of the Final Judgment, maintaining the status quo until DISH's network becomes a potential option for MVNOs.

The comments that the United States received reflect a wide array of views. After careful consideration of these comments, the United States has determined that nothing in them casts doubt on its conclusion that the public interest is well-served by the proposed remedy. In accordance with the Court's order granting the Unopposed Motion of the United States to Excuse **Federal Register** Publication of Comments,[3] the United States is publishing the comments and this response on the Antitrust Division's website and is submitting to the **Federal Register** this response and the website address at which the comments may be viewed and downloaded. Following **Federal Register** publication, the United States will move the Court to enter the proposed Final Judgment.

[1] The Complaint filed on July 26, 2019 was joined by the states of Kansas, Nebraska, Ohio, Oklahoma and South Dakota. Dkt. No. 1. An Amended Complaint adding the state of Louisiana as a plaintiff was entered on Aug. 16, 2019. Dkt. No. 28. The United States' Consent Motions for Leave to Amend the Complaint to add the states of Florida and Colorado as plaintiffs remain pending. Dkt. Nos. 33, 40.

[2] *In the Matter of Applications of T-Mobile US, Inc., and Sprint Corporation, et al.,* Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, WT Docket No. 18–197, FCC 19–103 (rel. Nov. 5, 2019) (''FCC Order'').

[3] Minute Order, Dkt. No. 41 (Nov. 5, 2019) (granting motion to excuse publication of the full text of each comment in the **Federal Register**).

II. Procedural History

On April 29, 2018, T-Mobile and Sprint, together with their parent entities Deutsche Telekom AG (''Deutsche Telekom'') and SoftBank Group Corp. (''SoftBank''), agreed to combine their respective businesses in an all-stock transaction.[4] On July 26, 2019, the United States filed a civil antitrust Complaint seeking to enjoin the proposed transaction because it would substantially lessen competition for retail mobile wireless services in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by the parties that consents to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act.[5] The United States subsequently filed a Competitive Impact Statement describing the transaction and the proposed Final Judgment. The United States caused the Complaint, the proposed Final Judgment, and Competitive Impact Statement to be published in the **Federal Register** on August 12, 2019, *see* 84 FR 39862 (Aug. 12, 2019), and caused notice regarding the same, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in *The Washington Post* on August 3–9, 2019.[6] The 60-day period for public comment ended on October 11, 2019.

III. Standard of Judicial Review

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed final judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed final judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed final judgment, a court's role is ''not to make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (DC Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: The court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (quoting *W. Elec. Co.,* 900 F.2d at 309).

Moreover, Congress limited the court's role under the APPA to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and did not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed

[4] Deutsche Telekom, T-Mobile, SoftBank, Sprint, and DISH are referred to collectively as ''Defendants.''

[5] *See* Stipulation and Order, Dkt. No. 2–1; Proposed Final Judgment, Dkt. No. 2–2 (''PFJ'').

[6] On Sept. 6, the United States filed a Notice of Determinative Documents, as required by 15 U.S.C. 16(b), along with an accompanying motion to file these documents with limited redactions of confidential information. *See* Dkt. No. 31. This motion remains pending. The redacted versions of these documents have been available to the public since before the Competitive Impact Statement was filed on July 30, 2019. Dkt. No. 20.

settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not ''effectively [to] redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments in antitrust enforcement, Pub. L. 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Courts can, and do, make Tunney Act determinations based solely on the competitive impact statement, comments filed by the public, and the United States' response thereto, even when there is opposition to the proposed remedy. A recent example is *United States* v. *Bayer AG,* in which the court entered the proposed Final Judgment without further factfinding despite opposition from a number of commenters, including several of the states now involved in the lawsuit seeking to enjoin the T-Mobile/Sprint transaction in the U.S. District Court for the Southern District of New York (''S.D.N.Y. Litigation''). *See* Order, *United States* v. *Bayer AG,* No. 18–1241 (D.D.C. Feb. 8, 2019); *see also United States* v. *US Airways,* 38 F. Supp. 3d 69, 76 (D.D.C. 2014) (entering proposed Final Judgment over the opposition of commenters and explaining that ''[a] court can make its public interest determination based on the competitive impact statement and response to public comments alone.'') (citing *Enova,* 107 F. Supp. 2d at 17).

IV. The Investigation and the Proposed Final Judgment

The proposed Final Judgment is the culmination of a comprehensive, fifteen-month investigation conducted by the Antitrust Division of the U.S. Department of Justice into T-Mobile's proposed acquisition of Sprint. The proposed Final Judgment addresses and ameliorates the harms alleged in the Complaint by enabling DISH's entry as a fourth nationwide facilities-based wireless competitor, expediting deployment of advanced 5G networks for American consumers, and providing other relief. The proposed Final Judgment has several components, by which the parties agreed to abide during the pendency of the Tunney Act proceeding, and which the Court ordered in the Stipulation and Order of July 29, 2019, Dkt. No. 16.

Divestiture of Sprint's Prepaid Businesses: Under the proposed Final Judgment, T-Mobile must divest to DISH Sprint's prepaid retail wireless service businesses and provide DISH an exclusive option to acquire cell sites and retail stores decommissioned by the merged firm.

- *Prepaid Assets.* The proposed Final Judgment requires T-Mobile to divest to DISH almost all of Sprint's prepaid wireless businesses,[7] including the Boost-branded, the Virgin-branded, and the Sprint-branded businesses. These Prepaid Assets, coupled with required network support from T-Mobile described more fully below, will provide an existing business, with assets including customers, employees, and intellectual property, that will enable DISH to offer retail mobile wireless service. Acquiring this existing business will enhance DISH's incentives to invest in a robust facilities-based network.
- *800 MHz Spectrum Licenses.* The proposed Final Judgment further requires T-Mobile to divest to DISH Sprint's 800 MHz spectrum licenses. This spectrum would add to DISH's existing spectrum assets in order to ensure DISH has sufficient spectrum to provide mobile wireless service to customers.[8]
- *Cell Sites and Retail Stores.* The proposed Final Judgment also requires T-Mobile to provide to DISH an exclusive option to acquire all cell sites and retail store locations being decommissioned by the merged firm. This requirement will enable DISH to utilize such existing cell sites and retail stores that are useful to DISH in building out its own wireless network and providing mobile wireless service to consumers.
- *Transition Services.* At DISH's option, T-Mobile and Sprint shall enter into one or more transition services agreements to provide billing, customer care, SIM card procurement, device provisioning, and all other services used by the Prepaid Assets prior to the date of their transfer to DISH for an initial period of up to two years after transfer. Such transition services will enable DISH to use the Prepaid Assets as quickly as possible and will help prevent disruption for Boost, Virgin, and Sprint prepaid customers as the businesses are transferred to DISH.

The divestiture of Sprint's prepaid businesses must be completed in such a way as to satisfy the United States in its sole discretion that it can and will be operated by DISH as a viable, ongoing business that can compete effectively in the retail mobile wireless service market. DISH is required to offer retail mobile wireless services, including offering nationwide postpaid retail mobile wireless service within one year of the closing of the sale of the Prepaid Assets.[9] As set forth in the Stipulation

[7] The divestiture does not include subscribers that Virgin Mobile serves under the Assurance Wireless brand as part of the federally subsidized Lifeline program administered by the FCC. The baseline Assurance Wireless plan, which includes unlimited voice and text and a fixed allotment of data, is free to qualifying subscribers. Virgin Mobile receives a subsidy from the FCC for each of these subscribers that it serves. Subscribers may also purchase additional data for a fee. Because Virgin Mobile's revenue for Assurance Wireless subscribers comes primarily from federal subsidies rather than user fees, this segment of the market does not raise the same competitive issues as the unsubsidized prepaid segment. Moreover, T-Mobile has publicly committed to maintaining the Assurance Wireless service indefinitely, barring material changes to the Lifeline program. *See* Letter from T-Mobile CEO John Legere to Rep. Tony Cardenas (Mar. 6, 2019), *available at https://cardenas.house.gov/sites/cardenas.house.gov/files/3-6-19%20T-MOBILE%20RESPONSE%20%20Final%20Cardenas%20Response%20030619%200908%20am%20est_Executed%20%28002%29%281%29.pdf.* The settlement is not affected by recent news reports concerning Sprint's compliance with the Lifeline program's requirements because the Lifeline customers are not included in the divestiture. The divestitures also do not include Sprint's prepaid customers receiving services through its Swiftel and Shentel affiliates, due to contractual obligations.

[8] DISH may, at its option, elect not to acquire the spectrum if DISH can meet certain network buildout and service requirements without it. *See infra* at 23. In such case, T-Mobile will auction the 800 MHz spectrum licenses to any person who is not already a national facilities-based wireless carrier.

[9] To ensure that DISH and T-Mobile remain independent competitors, Section XV of the proposed Final Judgment prohibits T-Mobile from reacquiring from DISH any part of the Divestiture

Continued

and Order, DISH has agreed to be joined to this action for purposes of the divestiture. Including DISH is appropriate because the United States has determined that DISH is a necessary party to effectuate the relief obtained; the divestiture package was crafted specifically taking into consideration DISH's existing assets and capabilities, and divesting the package to another purchaser would not preserve competition. Thus, as discussed above, the proposed Final Judgment imposes certain obligations on DISH to ensure that the divestitures take place expeditiously and that DISH meet certain deadlines in building out and operating its own mobile wireless services network to provide competitive retail mobile wireless service.

Full MVNO Agreement: The proposed Final Judgment requires T-Mobile and Sprint to enter into a Full MVNO Agreement with DISH for a term of no fewer than seven years. Under the agreement outlined in the proposed Final Judgment, T-Mobile and Sprint must permit DISH to operate as an MVNO on the merged firm's network on commercially reasonable terms that are approved by the Department of Justice and to resell the merged firm's mobile wireless service. As DISH deploys its own mobile wireless network, T-Mobile and Sprint must also facilitate DISH operating as a Full MVNO by providing the necessary network assets, access, and services. These requirements will enable DISH to begin operating as an MVNO as quickly as possible after entry of the Final Judgment, and provide DISH the support it needs to offer retail mobile wireless service to consumers while building out its own mobile wireless network.[10] They will also permit DISH to begin to market itself as a national retail mobile wireless provider immediately after the divestiture closes.

Notably, T-Mobile will provide DISH with a broader array of rights under the Full MVNO Agreement than wholesale providers generally grant to their partners in traditional MVNO agreements. This will benefit competition and American consumers. In particular, traditional MVNO agreements generally do not permit the MVNO partner to construct its own network facilities and carry a portion of its traffic on these facilities while relying on the wholesale provider to carry the remainder of the MVNO's traffic. The Full MVNO Agreement will provide DISH with this ability. In addition, unlike traditional MVNO agreements, full MVNO agreements grant the MVNO control over a broader range of technological components, which allow the MVNO to manage the customer relationship more directly.[11] By providing these capabilities, full MVNO agreements promise to enable more robust competition than traditional MVNO agreements have in the past.[12] The Full MVNO Agreement in this case will allow DISH to begin competing with the other carriers in short order and will facilitate DISH's transition into a full, facilities-based mobile wireless service provider.[13]

Facilities-Based Entry and Expansion: The proposed Final Judgment requires T-Mobile and Sprint to comply with all network build commitments made to the Federal Communications Commission (FCC)[14] related to their merger or the divestiture to DISH as of the date of entry of the Final Judgment, subject to verification by the FCC.[15] The FCC concluded that the transaction, as modified by these commitments, would ''result in a number of benefits,'' including ''the deployment of a highly robust nationwide 5G network'' and ''substantially increased coverage and capacity (and in turn, user speeds and cost structure) compared to the standalone companies.''[16] The FCC's order contains a comprehensive Technical Appendix detailing the benefits of T-Mobile's post-merger network plan.[17] The commenters in this proceeding generally do not attempt to criticize T-Mobile's network build commitments or the associated benefits they are expected to bring to consumers.

In turn, DISH is required to comply with the June 14, 2023 AWS–4, 700 MHz, H Block, and Nationwide 5G Broadband network build commitments made to the FCC on July 26, 2019, subject to verification by the FCC.[18] The FCC concluded that modifying DISH's spectrum licenses to include these commitments would be in the public interest and has directed its Wireless Telecommunications Bureau to do so once the divestiture of Boost has been

Assets, other than a limited carveout for T-Mobile to lease back a small amount of spectrum for a two-year period. Further, Section XV of the proposed Final Judgment prohibits DISH from selling, leasing, or otherwise providing the right to use the Divestiture Assets to any national facilities-based mobile wireless carrier. These provisions ensure that T-Mobile and DISH cannot undermine the purpose of the proposed Final Judgment by later entering into a new transaction, with each other or with another competitor, that would reduce the competition that the divestitures have preserved.

[10] To guard against the possibility that implementation and execution of the proposed Final Judgment and any associated agreements between T-Mobile and DISH could facilitate coordination or other anticompetitive behavior during the interim period before DISH becomes fully independent of T-Mobile, T-Mobile and DISH are required to implement firewall procedures to prevent each company's confidential business information from being used by the other for any purpose that could harm competition. T-Mobile and DISH submitted their respective firewall procedures to the United States on Sept. 10, 2019.

[11] Full MVNO agreements have been used to enable entry in wireless markets outside of the United States as well. *See* European Commission, DG Competition, Case M.7758-Hutchinson 3D Italy/Wind/JV § 5.2.4 (Jan. 1, 2016) (''So-called 'full MVNOs' typically do not have radio network access or spectrum, but own some of the core infrastructure, issue their own SIM cards, have network codes, a database of customers and back-office functions to manage customer relations.''), *available at https://ec.europa.eu/competition/mergers/cases/decisions/m7758_2937_3.pdf.*

[12] For example, cable provider Altice has launched a wireless service based on an infrastructure-based MVNO agreement that it plans to leverage to compete with facilities-based carriers across a variety of geographic areas. *See* Letter to Marlene H. Dortch (FCC) from Jennifer L. Richter, WT Docket No. 18–197 (June 6, 2019) (''Altice's model to enter the U.S. wireless market by investing in wireless core infrastructure and utilizing a full infrastructure mobile virtual network operator ('MVNO') will position Altice to provide true competition in the retail markets, providing significant benefits for consumers in Altice's diverse markets, from the urban centers in New York and New Jersey to the rural communities in West Virginia and Texas.''), *available at https://ecfsapi.fcc.gov/file/10607282312243/Altice%20USA%20Inc.%20-%20Ex%20Parte%206.4.19%20Meetings.pdf.*

[13] Given the difference between traditional MVNO agreements and Full MVNO agreements like the one at issue here, comparisons between DISH and traditional MVNOs that have failed in the past are inapposite. *See, e.g.,* RWA Comment (Exhibit 24) at 6. Similarly, CWA is incorrect in suggesting that there is a ''mismatch'' between the Complaint and the remedy. CWA Comment (Exhibit 10) at 1. The Complaint alleges that the competitive constraint imposed by *traditional MVNOs* is limited, while the remedy will allow DISH to enter as a *Full MVNO* and ultimately transition into a facilities-based carrier. *See also* FCC Order ¶ 205 (finding that ''generalized references to prior Commission decisions regarding the competitive significance of MVNOs fail to account for the unique aspects of the wholesale agreement required by the Boost Divestiture Conditions'').

[14] The FCC conducted its own independent review of this transaction and concluded that the transfer of licenses from Sprint to T-Mobile is in the public interest. *See* FCC Order ¶ 4. As part of its review, the FCC accepted T-Mobile's voluntary commitments on various elements of its post-merger plans, including with respect to the post-merger buildout of its 5G network. *Id.* ¶¶ 25–32. In accepting T-Mobile's voluntary commitments in its order, the FCC has transformed them into legally binding commitments. *Id.* ¶ 388.

[15] *See* Letter to Marlene H. Dortch (FCC) from Nancy J. Victory and Regina M. Keeney (Counsel for T-Mobile and Sprint, respectively), WT Docket No. 18–197, Attachment 1 (May 20, 2019), *available at https://www.fcc.gov/sites/default/files/t-mobile-us-sprint-letter-05202019.pdf.*

[16] FCC Order ¶ 236.

[17] *Id.* Technical App'x ¶¶ 31–42 (explaining complementarities between the two firms' spectrum holdings, potential efficiencies regarding cell site equipment deployment, and the merger's benefits to network capacity).

[18] *See* Letter to Donald Stockdale (FCC) from Jeffrey H. Blum (DISH), Attachment A (July 26, 2019) (''Blum July 26, 2019 Letter''), *available at https://www.fcc.gov/sites/default/files/dish-letter-07262019.pdf.*

consummated.[19] Incorporating these obligations into the proposed Final Judgment is intended to increase the incentives for the merged firm to achieve the promised efficiencies from the merger and for DISH to build out its own national facilities-based mobile wireless network to replace the competition lost as a result of Sprint being acquired by T-Mobile. Increasing DISH's incentives to complete the buildout of a fourth standalone 5G nationwide wireless network also serves to decrease the likelihood of anticompetitive coordinated effects that may arise out of the merger.[20]

600 MHz Spectrum Deployment: The proposed Final Judgment requires DISH and T-Mobile to enter into good-faith negotiations to allow T-Mobile to lease some or all of DISH's 600 MHz spectrum for use in offering mobile wireless services to its subscribers. Such an agreement is expected to expand output by making the 600 MHz spectrum available for use by consumers even before DISH has completed building out its network, and would assist T-Mobile in transitioning consumers to its 5G network.

MVNO Requirements: The proposed Final Judgment obligates T-Mobile and Sprint to extend all of their current MVNO agreements until the expiration of the proposed Final Judgment. This obligation will ensure that T-Mobile's and Sprint's MVNO partners remain options for the consumers who currently use them. This will also permit T-Mobile's and Sprint's MVNO partners to retain the benefits of their existing agreements until the expiration of the proposed Final Judgment, by which time DISH is expected to have become an additional provider of wireless services.

T-Mobile's and DISH's eSIM Obligations: The proposed Final Judgment requires T-Mobile and DISH to support eSIM technology and prohibits T-Mobile and DISH from discriminating against devices based on their use of remote SIM provisioning or use of eSIM technology. The more widespread use of eSIMs and remote SIM provisioning may help DISH attract consumers as it launches its mobile wireless business. These provisions are intended to increase the disruptiveness of DISH's entry by making it easier for consumers to switch between wireless carriers (particularly between the merged firm and DISH) and to choose a provider that does not have a nearby physical retail location, thus lowering the cost of DISH's entry and expansion.[21]

V. Summary of Public Comments and the United States' Response

The United States received 32 comments from different categories of commenters, the majority of which were supportive of the merger and/or the proposed final judgment. The commenters include: The Advanced Communication Law & Policy Institute; the American Antitrust Institute; Americans for Tax Reform; the Asian Business Association; Attorneys General for the States of Utah and Arkansas; Mr. Daniel M. Bellemare; the CalAsian Chamber of Commerce; the California Emerging Technology Fund; the Center for Individual Freedom; the Communications Workers of America; the Competitive Enterprise Institute; Economics Professors (Nicholas Economides, John Kwoka, Thomas Philipon, Robert Seamans, Hal Singer, Marshall Steinbaum, and Lawrence J. White); the Enterprise Wireless Alliance; the Greater Kansas Chamber of Commerce; Mr. Edward S. Hasten; the International Center for Law & Economics; the National Diversity Coalition; the National Hispanic Caucus of State Legislators; the National Puerto Rican Chamber of Commerce; NTCH, Inc.; the Overland Park Chamber of Commerce; a coalition of advocacy groups (Public Knowledge, Consumer Reports, Electronic Frontier Foundation, and New America's Open Technology Institute); Randolph May and Seth Cooper of the Free State Foundation; the Rural Wireless Association; Scott Wallsten of the Technology Policy Institute; Tech Freedom; Members of the United States House of Representatives (Representatives Anna G. Eshoo, Billy Long, Adam Smith, Doug Lamborn, Gregory W. Meeks, Roger W. Marshall, Suzan DelBene, Dan Newhouse, Anthony G. Brown, Ron Estes, Mike Thompson, Blaine Luetkemeyer, and Kurt Schrader); Vermont Telephone Co.; Viaero Wireless; Voqal, Inc.; Mr. R. Bruce Williamson; and Mr. Josh Wool.

The comments can be grouped into categories: (1) Comments that fail to acknowledge the context of this Court's Tunney Act review; (2) comments regarding DISH's viability as a competitor; (3) comments regarding the enforceability of the proposed Final Judgment; (4) other comments opposing entry of the proposed Final Judgment; (5) comments regarding procedural aspects of this review; and (6) other comments supporting entry of the proposed Final Judgment.

A. Comments That Fail To Acknowledge the Context of Tunney Act Review

A number of comments do not actually address the question presented to this Court, which is whether or not entry of the United States' proposed Final Judgment remedy is in the public interest under the Tunney Act. If these commenters acknowledge the Tunney Act at all, they make arguments that do not consider the governing legal standards discussed above, or the fact that the allegations in the United States' complaint have not been tested in any court. Nor do they acknowledge the benefits to the public from the merger itself. Several commenters presuppose that the standard relevant here is the same standard governing how a court is to fashion a remedy *after* an antitrust violation has been proven in court.[22] As discussed above, however, this is not the standard Congress and case law prescribe for courts reviewing settlements under the Tunney Act. Instead, courts recognize that a proposed final judgment necessarily represents a compromise between the parties, and give deference to the United States' views of the likely effects of the settlement.

Entry of the proposed Final Judgment here is fully in keeping with established Tunney Act standards. In *United States* v. *US Airways,* Judge Kollar-Kotelly entered the proposed Final Judgment in the merger of U.S. Airways and American Airlines over the objections of commenters. While noting that the ''the Final Judgment does not create a new independent competitor nor replicate American's capacity expansion plans nor affirmatively preserve the Advantage Fares program,'' the court credited the United States' ''predict[ion] that it will impede the airline industry's

[19] FCC Order ¶ 365.

[20] *See* Complaint ¶ 5 (alleging that, absent the remedy, ''the merger likely would make it easier for the three remaining national facilities-based mobile wireless carriers to coordinate their pricing, promotions, and service offerings''); *see also id.* ¶¶ 21–22. Notably, the FCC ''d[id] not conclude that the likelihood of coordination would increase post-transaction.'' *See* FCC Order ¶ 186.

[21] The FCC has recognized the benefits of eSIM technology and the potential for this condition to promote competition among mobile wireless service providers. *See id.* ¶ 206 (''[R]equirements related to the use of eSIM will tend to lower switching costs for wireless consumers, increasing the ability of Boost to win subscribers from T-Mobile and, in turn, Boost's ability to constrain pricing for T-Mobile's brands.'').

[22] *See* CWA Comment (Exhibit 10) at 6 and n.10 (quoting a statement in the Antitrust Division's remedies guide that ''The relief in an antitrust case must be 'effective to redress the *violations,*' '' which quotes *Ford Motor Co.* v. *United States,* 405 U.S. 562, 573 (1972), a case addressing post-trial relief) (emphasis added); Economics Professors Comment (Exhibit 12) at 2 (referring to ''restor[ing] ''the *ex ante* competitive conditions in the affected antitrust product markets.'').

evolution toward a tighter oligopoly.'' [23] By reducing slot concentration at Reagan National, the settlement provided low-cost carriers (''LCCs'') ''with substantial assets at key airports,'' and the Court credited the United States' prediction that ''providing LCCs with these otherwise unavailable opportunities will create incentives for LCCs to invest in new capacity, expand into new markets, and provide more meaningful system-wide competition to the three remaining legacy airlines.'' [24] Ultimately, the Court found that the ''United States has provided a reasonable basis for concluding that the settlement will mitigate the anticompetitive effects of combining two of the remaining legacy airlines.'' [25]

In *United States* v. *Bayer AG,* Judge Boasberg entered the proposed Final Judgment, over commenters' criticisms similar to those here.[26] Additionally, in *United States* v. *Abitibi-Consolidated, Inc.,* Judge Collyer entered the proposed Final Judgment where the ''United States has provided a factual basis for concluding that the . . . divestiture was reasonably adequate.'' [27] ''Irrespective of whether that conclusion [was] correct,'' the court recognized that the ''United States has established an 'ample foundation for [its] judgment call' and thus shown 'its conclusion [was] reasonable.' '' [28]

Almost all the comments opposing the proposed Final Judgment also ignore the benefits to the public from this merger.[29] For example, the Economics Professors attempt to dismiss the value of increasing capacity by arguing that the merger will not result in reductions in marginal cost. Specifically, they state that ''the merger purportedly will increase capacity . . . [but] there is no explanation of how a purported increase in capacity reduces the merged firm's marginal cost of serving the next customer or the next neighborhood.'' [30] In fact, the relationship between an increase in capacity and a reduction in marginal cost is a well-understood economic phenomenon in industries with capacity constraints. In the market for mobile wireless services, the marginal cost of an additional customer on a capacity-constrained network includes the costs of the congestion caused by adding that customer to the network. Thus, a merger-induced expansion of capacity would result in a reduction in marginal costs for a network facing congestion.[31]

Other commenters, however, recognize the substantial benefits that the proposed Final Judgment promises to bring. The Advanced Communications Law & Policy Institute (ACLP) at New York Law School states that it supports entry of the proposed Final Judgment because it believes the public interest benefits from the merger ''are substantial,'' and because the settlement ''will ensure that valuable spectrum resources will finally be put to productive use by Dish Network, an entity that has long lingered on the periphery of the U.S. wireless space.'' [32] In ACLP's view, DISH is ''well positioned to become a viable player'' in wireless, not only because of its existing ''treasure trove'' of spectrum licenses, but also because the proposed Final Judgment will enable DISH to ''leverage numerous resources either divested by or leased from the merging parties to support deployment of a standalone mobile service.'' [33] ACLP further notes that, in addition to the fact that DISH ''finally leveraging its stockpile of spectrum licenses . . . is a major win for consumers and the public interest writ large,'' consumers also will ''likely see additional price and service offerings over the next few years as [DISH] rolls out its service and seeks to respond to and one-up its competitors.'' [34]

B. Comments Regarding DISH's Viability as a Competitor

Several commenters object to the proposed Final Judgment on the basis that DISH will not be a sufficiently strong competitor to AT&T, Verizon, and T-Mobile. These commenters point to DISH's asset base and track record to support their claim that the company will lack the incentive and ability to compete vigorously in the mobile wireless market. The United States disagrees with these assertions.

1. DISH's Assets and Track Record

Some commenters take issue with the fact that DISH has been acquiring spectrum for a number of years but has not yet deployed a network that operates over that spectrum. For example, the CWA and Economics Professors accuse DISH of ''warehousing'' spectrum and claim that DISH has missed FCC network buildout deadlines.[35] Mr. Wool asks, ''given DISH Network's failure to meet prior Federal Communications Commission (FCC) build-out requirements on its existing spectrum . . . how is the proposed Final Judgment consistent with 'a low risk tolerance'?'' [36] Several commenters point to T-Mobile's past criticism of DISH as a basis for questioning DISH's viability as a competitor.[37]

Far from undermining the efficacy of the proposed Final Judgment, DISH's spectrum assets make it a prime candidate for entry into the mobile wireless market. DISH has invested more than $20 billion in spectrum licenses.[38] As a result, DISH currently has far more spectrum at its disposal than any other company aside from the existing nationwide wireless carriers.[39]

[23] *US Airways,* 38 F. Supp. 3d at 77.

[24] *Id.* at 78.

[25] *Id.* at 79.

[26] In *Bayer,* as here, commenters questioned both the ability of the divestiture buyer, BASF, ''to succeed with the divested assets'' and its ''incentives to compete aggressively against the merged company.'' *See* Response of the United States to Public Comments on the Proposed Final Judgment at 14, *United States* v. *Bayer AG,* No. 1:18–cv–1241 (JEB) (D.D.C. Jan. 29, 2019). There, as here, the United States ''carefully considered these issues in crafting the proposed remedy'' and required the merged company to make an appropriate divestiture and to provide an array of transitional services, all while ''specifically taking into account [the divestiture buyer's] existing assets and capabilities.'' *Id.* And while there, as here, it was ''impossible to predict with certainty how well [the buyer, BASF] will perform with the divested assets (just as [the merged firm's] own performance with those assets absent the merger is not certain),'' the proposed remedy ''ensure[d]'' that it ''will be as well-positioned as possible and have the necessary incentives'' to ''replace the competition that otherwise would be lost through the merger.'' *Id.*

[27] *United States* v. *Abitibi–Consolidated, Inc.,* 584 F. Supp. 2d 162, 166 (D.D.C. 2008).

[28] *Id.* (quoting *Microsoft,* 56 F.3d at 1461).

[29] *See* U.S. Department of Justice, Antitrust Division Policy Guide to Merger Remedies, at 2 (Oct. 2004), *https://www.justice.gov/sites/default/files/atr/legacy/2011/06/16/205108.pdf* (''2004 Remedies Guide'') (''Effective remedies preserve the efficiencies created by a merger, to the extent possible, without compromising the benefits that result from maintaining competitive markets.'').

[30] Economics Professors Comment (Exhibit 12) at 6.

[31] Notably, the FCC found that ''New T-Mobile will have significantly lower marginal costs for providing advanced wireless services.'' FCC Order ¶ 236.

[32] ACLP Comment (Exhibit 1) at 4.

[33] *Id.* at 6.

[34] *Id.*

[35] CWA Comment (Exhibit 10) at 16–18; Economics Professors Comment (Exhibit 12) at 9.

[36] Wool Comment (Exhibit 32) at 3.

[37] *See, e.g.,* CWA Comment (Exhibit 10) at 16; Economics Professors Comment (Exhibit 12) at 9; NTCH Comment (Exhibit 20) at 9–11.

[38] ''DISH to Become National Facilities-Based Wireless Carrier'' (July 26, 2019), *http://about.dish.com/2019-07-26-DISH-to-Become-National-Facilities-based-Wireless-Carrier* (''DISH July 26, 2019 Press Release'') (''These developments are the fulfillment of more than two decades' worth of work and more than $21 billion in spectrum investments intended to transform DISH into a connectivity company''); *see also* Todd Shields & Scott Moritz, Bloomberg, ''A $20 Billion Wireless Stockpile Is the Key to T-Mobile Merger'' (July 6, 2019), *https://www.bloomberg.com/news/articles/2019-07-06/a-20-billion-wireless-stockpile-is-the-key-to-t-mobile-merger.*

[39] FCC Communications Marketplace Report, 33 FCC Rcd 12558, 12587 Fig. A–25 (Dec. 26, 2018), *available at https://docs.fcc.gov/public/attachments/FCC-18-181A1_Rcd.pdf.*

The Division's 2004 Remedies Guide notes that ''[t]he circumstances of potential bidders may vary in ways that affect the scope of the assets each would need to compete quickly and effectively.'' [40] DISH's spectrum assets provide it with the ability to compete more quickly and more effectively than another entrant could. The proposed Final Judgment promises to put this spectrum to use for the benefit of consumers.[41]

These commenters' line of argument also fails to address what incentive DISH could have to acquire $20 billion in spectrum licenses and spend billions of dollars on the divestiture in this matter and risk billions more in fines, only to sit on these assets. The more logical inference, which aligns with DISH's economic incentives, is that DISH will deploy its spectrum and enter the mobile wireless market. DISH has explained to the FCC that the company has engaged in efforts to develop technology that operates over its spectrum but that it opted not to construct a 4G/LTE network at a time when 5G technology was on the horizon.[42] Now that mobile wireless providers are beginning to deploy 5G, DISH has issued three wide-ranging requests for information/requests for production to vendors of wireless equipment, software, and services to begin the process of sourcing inputs for the construction of a 5G network.[43]

DISH has not, as some commenters suggest, violated the FCC's construction requirements for its spectrum licenses. Those licenses have two relevant dates: An interim construction milestone and a final construction milestone. The FCC provides licensees (and in this case, DISH) with the choice of (1) satisfying both construction milestones, or (2) missing the interim milestones and agreeing to accelerate the final milestones by one year. DISH chose not to meet the interim construction milestones for its licenses, which meant that its final construction milestones were accelerated.[44] These final milestones have not yet passed, and prior to the remedy discussions in this case, DISH had provided the FCC with a proposal on how it planned to meet them. Specifically, DISH planned to rely on the FCC's ''flexible use'' policy, which permits licensees to choose the technology they use to meet their construction milestones, in order to execute a two-phase network deployment plan: (1) Deploy a narrowband Internet of Things (''NB-IoT'') network before the final construction milestones had passed, and (2) use this NB-IoT network as a foundation to ultimately deploy a 5G network at a later date.[45] The United States agrees with commenters who argue that having DISH construct a 5G network immediately is preferable to this two-stage plan, but any suggestion that DISH has violated the FCC's requirements is simply incorrect.[46]

The economics of DISH's entry under the proposed Final Judgment are fundamentally different—and more favorable to DISH—than what was available to DISH before the proposed Final Judgment. Much of the relief in the proposed Final Judgment is to provide DISH with assets and resources to make its entry as a nationwide, facilities-based wireless carrier easier and more certain. DISH has explained that the proposed Final Judgment ''will facilitate and accelerate DISH's entry into the wireless market as a 5G competitor by, among other things, enabling DISH to deploy its spectrum at the same time to provide a better overall 5G service, at lower cost, and on a more efficient deployment schedule.'' [47] In particular, the divestiture of Sprint's prepaid businesses will enable DISH to serve an existing base of 9 million subscribers. This customer base will put DISH into the wireless business immediately upon the closing of the divestitures, without first having to construct a network from scratch. DISH will have the option of acquiring more than 20,000 cell sites and upwards of 400 retail locations directly from T-Mobile, further reducing the burdens of building out a new network. As DISH completes its network buildout, it will be in position to move existing subscribers onto its new network in short order, allowing it to immediately monetize its own network by shifting away from using a third-party network to serve subscribers. Finally, the Full MVNO Agreement will give DISH the flexibility to serve customers the most efficient and cost-effective way, whether on post-merger T-Mobile's network, DISH's new network, or a combination of both. In light of these changes, DISH has agreed to waive its ''flexible use'' rights and deploy a 5G network immediately rather than taking the intermediate step of deploying an NB-IoT network first.[48]

RWA raises concern over the fact that the proposed Final Judgment provides DISH with a degree of flexibility as to which of T-Mobile's assets it will ultimately acquire.[49] RWA suggests that DISH should be required to purchase the 800 MHz Spectrum, regardless of whether it deems it necessary, as well as every one of the cell sites and retail locations that T-Mobile plans to decommission.[50] Such an obligation, however, would be counterproductive. The proposed Final Judgment gives DISH the flexibility to decline purchase of the 800 MHz spectrum if it is able to make significant progress in deploying

[40] 2004 Remedies Guide at 11.

[41] *See* ACLP Comment (Exhibit 1) at 6.

[42] *See* DBSD Services Limited, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C.'s Consolidated Interim Construction Notification for AWS–4 and Lower 700 MHz E Block Licenses (filed Mar. 7, 2017) (''DISH March 7, 2017 Buildout Report''), *available at https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=1fTvdTtC8v1mzWxXqsWNxw2BFWwHpdcSQM90fP1g21sy8CTyXHgB!-784178296!-1151086485?applType=search&fileKey=1888085105&attachmentKey=20103063&attachmentInd=applAttach.*

[43] *See* ''DISH to release deployment services RFP for standalone 5G network buildout'' (Oct. 21, 2019), *https://ir.dish.com/news-releases/news-release-details/dish-release-deployment-services-rfp-standalone-5g-network;* Letter from Jeffrey Blum (DISH) to Marlene H. Dortch (FCC), WT Docket No. 18–197, at 4 (Aug. 1, 2019) (''Blum Aug. 1, 2019 Letter''), *available at https://ecfsapi.fcc.gov/file/10801235883258/2019-08-01%20DISH%20%20EX%20Parte%20WT%20Docket%20No%2018-197%20(w%20summary).pdf; see also* Martha DeGrasse, Fierce Wireless, ''Dish Casts Wide Net to Vendor Community'' (Aug. 12, 2019), *https://www.fiercewireless.com/wireless/dish-casts-wide-net-to-vendor-community.*

[44] *See* DISH March 7, 2017 Buildout Report at 4 (certifying that DISH planned to meet the accelerated final construction milestones); Letter from Jeffrey Blum (DISH) to Donald Stockdale (FCC) (Sept. 21, 2018) (explaining that ''[s]uch a bridge to a 5G deployment is necessary because, among other things, equipment/installation availability for full standalone 5G (3GPP Release 16) will only be available after the March 2020 buildout milestones for our AWS–4 and E Block licenses, making it impractical for us to deploy 5G before such date.''), *available at https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1089751155&attachmentKey=20454822&attachmentInd=licAttach.*

[45] *Id.* at 6–7.

[46] Given this background, the Economics Professors' claim that Dish has ''no history or presence in this industry'' is also incorrect. Economics Professors Comment (Exhibit 12) at 3. In connection with its NB-IoT plans, DISH had established relationships with vendors, leased towers, and acquired equipment for a core network. *See* Mike Dano, Fierce Wireless, ''DISH's First Wireless Partners Revealed: Ericsson and SBA'' (Nov. 8, 2019), *https://www.fiercewireless.com/iot/dish-s-first-wireless-partners-revealed-ericsson-and-sba.*

[47] Blum Aug. 1, 2019 Letter at 3; *see also* FCC Order ¶ 372 (''We agree with DISH that its acquisition of Sprint's prepaid assets along with the set of MVNO, wholesale, and roaming rights agreed to with the Applicants provides DISH the means to provide nationwide service on a competitive 5G network.'').

[48] Blum July 26, 2019 Letter at 3 (''DISH will voluntarily waive its flexible use rights''); Blum Aug. 1, 2019 Letter at 3 (''Rather than approaching a network build in two phases, DISH will be able to shift the resources it has dedicated to building out a narrowband Internet of Things network to a 5G network deployment.'').

[49] RWA Comment (Exhibit 24) at 17–18.

[50] *Id.* at 18.

its network without that spectrum.[51] Likewise, the proposed Final Judgment provides DISH with the option to purchase only those cell sites and retail locations that it needs to support its network deployment and business plans. The proposed Final Judgment requires DISH to comply with specific build commitments, including relating to nationwide 5G.[52] Requiring DISH to purchase assets that turn out to be unnecessary would increase DISH's costs and impede its entry as a mobile wireless provider. In contrast, by giving DISH the flexibility to purchase only the assets that it needs in order to comply with the overarching directive to meet its nationwide 5G commitment, the proposed Final Judgment will allow DISH's entry to proceed efficiently.

Moreover, DISH will be subject to substantial penalties if it fails to satisfy its commitments. Failure to meet its network buildout obligations would cause DISH to incur penalties of up to $2.2 billion under its commitments to the FCC alone.[53] Failure to meet certain buildout milestones would also result in ''automatic termination'' of some of DISH's spectrum licenses.[54] The proposed Final Judgment further provides for DISH to pay a penalty of $360,000,000 if it elects not to purchase the 800 MHz Spectrum Licenses, unless it has already made significant progress in constructing its network.[55] All of this would be in addition to other penalties that this Court could impose if it were to find DISH to be in violation of the Final Judgment.[56]

CWA includes in its comment a declaration from engineering consultant Andrew Afflerbach, Ph.D., P.E., which purports to support CWA's criticisms of the proposed Final Judgment. Dr. Afflerbach begins by highlighting several potential risks that DISH will be unable to build a successful facilities-based mobile wireless business. He notes that DISH will be highly dependent on T-Mobile as an MVNO for years following entry of the proposed Final Judgment, and notes the ''criticality of the MVNO agreement terms'' for DISH's success.[57] However, DISH itself has explained that the Full MVNO Agreement will provide DISH with ''more attractive economics than traditional MVNO agreements, including pricing, packaging and marketing flexibility, a mechanism for costs to drop over time, and access to core control.'' [58] The FCC likewise recognizes that ''New Boost's wholesale network access agreement will be unique among MVNO agreements in the industry, with more favorable terms and conditions that, in turn, will enable New Boost to more effectively constrain potential price increases.'' [59]

Dr. Afflerbach also argues that ''DISH's execution risks are substantial.'' [60] His criticisms about DISH's prospects for building a 5G network overstate some of the challenges that DISH faces. For instance, Dr. Afflerbach suggests that DISH will be disadvantaged because ''[h]andset equipment (*i.e.* smartphones) is not currently manufactured for DISH's spectrum bands.'' [61] The current generation of smartphones, however, does support LTE service in DISH's holdings in the 600 MHz band (Band 71), the AWS–3 band, and the AWS–4 band (collectively, Band 66).[62] This is because other established players like T-Mobile and Verizon each offer LTE service in one or more of those bands. There is no reason to believe that DISH will not similarly be able to find support for 5G service in at least some of its spectrum bands as equipment-makers design handsets for the other carriers.

2. DISH's Incentive and Ability To Compete

Some commenters also question whether DISH will have the incentive and ability to compete vigorously in the mobile wireless marketplace. For example, CWA asserts that ''DISH has powerful incentives to create something less than a fully competitive 5G network.'' [63] Mr. Bellemare claims that ''Sprint is a maverick'' but ''[w]hether DISH would become a maverick in a more concentrated oligopoly is by no means assured.'' [64] Other commenters argue that the fact that DISH's wireless business will initially have only 9 million subscribers will inhibit its competitiveness.[65]

As an initial matter, commenters overlook the substantial advantages on which DISH currently can draw to grow its wireless business. The fact that DISH is unburdened by any need to support a legacy infrastructure based on older technology and has an established presence in a complementary video business, may enhance its ability to price aggressively and attract customers. In addition, and contrary to the commenters' claims, the proposed Final Judgment will position DISH to be an effective competitor to the existing carriers. As described above, the merger, when combined with the proposed Final Judgment, promises to expand output. A significant amount of unused and underused spectrum will be made available by both DISH and T-Mobile for use by consumers within the first years following the closing of the divestiture. Principles of economics tell us that expanded output provides further downward pressure on prices moving forward. Indeed, competition in the wireless industry has often been driven by the smallest of the nationwide carriers, to the benefit of consumers.[66]

[51] While AAI claims that the 800 MHz spectrum is ''necessary to build out a 5G network'' (AAI Comment (Exhibit 2) at 8), the proposed Final Judgment recognizes that DISH may find that it is able to deploy a competitive network that does not rely on this spectrum.

[52] PFJ § VIII.A.

[53] Blum July 26, 2019 Letter, Attachment A at 4.

[54] *Id.* at 3–4. Thus, claims that DISH's financial penalties alone would be insufficient to ensure compliance are misplaced. *See, e.g.,* RWA Comment (Exhibit 24) at 15–16. Nor do DISH's commitment to the FCC that it will not sell certain of its spectrum licenses for six years somehow suggests that they are planning to exit the mobile wireless market after that time period concludes, as RWA claims. *Id.* at 18–19. RWA provides no support for this assertion. DISH's commitment to the FCC merely ensures that it will maintain ownership of its wireless licenses while its network buildout advances.

[55] *See* PFJ § IV(B)(2).

[56] *See id.* § XVIII(A) (''The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court.'').

[57] Afflerbach Decl. ¶¶ 7, 11.

[58] Blum Aug. 1, 2019 Letter at 2.

[59] FCC Order ¶ 201.

[60] Afflerbach Decl. ¶ 36.

[61] Afflerbach Decl. ¶ 45.

[62] *See* Chris Holmes, Whistle Out, ''Cell Phone Networks and Frequencies Explained: 5 Things To Know'' (Oct. 14, 2019) (noting Verizon, AT&T and T-Mobile are currently using Band 66, and T-Mobile is currently using Band 71), *https://www.whistleout.com/CellPhones/Guides/cell-phone-networks-and-frequencies-explained;* Dan Meyer, RCR Wireless News, ''T-Mobile LTE network beats AT&T and Verizon with AWS–3 spectrum support'' (Oct. 17, 2016) (noting T-Mobile ''touting itself as the first domestic carrier to launch commercial services across the AWS–3 spectrum band''), *https://www.rcrwireless.com/20161017/carriers/t-mobile-lte-network-beats-att-verizon-aws-3-spectrum-support-tag2.*

[63] CWA Comment (Exhibit 10) at 19.

[64] Bellemare Comment (Exhibit 6) at 13–14.

[65] *See, e.g.,* RWA Comment (Exhibit 24) at 8 (''[T]he various Sprint prepaid subscriber bases, which Dish estimates to include approximately 9.3 million users, are a fraction of Sprint's overall subscriber base.''). AAI and RWA both point to the fact that DISH will initially serve only prepaid subscribers, which are generally less profitable to serve than postpaid subscribers. *See* AAI Comment (Exhibit 2) at 7; RWA Comment (Exhibit 24) at 8, 12. DISH, however, has committed to providing postpaid mobile wireless service within one year of the closing of the sale of the prepaid assets. PFJ § IV(F). Moreover, after spending the significant resources required to become a mobile wireless service provider, DISH will have strong business incentives to serve all profitable segments of the market.

[66] Given the potential for smaller market participants to drive competition, RWA is simply incorrect in claiming that increased coordination among AT&T, Verizon, and T-Mobile will be ''inevitable'' given that ''DISH on Day One'' will

T-Mobile was previously branded as the maverick and had success in growing its share. Such a firm can discipline prices based on its ability and incentive to expand production rapidly using available capacity, or on its willingness to resist otherwise-prevailing industry norms to cooperate on price setting or other terms of competition.[67] Moreover, even during the period in which DISH is relying on the Full MVNO Agreement, other mobile wireless providers will have full knowledge of DISH's obligations to deploy network infrastructure in the coming years, which itself may have a further constraining effect on their decision-making.

The Economics Professors point to T-Mobile CEO John Legere's statement that T-Mobile's agreement with DISH will not diminish the merged firm's synergies, profitability, and long-term cash generation as evidence that DISH will not be a disruptive competitor.[68] This line of argument assumes that the remedy would have to be harmful to T-Mobile in order to be good for consumers. In fact, T-Mobile stands to benefit by selling DISH wholesale access to its network, even as it stands to lose retail customers to DISH.[69] The relevant question for the Court is not how these two competing effects net out for T-Mobile, but rather whether DISH will introduce new competition into the marketplace that will benefit consumers. In a portion of the same investor call that the Economics Professors do *not* cite, Mr. Legere told investors that ''it's very clear that with the spectrum that DISH has, with the acquisition of Boost, with the MVNO arrangement, [with] the transition services agreement while they build out their network, with the ability to get some of the decommissioned towers and stores, DISH has a real significant opportunity to be a very credible disruptive fourth wireless carrier,''[70] which is consistent with T-Mobile's other public statements.[71] Indeed, DISH has disrupted other established industries in the past, and disrupting the mobile wireless market would be a welcome continuation of that trend.[72]

Some commenters focus on the near-term period prior to DISH's construction of its forthcoming mobile wireless network. For example, Public Knowledge *et al.* claim that ''DISH will be a nonfactor, as all MVNOs are'' during this period.[73] Under the terms of the proposed Final Judgment, DISH will be able to compete for subscribers immediately using the wholesale agreement and will transition into a full, facilities-based competitor as it constructs its planned network. As discussed above, the broad array of rights that T-Mobile will provide to DISH under the Full MVNO Agreement will empower DISH to become a more effective competitor than traditional MVNOs have been in the past. Additionally, the proposed Final Judgment's requirement that DISH begin offering postpaid plans within one year ensures that DISH will begin to restore the lost competition promptly, and, in any event, well before T-Mobile's commitments to the FCC expire.[74] The favorable terms in the Full MVNO Agreement will provide DISH with an attractive cost structure, and thus, an incentive to compete immediately. DISH's incentive to expand its output will only increase as DISH begins to realize cost savings by shifting traffic from T-Mobile's network onto its own.[75]

Other commenters raise concerns regarding the portion of the country that DISH's mobile wireless network will cover and its future network performance. For example, RWA argues that DISH could meet its population-based buildout obligations while covering ''only a small fraction of the

have fewer subscribers than Sprint and T-Mobile do today. RWA Comment (Exhibit 24) at 13.

[67] Dep't of Justice & Fed Trade Comm'n, Horizontal Merger Guidelines § 2.1.5 (2010).

[68] Economics Professors Comment (Exhibit 12) at 11.

[69] *See* T-Mobile US, Inc. (TMUS) CEO John Legere on Q2 2019 Results—Earnings Call Transcript, Seeking Alpha, (July 29, 2019), at 9 (noting that the agreement ''will be accretive to our business because the pricing allows us to monetize DISH's access of our network'').

[70] *Id.* at 10.

[71] *See, e.g.,* Monica Alleven, Fierce Wireless, ''T-Mobile CFO on Dish Rivalry: Bring It On'' (Sept. 24, 2019) (quoting T-Mobile CFO Braxton Carter remarks that DISH will be ''extremely viable'' and ''a fierce competitor, there's no doubt about it''), *https://www.fiercewireless.com/wireless/t-mobile-cfo-dish-rivalry-bring-it.*

[72] As noted in the Wall Street Journal, DISH's controlling shareholder, Charlie Ergen, ''has often played the role of disrupter.'' Drew Fitzgerald, Wall Street Journal, ''A TV Maverick Is Going All-In on a New Wireless Bet'' (July 27, 2019), *available at https://www.wsj.com/articles/a-tv-maverick-is-going-all-in-on-a-new-wireless-bet-11564200000.* The article notes that Mr. Ergen and his partners began selling ''10-foot-wide satellite dishes from a Denver storefront,'' then ''switched to hubcap-size dishes and took on cable-TV monopolies by slashing prices.'' *Id.* (noting the ''service now has 12 million customers across the country and his controlling stake in Dish is worth about $9 billion''). DISH also launched ''one of the first live-TV streaming services, Sling TV, in early 2015.'' *Id.* (noting that with ''a small package of channels and lower price, it made it easy for millions of people to cut their TV bill—even many of Dish's own satellite customers''). The settlement enables DISH to continue its disruptive history in the wireless business. *See id.* (Ergen noting that ''with four, there's always somebody that will be a rabble rouser,'' and that while somebody ''will say I don't have enough market share,'' ''I've only got 9 million subs and want 10 million. That person is going to be more aggressive.''). *See also* DISH July 26, 2019 Press Release (''When we entered pay-TV with the launch of our first satellite in 1995, we faced entrenched cable monopolies, and our direct competitor was owned by one of the largest industrial corporations in the world. As a new entrant, DISH encountered many skeptics who questioned our ability to succeed. But, customers loved the disruption we brought to the marketplace with innovations such as a 100-percent digital experience, local-into-local broadcast, the DVR and ad-skipping. Our substantial investments, constant innovation, aggressive pricing and commitment to the customer led us to become the third largest pay-TV provider. As we enter the wireless business, we will again serve customers by disrupting incumbents and their legacy networks, this time with the nation's first standalone 5G broadband network.'').

[73] Public Knowledge et al. Comment (Exhibit 22) at 2; *see also* Wool Comment (Exhibit 32) at 2 (''Mr. Wool asks, ''[g]iven the time required for DISH Network to build a national facilities-based network (*i.e.* DISH Network has until June 2023 to construct a network covering 70% of the population), how does the proposed Final Judgment 'preserve the status quo ante in affected markets.'''').

[74] *See* FCC Order ¶ 206 (''[T]he requirement that DISH offer postpaid services bolsters our conclusion that the Boost divestiture buyer will not merely constrain price increases within the prepaid segment, but across the differentiated retail mobile wireless services market.'').

[75] Suggestions that DISH will find it in itself too comfortable as an MVNO and decline to carry out its obligations under the decree overlook the various ways the decree guards against this risk. *See* Economics Professors Comment (Exhibit 12) at 9 (''Why would Dish invest and become a facilities-based provider if the margins from resale are large and guaranteed for seven years?''). For example, the proposed Final Judgment limits the term of any Transition Services Agreement to two years, with the possibility of a third subject to approval by the United States after consultation with its co-Plaintiff States. PFJ § IV.A.4. Thus, DISH is required to wean itself from T-Mobile's transitional support in ''billing, customer care, SIM card procurement, device provisioning, and all other services used by the Prepaid Assets'' by 2022 or 2023. The deadline of 2022 coincides with DISH's commitment to the FCC to offer broadband service to at least 20% of the United States population. Blum July 26, 2019 Letter at 2. Thus, by 2022 DISH is required to establish itself as an independent, facilities-based operator, and its achievement of these commitments will be supervised closely by the Monitoring Trustee. In an attempt to cast further doubt on DISH's plans, the Economics Professors compare DISH to 1&1 Drillisch, an MVNO in Germany that has announced its intention to become the fourth German facilities-based mobile wireless provider by constructing its own 5G network. Economics Professors Comment (Exhibit 12) at 10; *see also* Juan Pedro Tomas, RCR Wireless News, ''1&1 Drillisch Confirms Intention to Become Germany's Fourth Mobile Carrier'' (Jan. 25, 2019), *https://www.rcrwireless.com/20190125/5g/drillisch-confirms-intention-become-germany-fourth-mobile-carrier.* The Economics Professors ignore the fact that, since the date of the article they cite, 1&1 Drillisch successfully secured financing to participate in a German spectrum auction and won 70 MHz worth of spectrum licenses to support its network deployment plan. *See* Reuters, ''Shares in 1&1 Drillisch soar after Germany 5G auction'' (June 13, 2019) (''Shares in 1&1 Drillisch surged on Thursday after it won spectrum in Germany's 5G mobile auction that ensured its position as a new fourth operator in a market that has lagged globally.''), *available at https://www.reuters.com/article/germany-telecoms/shares-in-11-drillisch-soar-after-germany-5g-auction-idUSS8N22R022.*

country's geography.'' [76] Similarly, the Economics Professors assert that ''because the coverage requirement is denominated in terms of population, not geography, it is clear that certain parts of the country will lose out.'' [77] CWA argues that at a speed of 35 Mbps ''the result will not be a bona fide fourth network, but a niche network closer to the limited Internet of Things (IoT) network proposed by DISH prior to the T-Mobile deal.'' [78] These arguments reflect a misunderstanding of DISH's network build commitments. These commitments were incorporated into the proposed Final Judgment to increase the incentives for DISH to build out its own national facilities-based mobile wireless network.[79] These commitments should not, however, be interpreted as predictions of the likely breadth of DISH's network coverage or its likely speed. The proposed Final Judgment does not dictate the scope of DISH's future investments, but rather provides DISH with necessary assets and appropriate incentives, and then relies on market forces to guide DISH's long-term decisions about where to target its investments. DISH may ultimately have business incentives to provide substantially broader coverage and faster speeds than the minimums required to meet its network build commitments. By focusing on the floors set by the proposed Final Judgment rather than the likely effects of the divestiture, these commenters miss the relevant inquiry.

Separate criticisms that the proposed merger benefits rural customers at the expense of urban ones and that the United States' remedy benefits urban customers at the expense of rural ones illustrate why entry of the proposed Final Judgment is in the public interest. The Economics Professors argue that ''even if one were to credit'' (as the FCC now has [80]) the claimed benefit from the merger of ''enhanced 5G deployment in otherwise unprofitable-to-deploy neighborhoods,'' these ''largely rural households are distinct from those urban and suburban households that likely will incur a price increase on 4G services resulting from the merger.'' [81] In turn, Andrew Afflerbach, the engineer whose declaration was submitted along with the CWA comments, observes that the ''most straightforward way [for DISH] to serve 70 percent of the population is to focus on urban areas,'' which would mean DISH's ''2023 benchmark stops well short of the scale of the networks operated by the four existing MNOs.'' [82] Together, these concerns only confirm that the proposed Final Judgment fulfills the twin goals of a merger remedy. It permits the merger to proceed, enabling rural consumers to benefit from its promised efficiencies, while adopting remedies that will protect consumers in and bring new competition to urban areas that may have been at greater risk from this merger without this settlement.

C. Comments Regarding the Enforceability of the Proposed Final Judgment

Other commenters claim that the proposed Final Judgment is too complicated or too ''behavioral'' to be enforced. CWA and others cite statements in which current and former leaders of the Antitrust Division have identified challenges associated with behavioral conditions.[83] The commenters claim that the proposed Final Judgment is inconsistent with these statements, and they suggest that these inconsistencies should be a basis for denial.[84] These types of argument lack legal support and do not accurately describe the inquiry before the Court. They also misstate the facts of the proposed Final Judgment and the Division's policies.

Objections to the settlement that are based on parsing which elements are structural and which are behavioral miss the important larger point. The overall objective of the remedy is profoundly structural, as it is designed to stand up a fourth nationwide, facilities-based wireless carrier. The mechanisms for doing so begin immediately with a structural divestiture to prevent the consolidation of Sprint's prepaid business into T-Mobile's, and the non-structural elements of the proposed Final Judgment are largely aimed at enabling DISH to begin providing wireless services to consumers immediately, to grow that business as it builds its own network, and to enable it to stand on its own as an effective facilities-based competitor before the end of the decree's term.[85]

Indeed, while the Antitrust Division has expressed a preference for structural remedies, it has not taken the position that behavioral conditions are never appropriate. In fact, the 2004 Remedies Guide explains that ''there are limited circumstances when conduct remedies will be appropriate: (a) When conduct relief is needed to facilitate transition to or support a competitive structural solution, *i.e.,* when the merged firm needs to modify its conduct for structural relief to be effective or (b) when a full-stop prohibition of the merger would sacrifice significant efficiencies and a structural remedy would also sacrifice such efficiencies or is infeasible.'' [86] As to (a), the guide provides examples of potentially appropriate behavioral conditions that can help ''perfect structural relief,'' such as transitional supply agreements between the merged firm and the divestiture buyer and temporary limits on the merged firm's ability to reacquire personnel from the divestiture buyer.[87] The guide further notes that enforcing behavioral conditions may be easier, and thus such conditions may be more appropriate, in markets subject to ongoing oversight by regulatory agencies.[88]

The remedy in this case is ultimately structural, and fits squarely within the first circumstance described in the 2004 Remedies Guide—it is intended to bring about the entry of an independent, facilities-based mobile wireless network operator with the incentive and ability to compete with the other national carriers. DISH has agreed to acquire

[76] RWA Comment (Exhibit 24) at 14.

[77] Economics Professors Comment (Exhibit 12) at 11.

[78] CWA Comment (Exhibit 10) at 3.

[79] See Competitive Impact Statement (Dkt. No. 20) at 11–12.

[80] *See* FCC Order ¶¶ 257–76 (explaining the benefits of the merger for consumers in rural areas).

[81] Economics Professors Comment (Exhibit 12) ¶ 11.

[82] Afflerbach Dec. ¶ 51.

[83] *See* CWA Comment (Exhibit 10) at 10–12, 23.

[84] *Id.; see also* Wool Comment (Exhibit 32) at 2, 3. Based on his skepticism, Mr. Wool asserts that the proposed Final Judgment ''dramatically reinterprets the risk-allocation framework intended by Section 7 of the Clayton Act.'' Wool Comment at 1. This argument disregards the principle that ''[a] district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.'' *United States* v. *Archer-Daniels-Midland Co.,* 272 F.Supp.2d 1, 6 (D.D.C. 2003).

[85] Although Mr. Wool takes issue with the proposed Final Judgment's condition requiring the merged firm to extend existing MVNO agreements, he simultaneously argues (1) that the condition is too behavioral, and (2) that the condition does not do enough to protect future innovation. Wool Comment (Exhibit 32) at 3–4 & n.8. By relying on existing agreements, the condition as written does not require regular, ongoing oversight by the United States. In contrast, additional intervention to control the merged firm's conduct with respect to other MVNOs in the future would have required further involvement by the United States in the marketplace.

[86] 2004 Remedies Guide at 18. *Cf.* ''Assistant Attorney General Makan Delrahim Delivers Keynote Address at American Bar Association's Antitrust Fall Forum'' (Nov. 16, 2017) (stating the Antitrust Division would accept behavioral remedies ''where an unlawful vertical transaction generates significant efficiencies that cannot be achieved without the merger or through a structural remedy''), *available at https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-american-bar.*

[87] 2004 Remedies Guide at 18–19.

[88] *Id.* at 22.

Sprint's prepaid businesses for $1.4 billion and Sprint's 800 MHz spectrum for $3.6 billion, and it has the option to acquire cell sites and retail locations from the merged firm. Other aspects of the proposed Final Judgment are intended to ensure that these divestitures (and DISH's entry into the mobile wireless market more generally) are successful. Several of these provisions are akin to the examples of appropriate conditions set forth in the Remedies Guide. The Full MVNO Agreement will require T-Mobile to supply DISH with network access on a transitional basis. This will allow DISH to enter the market immediately, providing for MVNO-based competition while DISH works to deploy network facilities. DISH's network buildout obligations will ensure that this transition proceeds in a timely manner. The temporary prohibition on T-Mobile rehiring employees from the divested business will assist DISH in maintaining the personnel required to compete effectively.

The proposed Final Judgment in this case also fits within the second circumstance that the Remedies Guide describes as an appropriate context for behavioral relief—at least in the short term. The merger promises to yield significant efficiencies by enabling T-Mobile to offer 5G mobile wireless services more cost-effectively. These efficiencies would not be realized if the merger were blocked or if T-Mobile were required immediately to divest all of Sprint's existing infrastructure. Further, T-Mobile's network buildout obligations and associated penalties provide additional incentives to ensure that the merged firm will invest in a robust 5G network that becomes available to consumers quickly. These efficiencies will work in combination with the new competitive threat posed by DISH to offset any further harm that may arise from the transaction. By the time the proposed Final Judgment expires, and likely sooner, DISH will provide a fourth nationwide retail mobile wireless option for American consumers, and neither the Antitrust Division nor this Court will need to maintain ongoing entanglements with the company's business. Including a transitional period in which certain behavioral conditions are present, however, will ensure that consumers get the immediate benefits expected from the merger without risking anticompetitive harm.

These goals are consistent with the position on behavioral remedies expressed in the 2004 Remedies Guide and with the enforcement decisions made by the Antitrust Division. As noted, the Remedies Guide states that transitional behavioral remedies are appropriate for ensuring the effectiveness of structural relief.[89] In keeping with that principle, the Final Judgment submitted by the United States and adopted by Judge Boasberg in *United States* v. *Bayer* contained substantial divestitures to ensure a long-term structural solution, along with shorter-term behavioral relief including supply agreements with the possibility of extension for up to a total of six years.[90]

More fundamentally, the remedies here are consistent with longstanding guidance that the remedy must be tailored to the particular facts of the industry at hand.[91] Here, building a mobile wireless network takes several years. That fact alone does not bar the adoption of appropriate remedies, and the remedy here necessarily and appropriately reflects that fundamental fact in the interim and final buildout timelines and the overall term of the decree. The timelines also account for the ongoing transition from 4G to 5G, which ultimately will permit DISH to put into service a new, greenfield 5G wireless network unencumbered by older technology. This is consistent with guidance that the remedy be tailored to the specific characteristics of the divestiture buyer.[92] With this remedy, DISH will bring spectrum (that it currently has no obligation to build out in this way) into service as a mobile broadband 5G service that will serve consumers across the country. With a proposed merger that promises public benefits in the form of stronger 5G competition and expanding output, it is consistent with the Antitrust Division's announced policies to craft this settlement in a way that protects those efficiencies, increases output further through the choice of divestiture buyer, while still guarding against competitive harm.

Moreover, the proposed Final Judgment contains substantial monitoring and enforcement mechanisms. These mechanisms will operate in parallel with the ongoing regulatory oversight that the FCC will perform to ensure compliance with its own conditions.[93] The United States will be moving this Court to appoint a monitoring trustee with the power and authority to investigate and report on the Defendants' compliance with the terms of the Final Judgment and the Stipulation and Order during the pendency of the divestiture. The monitoring trustee will help ensure, among other things, that T-Mobile complies with its obligations relating to its sale of the Divestiture Assets, the exclusive-option requirements for cell sites and retail store locations, and DISH's progress toward using the Divestiture Assets to operate a retail mobile wireless network.

The United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should

[89] 2004 Remedies Guide Section III.E.1 (''Limited conduct relief can be useful in certain circumstances to help perfect structural relief.'').

[90] Final Judgment, *United States* v. *Bayer AG,* No. 18–cv–1241, at 22–23, 24, 25 (D.D.C. Feb. 08, 2019).

[91] 2004 Remedies Guide at 2 (encouraging the Division to ''[f]ocus[ ] carefully on the specific facts of the case at hand'' to ''permit the adoption of remedies specifically tailored to the competitive harm,'' and noting that ''there must be a significant nexus between the proposed transaction, the nature of the competitive harm, and the proposed remedial provisions''). CWA pulls quotations from the 2004 Remedies Guide that it believes call into question the proposed remedy here. CWA Comment (Exhibit 10) at 4–11, 13, 19. As discussed in this section, the United States vigorously disputes the notion that the proposed Final Judgment is at bottom inconsistent with the Antitrust Division's own guidance. CWA simply ignores the Remedies Guide provisions discussed in this section that explain why this remedy is in keeping with Division policy, and it also ignores the stated purpose of the Guide itself. The Guide ''is a policy document, not a practice handbook,'' it does not list or give ''particular language or provisions that should be included in any given decree,'' but instead it ''sets forth the policy considerations that should guide Division attorneys and economists when fashioning remedies for anticompetitive mergers.'' 2004 Remedies Guide at 1–2. As called for by its own Guide, and as explained in this Response to Comments, in arriving at this proposed Final Judgment the Antitrust Division has applied ''the pertinent economic and legal principles, appropriate analytical framework, and relevant legal limitations'' to ''craft and implement the proper remedy for the case at hand.'' *Id.* at 2.

[92] *See* 2004 Remedies Guide at 31 n.43 (noting that ''if harmful coordination is feared because the merger is removing a uniquely-positioned maverick, the divestiture would likely have to be to a firm with maverick-like interests and incentives''); *id.* at 5 (noting that ''assessing the competitive strength of a firm purchasing divested assets requires more analysis than simply attributing to this purchaser past sales associated with those assets'').

[93] *See, e.g.,* FCC Order ¶ 204 (''The Boost Divestiture Conditions also provide for strong Commission oversight to ensure the effectiveness of these principles to ensure New Boost is a meaningful competitor.''); *id.* ¶ 378 (''DISH continues to be subject to all of the Commission's other enforcement and regulatory powers, including the loss of part or all of any of its licenses for failing to meet its build-out requirements.'').

apply.[94] This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address. Defendants also agree that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of the goal of the proposed Final Judgment to restore competition that would otherwise be permanently harmed by the merger.[95]

The United States may also apply to the Court for a one-time extension of the Final Judgment, together with other relief as may be appropriate, if the Court finds in an enforcement proceeding that Defendants have violated the terms of the decree.[96] In addition, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.[97]

Finally, although the Final Judgment is set to expire seven years from the date of its entry,[98] the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated.[99] This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision thus makes clear that the United States may still challenge a violation that occurred during the Final Judgment's term, for four years after it expired or was terminated.

D. Other Comments Opposing Entry of the Proposed Final Judgment

1. Comments Regarding Harms Outside the Scope of the Complaint

Some commenters raise harms that are outside the scope of the complaint filed in this case, and they propose remedies to address those harms. These comments extend beyond the permissible scope of the Tunney Act review.[100] A few commenters, claiming to rely on a recent opinion interpreting the Tunney Act, urge this Court to engage in a broader inquiry.[101] That opinion, however, agreed that the Court cannot evaluate claims beyond those raised in the complaint.[102] To the extent that commenters read that opinion—and encourage this Court to apply that opinion—in a way that would permit this Court to evaluate legal theories, competitive effects, or claims that the United States chose not to bring, it would violate the Constitution. The D.C. Circuit recognized this fact in *Microsoft* when holding that district courts are ''barred from reaching beyond the complaint to examine practices the government did not challenge.'' [103] Reading the Tunney Act in a way that allows courts to second-guess the United States' exercise of prosecutorial discretion would violate separation-of-powers principles, and contravene the guidance that courts should ''not construe [a] statute in a manner that renders it vulnerable to constitutional challenge.'' [104] Put directly, ''any agency with limited resources and an investigative mission has the power, absent an express statute to the contrary, to assess a complaint to determine whether its resources are best spent on the violation, whether the agency is likely to succeed, whether the enforcement requested fits the organization's overall policies, and whether the agency has enough resources to undertake the action.'' [105] Thus, public comments that criticize the Complaint for taking too narrow a scope or that point to a broader set of practices that they also would have liked the government to challenge have no bearing on the public interest inquiry currently before the Court.

For example, RWA and NTCH both express concern about the impact of the merger on roaming services. RWA states that ''[t]he elimination of Sprint and the entry of Dish will mean the nation will go without a fourth wholesale or nationwide domestic roaming alternative to compete against AT&T, Verizon, and New T-Mobile for an extended period of time.'' [106] Likewise, NTCH asserts that ''[t]he FCC has largely ignored the growing crisis in the data roaming market,'' and alleges that data roaming rates that exist today ''amount to a denial of roaming service to [ ] small carriers and their subscribers in violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended.'' [107]

The Complaint, however, does not allege that the merger will eliminate competition in a market for roaming services, or that it will impact roaming rates. RWA attempts to tie its concern to a paragraph in the Complaint that pertains solely to the elimination of ''[c]ompetition between Sprint and T-Mobile to sell mobile wireless service to MVNOs.'' [108] This paragraph does not allege harm to rural facilities-based mobile wireless carriers that purchase roaming services. RWA and NTCH are free to advocate their positions on this issue to the FCC, and both did so in this proceeding.[109] Given that these concerns are outside the scope of this proceeding, the Court should not factor them into its public interest evaluation. For the same reason, the Court should reject NTCH's proposed new conditions, which it claims are designed to address these alleged harms.[110]

Similarly, Voqal—a coalition of 2.5 GHz spectrum licensees—claims that the merger will cause T-Mobile's spectrum holdings to exceed a ''spectrum screen'' that has been

[94] PFJ § XVIII(A).

[95] *Id.* § XVIII(B).

[96] *Id.* § XVIII(C).

[97] *Id.*

[98] *Id.* § XIX. The Final Judgment may be terminated after five years from the date of its entry upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest. *Id.*

[99] *Id.* § XVIII(D).

[100] *See supra* § III.

[101] *E.g.,* Economics Professors Comment (Exhibit 12) at 3; AAI Comment (Exhibit 2) at 13.

[102] *United States* v. *CVS Health Corp.,* No. 18–2340, 2019 WL 4194925, at *5 (D.D.C. Sept. 4, 2019) (''Courts cannot, of course, 'force the government to make [a] claim.' The Government, alone, chooses which causes of action to allege in its complaint.'' (citation omitted)).

[103] *Microsoft,* 56 F.3d at 1460; *see also Heckler* v. *Chaney,* 470 U.S. 821, 832 (1985) (citing Article II, Section 3 of the Constitution for the proposition that the decision about what claims to bring ''has long been regarded as the special province of the Executive Branch''); *United States* v. *Fokker Servs.,* 818 F.3d 733, 738 (D.C. Cir. 2016) (recognizing the ''long-settled understandings about the independence of the Executive with regard to charging decisions).

[104] *Rothe Dev., Inc.* v. *U.S. Dep't of Def.,* 836 F.3d 57, 68 (D.C. Cir. 2016); *cf. Maryland* v. *United States,* 460 U.S. 1001, 1003–06 (1983) (Rehnquist, J., dissenting) (noting concerns about the ability to formulate judicially manageable standards for the Tunney Act inquiry).

[105] *Caldwell* v. *Kagan,* 865 F. Supp. 2d 35, 44 (D.D.C. 2012).

[106] RWA Comment (Exhibit 24) at 11.

[107] NTCH Comment (Exhibit 20) at 7–8.

[108] RWA Comment (Exhibit 24) at 11 (citing Complaint ¶ 22).

[109] *See* FCC Order ¶ 297 (concluding that concerns raised by RWA, NTCH, and others regarding the impact of the transaction on roaming rates were adequately addressed by existing FCC regulations).

[110] NTCH Comment (Exhibit 20) at 16–20.

applied by the FCC in certain past merger reviews.[111] They further allege that New T-Mobile will have ''buyer market power in the 2.5 GHz band.''[112] Voqal proposes new, self-designed divestitures of 2.5 GHz spectrum that they claim would alleviate their concerns.[113] The question of whether and in what manner a regulatory ''spectrum screen'' should apply to this transaction is not before the Court.[114] Moreover, the Complaint does not allege a relevant market consisting of 2.5 GHz spectrum, nor does it allege that the merger would cause T-Mobile to acquire ''buyer market power'' in such a market.[115] Thus, the Court should not factor these claims into its public interest determination, and it should reject Voqal's proposal for new divestitures to be added to the proposed Final Judgment under review.[116]

2. Comments Regarding Services Provided to MVNOs

The proposed Final Judgment requires the merged firm to extend T-Mobile's and Sprint's existing MVNO agreements for the term of the proposed Final Judgment, subject to certain conditions. Nevertheless, the Economics Professors and others argue that this does not sufficiently address potential harm that could arise from the loss of competition between T-Mobile and Sprint in providing wholesale mobile wireless services to MVNOs.[117] They claim that future competition between the firms could yield *even better* rates and terms than those in the existing agreements, and that MVNOs will have no protection once the proposed Final Judgment expires. Neither of these arguments warrants finding that this portion of the proposed Final Judgment is not in the public interest.

First, T-Mobile and Sprint have both been selling wholesale services to MVNOs for many years, and the rates and terms in existing MVNO agreements are what have resulted from this competition. These terms will remain in place for the duration of the proposed Final Judgment, and the commenters cite no support for their prediction that maintaining this same level of competition would have yielded terms that are better than these. Moreover, by increasing the capacity of T-Mobile's network and reducing its cost of providing service to MVNOs who need to compete against DISH, the merger and proposed Final Judgment may combine to increase T-Mobile's incentive to provide wholesale service to MVNOs.[118] The Economics Professors fail to account for this effect.[119]

Second, when the protections of the proposed Final Judgment expire, MVNOs will not be limited to purchasing wholesale service from AT&T, Verizon, or T-Mobile. By that point, DISH will have constructed a mobile wireless network that could serve as an alternative host network for MVNOs.[120] Indeed, as a new entrant untethered to legacy business models, DISH may be especially willing to partner with innovative MVNOs. Thus, the Department believes that the proposed Final Judgment provides sufficient protections to address the narrow wholesale-related harm alleged in the Complaint.

3. Comments Regarding Other Regulatory Matters

NTCH claims that DISH could lose some of its wireless licenses in the future, and if this were to occur, DISH would be unable to construct a network that satisfies the provisions of the proposed Final Judgment.[121] It argues that DISH's licenses could be revoked for one of two reasons, but neither provides a credible basis to reject the decree.

First, NTCH argues that ''it is possible that the FCC may deny'' DISH's request for an extension of the upcoming construction deadlines for its AWS–4 and H Block licenses.[122] NTCH argues that, in the event of such a denial, DISH would likely fail to meet its future construction deadlines for these licenses, which could result in forfeiture of the licenses. The FCC, however, has

[111] Voqal Comment (Exhibit 30) at 7–9.

[112] *Id.* at 10.

[113] *Id.* at 12–14.

[114] This question was addressed directly by the FCC, which found that, although its spectrum screen was triggered in much of the nation, the transaction should be approved because of its potential to increase spectrum utilization and accelerate the deployment of 5G networks. *See* FCC Order ¶¶ 97–99.

[115] The FCC also declined to define such a market. *See id.* ¶ 64 (declining to ''define a separate product market for the sale or lease of 2.5 GHz spectrum'').

[116] Voqal proposes that T-Mobile be required to divest certain 2.5 GHz licenses because, it claims, no other spectrum bands are sufficient substitutes for the deployment of 5G mobile wireless services. *See* Voqal Comment at 6–7, 12–14. The FCC has rejected this view and is actively working to make additional mid-band spectrum available for 5G. FCC Order ¶¶ 99, 110; *see also In re Promoting Investment in the 3550–3700 MHz Band,* Notice of Proposed Rulemaking and Order Terminating Petition, 32 FCC Rcd 8071, ¶ 2 (2017) (''[I]t has become increasingly apparent that the 3.5 GHz Band will play a significant role as one of the core mid-range bands for 5G network deployments throughout the world. . . . In the two years since the Commission first adopted rules for this 'innovation band,' it has authorized service in other bands that also will be critical to 5G deployment, and we are currently evaluating additional bands for 5G use.''); *In re Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, ¶ 1 (2018) (''Today, we seek to identify potential opportunities for additional terrestrial use—particularly for wireless broadband services—of 500 megahertz of mid-band spectrum between 3.7–4.2 GHz. . . . Today's action is another step in the Commission's efforts to close the digital divide by providing wireless broadband connectivity across the nation and to secure U.S. leadership in the next generation of wireless services, including fifth-generation (5G) wireless, Internet of Things (IoT), and other advanced spectrum-based services.'').

[117] Economics Professors Comment (Exhibit 12) at 4, 9–11; *see also* Wool Comment (Exhibit 32) at 3. As an initial matter, the Economics Professors are incorrect in claiming that ''the DOJ's Complaint spells out harms in two markets: The wholesale market and the retail market.'' Economics Professors Comment (Exhibit 12) at 3. The Complaint alleges only one relevant product market: the market for retail mobile wireless services. See Complaint ¶ 14. The Complaint does contain one paragraph alleging that ''competition between Sprint and T-Mobile to sell mobile wireless service wholesale to MVNOs has benefited consumers by furthering innovation'' and that ''[t]he merger's elimination of this competition likely would reduce future innovation.'' Complaint ¶ 22. It does not, however, allege the existence of a distinct wholesale market. To the extent that the concerns expressed by the Economics Professors are premised on the existence of such a market, they are outside the scope of the Complaint. *See, e.g.,* Economics Professors Comment (Exhibit 12) at 4 (calculating an HHI for ''the national wholesale market'' and arguing that there is a ''presumption of enhanced market power''). *See also* FCC Order ¶ 63 (declining to define ''a separate product market for wholesale service offerings'').

[118] *See* FCC Order ¶ 290 (''New T-Mobile's vastly increased network capacity will likely give it incentives to offer appealing terms and reasonable prices to wholesale service customers so as to put that capacity to productive use by carrying as much revenue-generating traffic as it can.'').

[119] More generally, the Economics Professors Comment (Exhibit 12) is internally contradictory on the influence of MVNOs in the marketplace. On the one hand, to attack the settlement the comment dismisses any benefit from the divestitures that will stand DISH up as an MVNO. Economics Professors Comment (Exhibit 12) at 2–3. Later, in going on to attack the settlement for not doing *more* to help MVNOs, the comment champions the competitive benefits that MVNOs provide, including allowing carriers in effect to offer the same service at different price points under a different brand, and enabling cable companies to compete in wireless. Economics Professors Comment (Exhibit 12) at 4. In fact, while observing that by ''bundl[ing] wireless offerings with other products like broadband and pay television, cable companies such as Comcast and Charter have competed aggressively on price,'' *id.,* the comments overlook that this is precisely one of the benefits DISH will be able to provide consumers. *See* Chris Welch, The Verge, ''Dish loses more satellite TV customers as it embarks on a mobile future'' (July 29, 2019) (''Like other carriers, you can count on Dish combining its video and mobile products. A Sling TV and Dish Mobile bundle is all but guaranteed.''), *https://www.theverge.com/2019/7/29/20746191/dish-q2-2019-earnings-mobile-carrier-plans-sling-tv-5g.* The remedy thus creates an innovative MVNO immediately, and further establishes DISH as a likely future wholesale network provider.

[120] *See* FCC Order ¶ 292 (explaining that the proposed Final Judgment ''would enable DISH to emerge as a nationwide facilities-based provider that would be capable of supplying, among other things, robust wholesale wireless services to MVNOs.'').

[121] NTCH Comment (Exhibit 20) at 11–15.

[122] *Id.* at 11.

concluded that granting these extensions would be in the public interest, and accordingly, has directed the relevant bureau of the agency to do so.[123]

Second, NTCH contends that it might prevail in its pending appeals of certain FCC orders that enabled DISH's purchase of the H Block spectrum and granted DISH the ability to use the AWS–4 spectrum to offer mobile wireless service.[124] NTCH argues that ''reversal of the FCC's license grants would doom this entire DISH-to-the-rescue plan to failure.'' [125] NTCH failed, however, in its opposition of these orders at the FCC, and there is no reason to believe that NTCH will prevail in its appeals. As the FCC and the United States have explained in that litigation, NTCH lacks standing to bring several of these challenges, and even if NTCH were found to have standing, its arguments for why the FCC should not have adopted the orders at issue lack merit.[126] In any event, it would be improper for the Court to deny entry of the proposed Final Judgment on the basis of a pending appeal in a separate matter whose outcome is uncertain.

Separately, CWA argues that DISH is not fit to be a divestiture buyer because of the existence of a dispute between DISH and the FCC over a past spectrum auction.[127] The referenced dispute arose from the FCC's auction of so-called AWS–3 spectrum. In that auction, two entities (Northstar and SNR Wireless) purchased spectrum licenses using bidding credits intended for use by small businesses. The FCC subsequently found that Northstar and SNR Wireless were ineligible for the bidding credits they used because they were under the *de facto* control of DISH and therefore were not small businesses. Accordingly, the FCC revoked the credits and imposed a fine. After Northstar and SNR Wireless appealed the FCC's order, the U.S. Court of Appeals for the District of Columbia Circuit found that the FCC had reasonably interpreted its rules but had not provided sufficient notice of its interpretation.[128] Thus, it ordered the FCC to provide Northstar and SNR Wireless an opportunity to cure the violation by amending its agreements with DISH.[129] These efforts are ongoing. Significantly, the D.C. Circuit went out of its way to note that the FCC's finding that DISH exercised *de facto* control ''does not compel a finding that the applicants lacked candor.'' [130] It also emphasized that the FCC explicitly said that SNR and Northstar appropriately disclosed their relationships with DISH, that no other auction participant was harmed by their conduct, and that no evidence showed that SNR and Northstar ''colluded with one another in violation of federal antitrust laws.'' [131] Without wading into the merits of that ongoing matter, the United States rejects CWA's contention that this should disqualify DISH from being a divestiture buyer here.

4. Other Negative Comments

CWA objects that the proposed Final Judgment ''uses open-ended, vague and ambiguous language with reference to defendants' obligations and/or the time within which certain actions must be taken,'' and that such language is ''deeply problematic'' in a court order.[132] Such terminology, however, is not unusual and has been present in final judgments previously approved under the Tunney Act.[133] Moreover, the Final Judgment minimizes any enforceability risks by providing for resolution of any disputes that may arise without the need to involve this Court. For example, if there is no agreement (regardless of the reason), the monitoring trustee will report to the United States, and the Department of Justice can resolve the dispute at its ''sole discretion'' or at its sole discretion ''after consultation with the affected Plaintiff States.'' [134] Additionally, should any disputes be brought before the Court, the Final Judgment provides standards for resolving disputes over interpretation of any such terms. This is accomplished both by reference to the purpose of the decree ''to give full effect to the procompetitive purposes of the antitrust laws,'' and by empowering the Court to enforce any provision of the Final Judgment, as ''interpreted by the Court in light of these procompetitive principles and in applying ordinary tools of interpretation,'' to terms that are ''stated specifically and in reasonable detail, whether or not [they are] clear and unambiguous on [their] face.'' [135]

E. Comments Regarding Procedural Aspects of This Review

1. Sufficiency of the Filings

Mr. Bellemare argues that the ''materials published in the **Federal Register** do not allow meaningful public comments.'' [136] He asserts that the United States was required to include additional information in its filings, such as ''pre- and post-merger levels of concentration (Herfindahl-Hirschman Index) (HHI); increase in HHI numbers as a result of the merger; exact pre- and post- merger market shares of all entities in the relevant market; trend toward concentration (or recent acquisitions)'' as well as ''substantial information . . . on regulatory or nonregulatory entry barriers in the relevant market.'' [137] Mr. Bellemare does not identify a source for his claim that these categories of information are required, and for good reason—neither the Tunney Act itself nor the caselaw interpreting the Act identifies such requirements. Under the Tunney Act, the United States must file a Competitive Impact Statement that recites ''(1) the nature and purpose of the proceeding; (2) a description of the practices or events giving rise to the alleged violation of the antitrust laws; (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby,

[123] *See* FCC Order ¶ 365.

[124] NTCH Comment (Exhibit 20) at 14–15.

[125] *Id.* at 15.

[126] *See* Corrected Brief for Respondent/Appellee and Respondent, *NTCH, Inc.* v. *Fed. Commc'ns Comm'n,* Nos. 18–1241 & 18–1242 (D.C. Cir. Mar. 28, 2019).

[127] CWA Comment (Exhibit 10) at 18–19.

[128] *See SNR Wireless LicenseCo, LLC* v. *Fed. Commc'ns Comm'n,* 868 F.3d 1021, 1024–25 (D.C. Cir. 2017) (summarizing the background of the case and the court's opinion). In discussing *de facto* control, the D.C. Circuit noted that while ''the question of whether one business exercises *de jure* control over another is binary, the highly contextual question of *de facto* control is a matter of degree.'' *Id.* at 1026.

[129] *Id.* at 1043–46.

[130] *Id.* at 1028.

[131] *Id.*

[132] CWA Comment (Exhibit 10) at 21, 22.

[133] *See, e.g.,* Final Judgment, *United States* v. *Bayer AG,* No. 18–cv–1241, at 19 (D.D.C. Feb. 08, 2019) (''The divestitures shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between BASF and Bayer and Monsanto give Bayer and Monsanto the ability unreasonably to raise BASF's costs, to lower BASF's efficiency, or otherwise to interfere in the ability of BASF to compete effectively.''); *id.* at 26 (''The terms and conditions of all agreements reached between Bayer and BASF under Paragraph IV(G) must be acceptable to the United States, in its sole discretion.''); *id.* (''Bayer shall perform all duties and provide all services required of Bayer under the agreements reached between Bayer and BASF under Paragraph JV(G).''). *See also US Airways* Final Judgment at 12 (requiring divestiture to be ''accomplished so as to satisfy the United States in its sole discretion, in consultation with the Plaintiff States, that none of the terms of any agreement between an Acquirer(s) and Defendants gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer(s) to effectively compete.''); *id.* at 13 (''Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture.'').

[134] *See* PFJ § IV.A.4.

[135] PFJ § Section XVIII.B. Another commenter expressed general opposition to the proposed remedy but did not provide a sufficient basis for his concern to allow the United States to respond. *See* Hasten Comment (Exhibit 15) (''No! No! No! No! No! You don't need me to tell you the reasons why.'').

[136] Bellemare Comment (Exhibit 6) at 1.

[137] Bellemare Comment (Exhibit 6) at 7–8.

and the anticipated effects on competition of such relief; (4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding; (5) a description of the procedures available for modification of such proposal; and (6) a description and evaluation of alternatives to such proposal actually considered by the United States.'' [138] The Competitive Impact Statement filed in this case amply satisfies these requirements.[139]

2. Comments Regarding the Timing of This Review

Some commenters seek to delay this Court's proceedings until after the conclusion of the litigation initiated by a group of state attorneys general in the Southern District of New York (''S.D.N.Y. Litigation''). AAI asks the Court to ''defer a public interest determination and keep the public comment period open pending a final judgment in the States' challenge to the proposed transaction.'' [140] Similarly, Public Knowledge *et al.* ''request[s] that the DOJ ask the court to wait to decide whether to accept its proposed consent decree until the pending state enforcement action to block this merger is resolved.'' [141] These commenters assert that this approach would impose no hardship on the merging parties and would be in the best interests of both the Department and the public. They claim that this approach would be appropriate because it would allow for a more comprehensive public comment process and would promote the efficient use of judicial resources. As discussed below (and in greater detail in the United States's Response to States' Motion to File Brief as Amici Curiae (''Response to States' Brief'') filed with this Court on October 23, 2019), AAI's assertions are incorrect.

First, delay would prejudice the public interest, the Department, and DISH. As the Department explained in its Response to States' Brief, T-Mobile's obligation to begin preparing its network for DISH subscribers is triggered by entry of the proposed Final Judgment.[142] No useful purpose would be served by delaying this process and thus delaying the date by which DISH can begin offering mobile wireless service to the public. In addition, the Department has a broader interest in ensuring that its proposed settlements are entered in an efficient manner. Jeopardizing this ability would require the Department to devote resources to matters it has decided to settle rather than matters it has not.[143] For its part, DISH has an interest in prompt entry of the proposed Final Judgment because of its fixed-date network deployment deadlines. The proposed Final Judgment requires DISH to reach certain milestones by June 14, 2023, and delaying the Court's consideration of the proposed Final Judgment would shorten the time available to DISH to comply with this requirement.[144]

Second, contrary to these commenters' claims,[145] the Court need not allow third parties to file ''new or supplementary'' comments after conclusion of the S.D.N.Y. Litigation. Much of the record developed in the S.D.N.Y. Litigation will pertain to the merits of the states' Section 7 challenge and thus will not be relevant here. Some of that evidence will also pertain to legal claims that the United States did not assert. Considering these claims would violate separation-of-powers principles.[146] Even as to evidence that could arguably be relevant, the United States will not have participated in the creation of that record, and it would violate fundamental principles of procedural fairness to rely on such evidence.

Third, adopting the proposed delay would not promote the efficient use of judicial resources. When it passed the Tunney Act, Congress expressed its intent for courts making public interest determinations to ''adduce the necessary information through the least complicated and least time-consuming means possible.'' [147] Consistent with this intent, courts routinely make Tunney Act determinations on the basis of only the Competitive Impact Statement, comments filed by the public, and the response filed by the Department.[148] With the benefit of the Department's Competitive Impact Statement in this proceeding, the comments filed, and this response, the Court now has before it a record sufficient to support a public interest determination.[149]

F. Comments Supporting Entry of the Proposed Final Judgment

Several commenters stated that although they believe the settlement is unnecessary, they nevertheless endorse entry of the proposed Final Judgment. Scott Wallsten of the Technology Policy Institute refers to an earlier analysis he conducted that concluded the empirical evidence was mixed as to whether 4-to-3 mergers ''necessarily harm'' consumers, but that also ''identified areas in which the merger might pose some concerns.'' [150] Mr. Wallsten goes on to state that, ''[t]aken together, the DOJ conditions address the concerns by aiming to lock in existing MVNO agreements while lowering the barriers to entry by a facilities-based carrier (DISH).'' [151] Mr. Wallsten observes that these conditions ''appear designed to reduce the chances of consumer harm in the areas otherwise most likely to be affected while allowing the New T-Mobile to retain sufficient assets to compete with AT&T and Verizon.'' [152] Mr. Wallsten states that these ''remedies lower the barriers to DISH's entry into mobile cellular,'' and that ''[l]owering the cost of entry also increases the chances DISH will enter the market, thereby increasing competitive pressure on the New T-Mobile (and other incumbents) from the threat of new entry.'' [153] After noting that, ''[f]or the longer run, the DOJ also proposes to reduce barriers to entry into facilities-based provision for DISH,'' Mr. Wallsten concludes that ''the conditions proposed by the DOJ are a reasonable approach to managing potential concerns.'' [154]

[138] 15 U.S.C. 16(b)(1)–(6).

[139] Mr. Bellemare also points to the standards that apply to motions to dismiss and motions for summary judgment under the Federal Rules. *See* Bellemare Comment (Exhibit 6) at 2, 8. Those standards have no bearing on this proceeding.

[140] AAI Comment (Exhibit 2) at 11.

[141] Public Knowledge *et al.* Comment (Exhibit 22) at 4.

[142] *See* PFJ § IV.A.1; Response to States' Brief at 7–8.

[143] *See Microsoft,* 56 F.3d at 1459 (noting in an appeal of a Tunney Act decision that ''a settlement, particularly of a major case, will allow the Department of Justice to reallocate necessarily limited resources''); *see also Heckler,* 470 U.S. at 831 (explaining that ''an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion'' because the agency must consider, among other things, ''whether agency resources are best spent on this violation or another'').

[144] *See* PFJ § VIII.A.

[145] AAI Comment (Exhibit 2) at 12–13.

[146] *See Heckler,* 470 U.S. at 832 (noting that the decision about which claims to bring ''has long been regarded as the special province of the Executive Branch''); *Microsoft,* 56 F.3d at 1461 (noting that district courts engaging in Tunney Act review are ''barred from reaching beyond the complaint to examine practices the government did not challenge'').

[147] S. Rep. No. 93–298, at 6 (1973).

[148] *See supra* Section III.

[149] For this reason, the Court should also reject Public Knowledge *et al.*'s unsupported request for an evidentiary hearing. *See* Public Knowledge *et al.* Comment (Exhibit 22) at 4.

[150] Wallsten Comment (Exhibit 25) at 1.

[151] *Id.* at 1–2 (citing, *inter alia,* the divestiture of Sprint's prepaid businesses, the MVNO agreement ''to ensure [DISH] is able to sell a competitive mobile product,'' and the extension of all current MVNO agreements).

[152] *Id.*

[153] *Id.* at 5.

[154] *Id.* at 6.

Similarly, Randolph May and Seth Cooper of the Free State Foundation state that, while they ''do not specifically endorse or oppose the proposed merger or the proposed settlement,'' they believe there is ''strong evidence'' that the proposed merger, ''if approved pursuant to the proposed settlement, would be in the public interest.'' [155] And the Enterprise Wireless Alliance states that it supports the merger because it ''would promote competition in the nationwide commercial wireless marketplace and accelerate the deployment of a 5G network covering much of the population including substantial expansions in coverage to rural areas,'' and that it also ''supports the introduction of DISH as a potential fourth national wireless carrier'' through the consent decree.[156]

A number of other commenters expressed support for the merger generally, without specifically commenting on the settlement. For example, several scholars affiliated with the International Center for Law & Economics submitted a letter along with their recent report that ''reviews 18 empirical analyses in the last five years that study the effects of changes in market concentration (such as by merger) in the wireless telecommunications industry.'' [157] These scholars express the view that the divestiture package ''is likely unnecessary to ensure that the market remains competitive.'' [158] Nevertheless, and ''regardless'' of the proposed remedy, the scholars state that they ''believe that the DOJ was correct.'' [159] The United States construes these submissions [160] as comments in favor of entry of the proposed Final Judgment.

Other states besides the Co-Plaintiff States in this matter have also indicated their support for the proposed Final Judgment. The Attorneys General of Arizona and New Mexico have also expressed their support for this settlement.[161] The State of Mississippi went so far as to withdraw from the S.D.N.Y. Litigation and enter an agreement with T-Mobile that relies on the relief obtained by the FCC and in this proposed Final Judgment.[162] The State of Colorado has now also withdrawn from the S.D.N.Y. Litigation and has requested to join as a plaintiff in this action.[163]

Finally, the Attorneys General of Utah and Arkansas filed a comment in this proceeding stating that they ''have studied—and agree with—the conclusions in the DOJ's Competitive Impact Statement.'' [164] In their view, the proposed settlement ''contains a powerful divestiture component'' and will ''greatly increase the probability that Dish will become a successful and significant fourth competitor in the market.'' [165] They conclude that ''the settlement embodied in the proposed Final Judgment is in the public interest, mitigates the potential harms that the merger could otherwise have created, and offers benefits to rural communities while maximizing output and consumer choice for all Americans.'' [166]

VI. Conclusion

After careful consideration of the public comments, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comments and this response are published as required by 15 U.S.C. 16(d).

[155] May & Cooper Comment (Exhibit 23) at 1.

[156] EWA Comment (Exhibit 13) at 1. Two additional commenters explain that, after their initial concerns were satisfied by negotiating additional relief directly with T-Mobile, they now also support entry of the proposed Final Judgment. *See* California Emerging Technology Fund Comment (Exhibit 8) at 1–2 (after becoming a legal party in proceedings before the California Public Utilities Commission and negotiating a Memorandum of Understanding ''that provides unprecedented public benefits for California consumers, especially the digitally-disadvantaged,'' states that the ''subsequent commitments secured by DOJ ensure that there is increased competition and additional choices for all U.S. consumers''); National Hispanic Caucus of State Legislators Comment (Exhibit 18) at 1, 4 (after securing ''commitments regarding deployment and hiring'' through an ''extensive Memorandum of Understanding'' between T-Mobile and the National Diversity Coalition, supports the DOJ's proposed settlement because it ''addresses some residual concerns we had previously identified'').

[157] ICLE Report at 2.

[158] *Id.*

[159] *Id.* at 1–2. Similarly, Tech Freedom filed ''comments in support of the proposed Final Judgment and Stipulation and Order'' and ''urge[s] the Court to approve these Measures.'' TechFreedom Letter (Exhibit 26) at 1 (also attaching ''Comments of TechFreedom'' filed with the FCC on Sept. 17, 2018). TechFreedom states that it agrees with the analysis in the ICLE report discussed in the text above, and that while it believes the remedy measures ''actually go too far,'' it ''believes that the quickest path to bringing forth the benefits of the merger is for the court to approve the merger as agreed.'' *Id. See also* Competitive Enterprise Institute Comment (Exhibit 11) at 1, 5, 7 (after stating the proposed merger ''more-than passes muster'' under the DOJ/FTC horizontal merger deadlines, discusses the benefits of T-Mobile's commitments to the FCC and ''respectfully encourage[s] DOJ to accept the proposed settlement'').

[160] *See also* National Puerto Rican Chamber of Commerce Comment (Exhibit 19) (asking DOJ to ''approve the merger to help Puerto Rico expedite its [hurricane] recovery and grow its economy''); Overland Park Chamber of Commerce Comment (Exhibit 21) (''we support approval of the proposed merger''); Vermont Telephone Co. Comment (Exhibit 28) (''Rural America has so much to gain from this [merger], and so much to lose if it does not go forward''); Viaero Wireless Comment (Exhibit 29) (the merger ''will directly benefit consumers and rural carriers like Viaero''); Center for Individual Freedom Comment (Exhibit 9) (CFIF and its supporters ''urge swift approval of the proposed merger''); Greater Kansas City Chamber of Commerce Comment (Exhibit 14) (writing to ''express the KC Chamber's support'' for the merger); National Diversity Coalition Comment (Exhibit 17) (stating it is ''one of many organizations that support the merger''); Asian Business Association Comment (Exhibit 4) (stating ''our believe that this merger has the potential to greatly benefit everyone in America''); Williamson Comment (Exhibit 31) (''I strongly support the T-Mobile-Sprint merger and am hopeful that the Department of Justice will approve the Merger.''); Americans for Tax Reform Comment (Exhibit 3) at 1 (''I urge the Department of Justice to approve the merger.''); CalAsian Chamber of Commerce Comment (Exhibit 7) (''We have been outspoken in our support for the merger of T-Mobile with Sprint . . . .''); Members of the United States House of Representatives Comment (Exhibit 27) (Oct. 10, 2019 letter resubmits ''in support of the proposed Final Judgment'' Jan. 25, 2019 letter sent to the FCC and the DOJ ''to express our support for, and encourage your prompt consideration of, the proposed merger of T-Mobile U.S., Inc. and Sprint Corporation.'').

[161] *See* ''Attorney General Brnovich Statement on DOJ-T-Mobile/Sprint Merger Settlement'' (stating ''the divestiture, the FCC commitments, and PFJ provide Dish the realistic ability to become a competitive and fourth facilities-based wireless carrier'' and that the PFJ ''also facilitates Dish's ability to exercise its option to acquire the spectrum assets, cell sites, and retail assets to establish itself as a viable competitor in the retail mobile wireless services market''), *available at https://www.azag.gov/press-release/attorney-general-brnovich-statement-doj-t-mobilesprint-merger-settlement;* ''AG Balderas' Statement on the Department of Justice's Announced Agreement on T-Mobile/Sprint Merger,'' July 26, 2019 (the AG is ''pleased'' by the settlement), *available at https://www.nmag.gov/uploads/PressRelease/48737699ae174b30ac51a7eb286e661f/AG_Balderas%E2%80%99_Statement_on_the_Department_of_Justice%E2%80%99s_Announced_Agreement_on_T_mobileSprint_Merger.pdf.*

[162] *See* ''AG Hood Settles Concerns on T-Mobile-Sprint Merger, Increases Services Available for Mississippians'' (Oct. 9, 2019), *available at https://www.ago.state.ms.us/releases/ag-hood-settles-concerns-on-t-mobile-sprint-merger-increases-services-available-for-mississippians/;* Letter Agreement, ''T-Mobile and Sprint Pledged Commitments in Mississippi'' (''Mississippi Letter Agreement'') *available at http://www.ago.state.ms.us/wp-content/uploads/2019/10/MS-T-Mobile-agreement-executed.pdf.*

[163] *See* Consent Motion for Leave to File Third Amended Complaint (Oct. 28, 2019), Dkt. No. 40; *see also* ''Attorney General's Office Secures 2,000 Jobs, Statewide 5G Network Deployment Under Agreements with Dish, T-Mobile'' (Oct. 21, 2019), *https://coag.gov/press-releases/attorney-generals-office-secures-2000-jobs-statewide-5g-network-deployment-under-agreements-with-dish-t-mobile-10-21-19/.*

[164] Utah/Arkansas Comment (Exhibit 5) at 1.

[165] *Id.* at 2 (citing the ''multifaceted and detailed nature'' of the Divestiture Assets, DISH's willingness to be bound as a party, provisions allowing for DOJ and FCC verification, ''all backed by the potential of significant monetary penalties for non-compliance'').

[166] *Id.* at 3.

Dated: November 6, 2019.

Respectfully submitted,

Frederick S. Young,

Matthew R. Jones,

U.S. Department of Justice Antitrust Division, 450 Fifth Street NW, Suite 4100, Washington, DC 20530, (202) 307–2869, Frederick.Young@usdoj.gov.

[FR Doc. 2019–24642 Filed 11–12–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on October 23, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Parallel Wireless, Inc., Nashua, NH; Concurrent Technologies Corporation, Johnstown, PA; Aether Argus Inc., Atlanta, GA; Selex Galileo Inc., Arlington, VA; NEC Corporation of America, Irving, TX; A10 Systems LLC, Chelmsford, MA; The Kenjya-Trusant Group, LLC, Columbia, MD; iPosi Inc., Denver, CO; Intel Federal LLC, Fairfax, VA; Old Dominion University Research Foundation, Norfolk, VA; Starry, Inc., Boston, MA; QuayChain, Inc., San Pedro, CA; Wind Talker Innovations Inc., Fife, WA; Ewing Engineered Solutions, Allen, TX; Ericsson, Inc., Plano, TX; AnTrust, Clarksville, MD; Novowi LLC, Brookline, MA; Frequency Electronics, Inc., Uniondale, NY; GATR Technologies, Huntsville, AL; T-Mobile USA Inc., Washington, DC; GreenSight Agronomics, Inc., Boston, MA; Otava, Inc., Moorestown, NJ; William Marsh Rice University, Houston, TX; Thinklogical, LLC, Milford, CT; Blue Danube Systems, Inc., Santa Clara, CA; MixComm, Inc., Chatham, NJ; American Systems Corporation, Chantilly, VA; University of Oklahoma, Normon, OK; Qubitekk, Inc., Bakerfield, CA; LocatorX, Inc., Suwanne, GA; Technology Unlimited Group, San Diego, CA; and Synoptic Engineering, LLC, Arlington, VA, have been added as parties to this venture.

Also, Avionics Test & Analysis Corporation, Niceville, FL; Veritech, LLC, Glendale, AZ; and Bascom Hunter Technologies, Inc., Baton Rouge, LA, have withdrawn as parties from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (79 FR 65424).

The last notification was filed with the Department on August 13, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2019 (84 FR 48377).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–24605 Filed 11–12–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management Agency Information Collection Activities; Comment Request; Request for State or Federal Workers' Compensation Information

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Notice of Issuance of Insurance Policy.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 13, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of responses, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Division of Coal Mine Workers' Compensation, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Black Lung Benefits Act (the Act), 30 U.S.C. 901–944, requires coal mine operators to be insured (either by qualifying as a self-insurer or obtaining commercial insurance) for liabilities arising from the Act; failure to do so may result in civil money penalties. 30 U.S.C. 933. Accordingly, 20 CFR part V, subpart C, 726.208–.213 requires insurance carriers to report to the Division of Coal Mine Workers' Compensation (DCMWC) each policy and endorsement issued, cancelled, or renewed with respect to operators in such a manner and on such form as DCMWC may require. These regulations also require carriers to file a separate report for each operator it insures. Carriers use Form CM–921, Notice of Issuance of Insurance Policy, to report issuance of insurance policies to operators. This information collection is currently approved for use through November 30, 2019. 30 U.S.C. 901 and 20 CFR 725.535 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of

information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0048.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Type of Review: Extension.

Title of Collection: Notice of Issuance of Insurance Policy.

Form: Notice of Issuance of Insurance Policy, CM–921.

OMB Control Number: 1240–0048.

Affected Public: Federal government, State, Local, or Tribal Government.

Estimated Number of Respondents: 3,450.

Frequency: Annually.

Total Estimated Annual Responses: 3,450.

Estimated Average Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 58 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 30 U.S.C. 901 and 20 CFR 725.535.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2019–24620 Filed 11–12–19; 8:45 am]

BILLING CODE 4510–CK–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Annual Reporting (Form 5500 Series)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval, with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, with modifications, under the Paperwork Reduction Act of 1995, of its collection of information for Annual Reporting. This notice informs the public of PBGC's request and solicits public comment on the collection.

DATES: Comments must be submitted by December 13, 2019.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974.

A copy of the request will be posted on PBGC's website at: *https://www.pbgc.gov/prac/laws-and-regulations/information-collections-under-omb-review.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026; faxing a request to 202–326–4042; or, calling 202–326–4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040). The Disclosure Division will email, fax, or mail the information to you, as you request.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202 229–3559. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–3559.

SUPPLEMENTARY INFORMATION: Annual reporting to the Internal Revenue Service (IRS), the Employee Benefits Security Administration (EBSA), and the Pension Benefit Guaranty Corporation (PBGC) is required by law for most employee benefit plans. For example, section 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) requires annual reporting to PBGC for pension plans covered by title IV of ERISA. To accommodate these filing requirements, IRS, EBSA and PBGC have jointly promulgated the Form 5500 Series, which includes the Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan.

PBGC is proposing modifications to the 2020 Schedule R (Retirement Plan Information) and its related instructions. Schedule R is part of the Form 5500 Series. The proposed modifications to Schedule R affect multiemployer defined benefit plans covered by title IV of ERISA. PBGC also is proposing minor modifications to the Form 5500 Series to improve the accuracy of reported information. The modifications are described in greater detail in the supporting statement submitted to OMB with this information collection, along with PBGC's rationale for each modification.

Section 103(f)(2)(C) of ERISA requires that a multiemployer defined benefit plan include in its annual report, ''[t]he number of participants under the plan on whose behalf no contributions were made by an employer as an employer of the participant for such plan year and for each of the 2 preceding plan years.'' Line 14a of Schedule R requires the plan to report the inactive participant counts for the current plan year's filing. Lines 14b and 14c require the plan to report the inactive participant counts for the previous two respective plan years. PBGC has found a majority of plans that are required to report do not provide accurate information on line 14 of Schedule R.

The current instructions for line 14 require multiemployer plans to count inactive participants using the last contributing employer counting method. Under the last contributing employer method, a plan counts only those inactive participants whose last contributing employer withdrew from the plan by the beginning of the relevant plan year for which the Form 5500 relates. The plan does not count any inactive participants whose employers had not withdrawn from the plan.

PBGC is proposing to modify Schedule R to provide multiemployer plans with a choice of the last

contributing employer counting method and two other proposed counting methods: The alternative method and the reasonable approximation method. PBGC anticipates that providing plans with three available counting methods will allow each plan to choose the counting method that will be most accurate and least burdensome for the plan to count its inactive participants.

Under the alternative method, a plan would count only those inactive participants whose last contributing employer and all prior contributing employers had withdrawn from the plan by the beginning of the relevant plan year. Under this method, the plan would review the list of all contributing employers (employers that had not withdrawn from the plan by the beginning of the relevant plan year), and include on Line 14 only those inactive participants who had no covered service with any of these employers.

Under the reasonable approximation method, a plan that is unable to use the other two counting methods must make a reasonable, good faith effort to count inactive participants to satisfy the requirements of section 103(f)(2)(C) of ERISA. The plan would also be required to provide an attachment that explains the plan's approximation method, including a description of the data and a breakdown describing the number of clearly identified inactive participants and the number of estimated inactive participants.

PBGC is also proposing that when a plan reports a number on line 14b or 14c that differs from the number it reported for the plan year immediately preceding the current plan year, it would be required to submit an attachment with an explanation of the reason for the change.

Both attachments will provide PBGC with data to be used in its Pension Insurance Modeling System (PIMS). PBGC's evaluation of the data submitted in the attachments will allow PBGC to review the integrity of the data. PBGC estimates that the proposed changes would have an offsetting effect and would not change the hour or cost burden for the Schedule R.

The existing collection of information was approved under OMB control number 1212–0057 (expires January 31, 2022). On August 20, 2019, PBGC published in the **Federal Register** (at 84 FR 43189) a notice informing the public of its intent to request an extension of this collection of information, as modified. PBGC received one comment in support of the collection of information. PBGC is requesting that OMB extend approval of the collection, with modifications, for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive approximately 24,800 Form 5500 and Form 5500–SF filings per year under this collection of information. PBGC further estimates that the total annual burden of this collection of information for PBGC will be 1,200 hours and $1,664,000.

Issued in Washington, DC, by

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–24619 Filed 11–12–19; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings

	Docket No.
Competitive Product Prices, Priority Mail Contract 473, (MC2019–12), Negotiated Service Agreements	CP2019–12
Competitive Product Prices, Priority Mail & First-Class Package Service Contracts, Priority Mail & First-Class Package Service, Contract 125.	MC2020–21
Competitive Product Prices, Priority Mail & First-Class Package Service, Contract 125 (MC2020–21), Negotiated Service Agreements.	CP2020–20
Competitive Product Prices, Priority Mail Contracts, Priority Mail Contract 559	MC2020–22
Competitive Product Prices, Priority Mail Contract 559, (MC2020–22), Negotiated Service Agreements	CP2020–21

Issued November 7, 2019.

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–12; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 473, Filed Under Seal; *Filing Acceptance Date:* November 6, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 15, 2019.

2. *Docket No(s).:* MC2020–21 and CP2020–20; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 125 to

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 15, 2019.

3. *Docket No(s).:* MC2020–22 and CP2020–21; *Filing Title:* USPS Request to Add Priority Mail Contract 559 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 15, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–24646 Filed 11–12–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 125 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–21, CP2020–20.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–24602 Filed 11–12–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 559 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–22, CP2020–21.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–24606 Filed 11–12–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87478; File No. SR–MSRB–2019–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 and Amendment No. 2, To Amend and Restate the MSRB's August 2, 2012 Interpretive Notice Concerning the Application of Rule G–17 to Underwriters of Municipal Securities

November 6, 2019.

I. Introduction

On August 1, 2019, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (the ''original proposed rule change'') to amend and restate the MSRB's August 2, 2012 interpretive notice concerning the application of MSRB Rule G–17 to underwriters of municipal securities (the ''2012 Interpretive Notice'').[3] The original proposed rule change was published for comment in the **Federal Register** on August 9, 2019.[4]

The Commission received three comment letters in response to the original proposed rule change.[5] On September 10, 2019, the MSRB granted an extension of time for the Commission to act on the filing until November 7, 2019. On October 7, 2019, the MSRB responded to the comments [6] and filed Amendment No. 1 to the original proposed rule change (''Amendment No. 1'').[7] The Commission published notice of Amendment No. 1 in the **Federal Register** on October 15, 2019.[8] In response to Amendment No. 1, the Commission received three comment letters.[9] On October 31, 2019, the MSRB submitted a response to comments received on Amendment No. 1 [10] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The 2012 Interpretive Notice was approved by the SEC on May 4, 2012 and became effective on August 2, 2012. *See* Release No. 34–66927 (May 4, 2012); 77 FR 27509 (May 10, 2012) (File No. SR–MSRB–2011–09); and MSRB Notice 2012–25 (May 7, 2012). The 2012 Interpretive Notice is available here.

[4] Exchange Act Release No. 86572 (Aug. 5, 2019), 84 FR 39646 (Aug. 9, 2019) (''Notice of Filing''). The comment period closed on August 30, 2019.

[5] *See* Letter to Secretary, Commission, from Tamara K. Salmon, Associate General Counsel, Investment Company Institute dated Aug. 26, 2019 (the ''ICI Letter''), Letter to Secretary, Commission, from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated August 30, 2019 (the ''First SIFMA Letter''); Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated August 30, 2019 (the ''First NAMA Letter'').

[6] *See* Letter to Secretary, Commission, from Gail Marshall, Chief Compliance Officer, MSRB, dated October 7, 2019 (the ''First Response Letter''), available at *https://www.sec.gov/comments/sr-msrb-2019-10/srmsrb201910-6261133-193028.pdf.*

[7] Amendment No. 1 is available at *http://msrb.org/~/media/Files/SEC-Filings/2019/MSRB-2019-10-A-1.ashx?.*

[8] *See* Exchange Act Release No. 87255 (October 8, 2019), 84 FR 55192 (October 15, 2019) (the ''Notice of Amendment No. 1''). The comment period closed on October 29, 2019.

[9] *See* Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated October 29, 2019 (the ''Second NAMA Letter''); Letter to Secretary, Commission, from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated October 29, 2019 (the ''Second SIFMA Letter''); Letter to Secretary, Commission, from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated October 29, 2019 (the ''BDA Letter'').

[10] *See* Letter to Secretary, Commission, from Gail Marshall, Chief Compliance Officer, MSRB, dated October 31, 2019 (the ''Second Response Letter'' and, together with the First Response Letter, the ''MSRB Response Letters''), available at *https://*

filed Amendment No. 2 to the original proposed rule change (''Amendment No. 2'').[11] This order approves the original proposed rule change, as modified by Amendment No. 1 and Amendment No. 2 (as so modified, the ''proposed rule change''), on an accelerated basis.

II. Description of Proposed Rule Change

As described more fully in the Notice of Filing, Amendment No. 1, and Amendment No. 2, the MSRB stated that the purpose of the proposed rule change is to update and streamline certain obligations specified in the 2012 Interpretive Notice (the 2012 Interpretive Notice, so amended by the proposed rule change, is referred to herein as the ''Revised Interpretive Notice'') and, thereby, benefit issuers and underwriters of municipal securities alike by reducing the burdens associated with those obligations, including the obligation of underwriters to make, and the burden on issuers to acknowledge and review, written disclosures that itemize risks and conflicts that are unlikely to materialize during the course of a transaction, not unique to a given transaction or a particular underwriter where a syndicate is formed, and/or otherwise duplicative.[12]

A. Incorporation of Subsequent MSRB Guidance Into Revised Interpretive Notice

The MSRB stated that the proposed rule change would integrate certain concepts (with revisions as described in the Notice of Filing, Amendment No. 1, and Amendment No. 2) from (i) the MSRB's implementation guidance dated July 18, 2012 concerning the 2012 Interpretive Notice (the ''Implementation Guidance'') [13] and (ii) the regulatory guidance dated March 25, 2013 answering certain frequently asked questions regarding the 2012 Interpretive Notice (the ''FAQs'') [14] into the Revised Interpretive Notice, thereby consolidating the Implementation Guidance, FAQs, and the Revised Interpretive Notice into a single publication.[15]

i. Applicability of the Revised Interpretive Notice to the Continuous Offering of Municipal Fund Securities

The MSRB noted that the Implementation Guidance makes clear that the 2012 Interpretive Notice applies not only to primary offerings of new issues of municipal bonds and notes by an underwriter, but also to a dealer serving as primary distributor (but not to dealers serving solely as selling dealers) in a continuous offering of municipal fund securities, such as interests in 529 savings plans.[16] In the original proposed rule change, the MSRB incorporated this concept from the Implementation Guidance, adding a reference to Achieving a Better Life Experience (ABLE) programs.[17] In response to concerns raised in the comments to the original proposed rule change, the MSRB proposed in Amendment No. 1 and Amendment No. 2 to modify the proposed rule change to state, ''[t]his notice does not apply to a dealer acting as a primary distributor in a continuous offering of municipal fund securities.'' [18] Thus, the MSRB stated, the original proposed rule change, as revised by Amendment No. 1 and Amendment No. 2, makes clear that the specific fair dealing duties outlined in the proposed rule change—which articulate the delivery of certain disclosures at particular times during the course of an underwriting transaction—would not be applicable to the situations of a dealer serving as a primary distributor in a continuous offering of municipal fund securities.[19] The MSRB noted that Amendment No. 1 did not revise the portion of the text of the original proposed rule change indicating that the fair dealing obligations outlined in the interpretive notice may serve as one of many bases for dealers acting in a capacity not specifically addressed therein—such as a dealer serving as a primary distributor in a continuous offering of municipal fund securities—to determine how to establish appropriate policies and procedures for ensuring it meets its fair dealing obligations under Rule G–17.[20]

ii. Applicability of the Revised Interpretive Notice to a Primary Offering That Is Placed With Investors by a Placement Agent

The MSRB noted that the Implementation Guidance provides that no type of underwriting is wholly excluded from the application of the 2012 Interpretive Notice, including certain private placement activities.[21] The MSRB stated that the proposed rule change would incorporate this concept from the Implementation Guidance into the Revised Interpretive Notice with certain revisions, as discussed in further detail in the Notice of Filing and Amendment No. 1.[22] Pursuant to Amendment No. 1, the MSRB added language to the Revised Interpretive Notice clarifying that the disclosures delivered by an underwriter to an issuer must not be inaccurate or misleading, and that nothing in the Revised Interpretive Notice should be construed as requiring an underwriter to make a disclosure to an issuer that is false.[23]

In addition, the MSRB stated that the proposed rule change would update the 2012 Interpretive Notice by incorporating supplemental language into the Revised Interpretive Notice intended to harmonize it with the Commission's adoption of its permanent rules regarding the registration and record-keeping requirements applicable to municipal advisors, and related exclusions and exceptions, which went into effect after the effective date of the 2012 Interpretive Notice.[24] The MSRB stated that it believes that the guidance provided by this harmonizing language is in keeping with the existing references included in the 2012 Interpretive Notice and its guidance regarding the existence of other relevant or similar legal obligations that could have a bearing on an underwriter's fair dealing obligations under Rule G–17.[25]

iii. Statements Regarding Negotiated Offerings and Defining Negotiated and Competitive Offerings for Purposes of the Revised Interpretive Notice

The MSRB stated that by its terms, and as presently stated in the Implementation Guidance, the 2012 Interpretive Notice applies primarily to negotiated offerings of municipal securities, with many of its provisions not applicable to competitive offerings.[26] The MSRB noted that the Implementation Guidance clarified what constitutes a negotiated offering for purposes of the 2012 Interpretive Notice, and the MSRB stated that the proposed rule change would incorporate this language into the Revised Interpretive Notice.[27]

www.sec.gov/comments/sr-msrb-2019-10/srmsrb201910-6381148-197768.pdf.

[11] Amendment No. 2 is available at *http://msrb.org/~/media/Files/SEC-Filings/2019/MSRB-2019-10-A-2.ashx?.*

[12] *See* Notice of Filing.

[13] *See* MSRB Notice 2012–38 (July 18, 2012).

[14] *See* MSRB Notice 2013–08 (Mar. 25, 2013).

[15] *See* Notice of Filing.

[16] *Id.*

[17] *Id.*

[18] *See* Amendment No. 1, Amendment No. 2.

[19] *See* Amendment No. 1.

[20] *Id.*

[21] *See* Notice of Filing.

[22] *See* Notice of Filing, Amendment No. 1.

[23] *See* Amendment No. 1.

[24] *See* Notice of Filing.

[25] *Id.*

[26] *Id.*

[27] *Id.*

iv. Applicability of the Revised Interpretive Notice to Persons Other Than Issuers of Municipal Securities

The MSRB noted that the 2012 Interpretive Notice outlines the duties that a dealer owes to an issuer of municipal securities when the dealer underwrites a new issuance, and that the Implementation Guidance provides that the 2012 Interpretive Notice ''does not set out the underwriter's fair dealing obligations to other parties involved with a municipal securities financing, including a conduit borrower.'' [28] The MSRB stated that the proposed rule change would incorporate the language from the Implementation Guidance into the Revised Interpretive Notice with conforming revisions, stating ''[t]his notice does not set out the underwriter's fair-practice duties to other parties to a municipal securities financing (*e.g.,* conduit borrowers).'' [29]

v. Statements Regarding Underwriters' Discouragement of the Engagement of a Municipal Advisor

The MSRB noted that the Implementation Guidance further clarifies the scope of the prohibition included in the 2012 Interpretive Notice, affirming that an underwriter must not recommend that the issuer not retain a municipal advisor.[30] The MSRB stated that the proposed rule change would incorporate this concept into the Revised Interpretive Notice certain revisions, as more fully discussed in the Notice of Filing, providing that ''Underwriters also must not recommend issuers not retain a municipal advisor. Accordingly, underwriters may not discourage issuers from using a municipal advisor or otherwise imply that the hiring of a municipal advisor would be redundant because the sole underwriter or underwriting syndicate can provide the services that a municipal advisor would.'' [31]

vi. Statements Regarding Third-Party Payments

The MSRB noted that the Implementation Guidance clarifies the obligation of underwriters to disclose certain third-party payments, as well as other payments, values or credits received by an underwriter.[32] The MSRB stated that proposed rule change would incorporate the language from the Implementation Guidance into the Revised Interpretive Notice, with certain revisions, including the removal of language regarding ''normal course of business'' payments that the MSRB believed was redundant, as more fully described in the Notice of Filing.[33]

vii. Need for Each Underwriter in a Syndicate To Deliver Dealer-Specific Conflicts of Interest When Applicable

The MSRB noted that the FAQs clarify what disclosures may be effected by a syndicate manager on behalf of co-managing underwriters in the syndicate. The MSRB stated that the proposed rule change would incorporate the relevant language from the FAQs into the Revised Interpretive Notice with certain revisions, including the technical clarification that such disclosures apply to ''actual material conflicts of interest'' and ''potential material conflicts of interest'' in order to make the statements consistent with related amendments in the proposed rule change, as more fully described in the Notice of Filing.[34]

viii. Statements Regarding the Timing for the Delivery of Certain Disclosures

The MSRB noted that the Implementation Guidance and FAQs clarify the timing for the delivery of the disclosures under the 2012 Interpretive Notice.[35] The MSRB stated that the proposed rule change would incorporate these timing concepts from the Implementation Guidance and FAQs into the Revised Interpretive Notice with certain revisions (*e.g.,* by utilizing the Revised Interpretive Notice's defined terms of ''standard disclosure,'' ''dealer-specific disclosures,'' and ''transaction-specific disclosures'').[36]

The MSRB stated that the proposed rule change also would incorporate the concept that the timelines are defined to ensure that underwriters act promptly to deliver disclosures in light of all the relevant facts and circumstances, but are not ''intended to establish strict, hair-trigger tripwires resulting in mere technical rule violations.'' [37]

ix. Statements Regarding Whether Underwriters May Rely on Certain Representations of Issuer Officials

The MSRB noted that the FAQs clarify the circumstances under which an underwriter may rely on the representations of issuer officials.[38] The MSRB stated that the proposed rule change would incorporate this language from the FAQs into the Revised Interpretive Notice with clarifying language regarding the relevance of facts discovered during the course of an underwriter's due diligence, including diligence related to the transaction generally or pursuant to an underwriter's own determination of whether it has any actual material conflicts of interest or potential material conflicts of interest.[39] Specifically, the Revised Interpretive Notice supplements the existing statement from the FAQs with language intended to clarify that if an underwriter becomes aware of a fact through the normal course of its diligence that would lead it to doubt a representation of an issuer official, such information may rise to the level of a red flag that would not allow the underwriter to reasonably rely on the written representation.[40]

x. Statements Regarding an Underwriter Having a Reasonable Basis for Its Representations and Other Material Information Provided to Issuers

The MSRB noted that the 2012 Interpretive Notice states that underwriters must ''have a reasonable basis for representations and other material information provided to issuers'' and clarifies that the obligation ''extends to the reasonableness of assumptions underlying the material information being provided,'' and that the Implementation Guidance further contextualizes this reasonable basis standard.[41] The MSRB stated that the proposed rule change would incorporate this language from the Implementation Guidance into the Revised Interpretive Notice with certain revisions, including removing certain language regarding an underwriter's use of assumptions, which the MSRB believed was potentially confusing and redundant, as further described in the Notice of Filing.[42]

xi. Statements Regarding Whether a Particular Recommended Financing Structure or Product Is Complex

The MSRB noted that the 2012 Implementation Guidance contains a description of a ''complex municipal securities financing'' that is further clarified in the Implementation Guidance.[43] The MSRB further noted the 2012 Interpretive Notice then provides a non-exclusive, illustrative list of examples of new issue structures

[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*

that constitute a complex municipal securities financing.[44]

The MSRB stated that the proposed rule change would incorporate this language from the Implementation Guidance into the Revised Interpretive Notice with conforming revisions and an update to the illustrative, non-exclusive list of interest rate benchmarks to include the Secured Overnight Financing Rate (SOFR).[45] The MSRB stated that it believes this edit is a necessary update to ensure that the Revised Interpretive Notice would reflect current market practices.[46]

xii. Statements Regarding the Specificity of Disclosures

The MSRB noted that the 2012 Interpretive Notice provides that an underwriter of a negotiated issue that recommends a complex municipal securities transaction or product to an issuer has an obligation to disclose all financial material risks known to the underwriter and reasonably foreseeable at the time of the disclosure, financial characteristics, incentives, and conflicts of interest regarding the transaction or product.[47] The MSRB further noted that the Implementation Guidance provided clarification and additional guidance with respect to this obligation, as further described in the Notice of Filing.[48] The MSRB stated that the proposed rule change would incorporate the language from the Implementation Guidance into the Revised Interpretive Notice with certain revisions as further described in the Notice of Filing and Amendment No. 1, including the removal of the statement regarding how such disclosures might assist issuers.[49]

xiii. Statements Regarding Profit Sharing Arrangements

The MSRB noted that the 2012 Interpretive Notice states that, ''[a]rrangements between the underwriter and an investor purchasing new issue securities from the underwriter according to which profits realized from the resale by such investor of the securities are directly or indirectly split or otherwise shared with the underwriter also would, depending on the facts and circumstances (including in particular if such resale occurs reasonably close in time to the original sale by the underwriter to the investor), constitute a violation of the underwriter's fair dealing obligation under Rule G–17.'' [50] The MSRB stated that the proposed rule change would incorporate into the Revised Interpretive Notice additional language from the Implementation Guidance, which reads, in relevant part, ''[u]nderwriters should be mindful that, depending on the facts and circumstances, such an arrangement may be inferred from a purposeful but not otherwise justified pattern of transactions or other course of action, even without the existence of a formal written agreement.'' [51]

B. Amending the Nature, Timing, and Manner of Disclosures

The MSRB stated that the proposed rule change would define certain categories of underwriter disclosures and assign the responsibility for the delivery of certain disclosures to the syndicate manager in circumstances where a syndicate is formed, as described below and as further described in the Notice of Filing and Amendment No. 1.[52]

i. Definitions of Certain Categories of Underwriter Disclosures

The MSRB stated that the proposed rule change would define the following terms in order to delineate a dealer's various fair dealing obligations under the Revised Interpretive Notice: ''standard disclosures'' as collectively referring to the disclosures concerning the role of an underwriter and an underwriter's compensation; ''dealer-specific disclosures'' as collectively referring to the disclosures concerning an underwriter's actual material conflicts of interest and potential material conflicts of interest; and ''transaction-specific disclosures'' as collectively referring to the disclosures concerning the material aspects of financing structures that the underwriter recommends.[53]

ii. Assignment of Responsibility for the Standard Disclosures and Transaction-Specific Disclosures

The MSRB noted that the 2012 Interpretive Notice states that a syndicate manager is permitted, but not required, to make the standard disclosures and the transaction-specific disclosures on behalf of the other underwriters in the syndicate.[54] The MSRB stated that the amendments in the original proposed rule change would obligate only the syndicate manager [55] of a syndicate—or sole underwriter, as the case may be—to make the standard disclosures and transaction-specific disclosures and would eliminate any obligation of other co-managing underwriters in the syndicate to make the standard disclosures and transaction-specific disclosures.[56] In response to concerns raised in the comments to the original proposed rule change, the MSRB proposed in Amendment No. 1 to modify the original proposed rule change to state that the underwriter making a recommendation to an issuer regarding a financing structure or product, including, when applicable, a Complex Municipal Securities Financing Recommendation,[57] has the fair dealing obligation to deliver the applicable transaction-specific disclosures.[58] Consequently, the MSRB stated, pursuant to Amendment No. 1, when the syndicate manager (or any other underwriter in the syndicate) is not the underwriter making the recommendation of a financing structure or product to the issuer, such underwriter does not have a fair dealing obligation under the proposed rule change to deliver the transaction-specific disclosures with respect to such financing structure or product.[59]

In addition, the MSRB stated that the proposed rule change provides that any disclosures delivered by a syndicate manager prior to or concurrent with the formation of a syndicate would not need to be identified as delivered in the capacity of the syndicate manager or otherwise redelivered ''on behalf'' of the syndicate.[60]

The MSRB further noted that, pursuant to the proposed rule change, each member of the syndicate would remain responsible for ensuring the delivery of any dealer-specific disclosures if, but only if, such syndicate member had actual material conflicts of interest or potential material conflicts of interest that must be disclosed.[61]

iii. Separate Identification of the Standard Disclosures

The MSRB noted that the 2012 Interpretive Notice currently permits the delivery of omnibus disclosure documents, in which the standard

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *See* Notice of Filing, Amendment No. 1. *See also* ''Amending the Nature, timing and Manner of Disclosures—Assignment of responsibility for the Standard Disclosures and Transaction-Specific Disclosures,'' *infra.*

[50] *See* Notice of Filing.

[51] *Id.*

[52] *See* Notice of Filing, Amendment No. 1.

[53] *See* Notice of Filing.

[54] *Id.*

[55] As defined in Exhibit 5 to Amendment No. 2.

[56] *See* Notice of Filing.

[57] As defined in Exhibit 5 to Amendment No. 2.

[58] *See* Amendment No. 1.

[59] *Id.*

[60] *See* Notice of Filing.

[61] *Id.*

disclosures need not be separately identified from the transaction-specific disclosures and dealer-specific disclosures.[62] The proposed rule change would require the separate identification and formatting of the standard disclosures (*i.e.,* disclosures concerning the role of the underwriter and the underwriter's compensation) from the transaction-specific disclosure and the dealer-specific disclosures.[63]

iv. Meaning of ''Recommendation'' for Purposes of Disclosures Related to Complex Municipal Securities Financings

The MSRB noted that the 2012 Interpretive Notice provides that an underwriter in a negotiated offering that recommends a complex municipal securities financing to an issuer must disclose the material financial characteristics of the complex municipal securities financing, as well as the material financial risks of the financing that are known to the underwriter and reasonably foreseeable at the time of the disclosure (a ''complex municipal securities financing disclosure'').[64] As the MSRB further noted, the Implementation Guidance provides that the requirement to provide a complex municipal securities financing disclosure is triggered if: the new issue is sold in a negotiated offering; the new issue is a complex municipal securities financing; and such financing was recommended by the underwriter.[65] The MSRB stated that these aspects of the 2012 Interpretive Notice would remain applicable under the Revised Interpretive Notice.[66]

However, the MSRB noted that the 2012 Interpretive Notice does not define the term ''recommendation'' for purposes of this requirement.[67] The MSRB stated that it believes it is important to provide this clarification to facilitate dealer compliance with the proposed rule change. Therefore, as further described in the Notice of Filing, the MSRB stated that the proposed rule change would clarify that a communication by an underwriter is a ''recommendation'' that triggers the obligation to deliver a complex municipal securities financing disclosure if—given its content, context, and manner of presentation — the communication reasonably would be viewed as a call to action to engage in a complex municipal securities financing or reasonably would influence an issuer to engage in a particular complex municipal securities financing.[68]

v. ''Reasonably Likely'' Standard for Disclosure of Potential Material Conflicts of Interest

The MSRB noted that the 2012 Interpretive Notice currently requires the underwriter to disclose to the issuer any actual material conflicts of interest and any potential material conflicts of interest, and that the Implementation Guidance provides guidance as to when such obligation is triggered.[69] The MSRB stated that these aspects of the 2012 Interpretive Notice would remain applicable under the Revised Interpretive Notice. However, the MSRB noted, the proposed rule change provides that an underwriter's potential material conflict of interest must be disclosed as part of the dealer-specific disclosures if, but only if, the potential material conflict of interest is ''reasonably likely'' to mature into an actual material conflict of interest during the course of that specific transaction.[70] The MSRB noted that the proposed rule change will not diminish an underwriter's fair dealing obligation to update, or otherwise supplement, its dealer-specific disclosures in circumstances when a previously undisclosed potential conflict of interest later ripens into an actual material conflict of interest.[71]

vi. Underwriters Are Not Obligated To Provide Written Disclosure of Conflicts of Other Parties

As the MSRB noted, the 2012 Interpretive Notice requires underwriters to provide issuers with certain standard disclosures, dealer-specific disclosures, and transaction-specific disclosures, when and if applicable. By their respective definitions, the standard disclosures cover generic conflicts of interest that could apply to any underwriter in any underwriting; the dealer-specific disclosures are the actual material conflicts of interest and potential material conflicts of interest generally unique to a specific underwriter; and the transaction-specific disclosures relate to the specific financing structure recommended by an underwriter.[72] The MSRB stated that the proposed rule change would expressly state that underwriters are not required to make any written disclosures on the part of issuer personnel or any other parties to the transaction as part of the standard disclosures, dealer-specific disclosures, or the transaction-specific disclosures.[73]

vii. Disclosures Must Be ''Clear and Concise''

The MSRB noted that the 2012 Interpretive Notice currently requires disclosures to be ''designed to make clear to such official the subject matter of such disclosures and their implications for the issuer.'' [74] The MSRB stated that the proposed rule change would provide that an underwriter's disclosures must be delivered in a ''clear and concise'' manner.[75]

viii. Definition of Municipal Entity

The MSRB noted that the 2012 Interpretive Notice currently provides a definition of ''municipal entity'' that references Section 15B(e)(8) under the Exchange Act.[76] In light of the Commission's definition contained in Exchange Act Rule 15Ba1–1 [77] and the MSRB's definition of ''municipal entity'' as used under Rule G–42, both of which were adopted after the publication of the 2012 Interpretive Notice, the MSRB stated that the proposed rule change would incorporate a specific reference to this rule definition, in addition to the general statutory definition, to avoid any confusion about the scope of the Revised Interpretive Notice and to promote harmonization with Exchange Act Rule 15Ba1–1 and Rule G–42.[78]

C. Additional Standard Disclosure Regarding the Engagement of Municipal Advisors

The MSRB noted that the 2012 Interpretive Notice currently requires an underwriter to make five discrete statements regarding the underwriter's role as part of the standard disclosures, including a disclosure that, ''unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interest of the issuer without regard to its own or other interests.'' [79] The MSRB stated that the proposed rule change would incorporate

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *See* Registration of Municipal Advisors, Release No. 34–70462 (September 20, 2013), 78 FR 67467 (hereinafter, the ''MA Rule Adopting Release'') (November 12, 2013) (available at *http://www.sec.gov/rules/final/2013/34-70462.pdf*).

[78] *See* Notice of Filing.

[79] *Id.*

a new standard disclosure that ''the issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the issuer's interests in the transaction.'' [80]

D. Permit Email Read Receipt To Serve as Issuer Acknowledgement

The MSRB noted that the 2012 Interpretive Notice currently requires underwriters to attempt to receive written acknowledgement of receipt by the official of the issuer other than by evidence of automatic email receipt.[81] The MSRB stated that the proposed rule change would permit an email read receipt to serve as the issuer's acknowledgement under the Revised Interpretive Notice.[82] The proposed rule change would define the term ''email read receipt'' to mean ''an automatic response generated by a recipient issuer official confirming that an email has been opened.'' The MSRB stated that it believes that this proposed change will not compromise issuer protection, because the proposed rule change would require the email read receipt to come from an issuer official that is not party to a conflict, based on the underwriter's knowledge, and either has been specifically identified by the issuer to receive such disclosure communications or, in the absence of such specific identification, is an issuer official who the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter. The MSRB further stated that the proposed rule change would also clarify that, ''[w]hile an email read receipt may generally be an acceptable form of an issuer's written acknowledgement under this notice, an underwriter, may not rely on such an email read receipt as an issuer's written acknowledgement where such reliance is unreasonable under all of the facts and circumstances, such as where the underwriter is on notice that the issuer official to whom the email is addressed has not in fact received or opened the email.'' [83]

E. Other Technical and Conforming Amendments

The MSRB stated that the proposed rule change would make certain other technical and conforming changes to the proposed rule change, as described in detail in the Notice of Filing, Amendment No. 1, and Amendment No. 2.[84]

In the Notice of Filing, the MSRB stated that it will publish a regulatory notice within 90 days of the publication of approval of the proposed rule change in the **Federal Register**, and such notice will specify the compliance date for the amendments described in the proposed rule change, which in any case shall be not less than 90 days, nor more than one year, following the date of the notice establishing such compliance date.[85] The MSRB is requesting accelerated approval of Amendment No. 1 and Amendment No. 2.[86]

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received three comment letters in response to the Notice of Filing and three comment letters in response to Amendment No. 1. The MSRB responded to the comment letters on the Notice of Filing in its First Response Letter,[87] and the MSRB responded to the comment letters on Amendment No. 1 in its Second Response Letter.[88] One commenter expressed its support for the original proposed rule change [89] and for Amendment No. 1.[90]

A. Application to Underwriters of Municipal Fund Securities

In the original proposed rule change, the MSRB proposed to revise the 2012 Interpretive Notice to incorporate existing language from the Implementation Guidance clarifying the application of the notice ''to a dealer serving as a primary distributor (but not to dealers serving solely as selling group members) in a continuous offering of municipal fund securities, such as interests in 529 savings plans and Achieving a Better Life Experience (ABLE) programs.'' [91] In response to the Notice of Filing, one commenter requested that the MSRB revise the original proposed rule change to further ''distinguish the disclosure required of 529 underwriters from those required of bond offering underwriters'' and recommended specific revisions in this regard.[92] For example, the commenter requested that the standard disclosures concerning the underwriter's role under the original proposed rule change allow such disclosures to be amended ''to the extent applicable to the nature of the relationship with the issuer.'' [93]

The MSRB responded that it believes there is merit to the commenter's view that the proposed rule change ''should provide additional guidance regarding its application to underwriters of 529 plans,'' but that the MSRB did not believe incorporating the specific revisions proposed by the commenter would be prudent because such revisions may reduce the clarity of the disclosure obligations applicable to other underwriters and, thereby, reduce the overall clarity of the Revised Interpretive Notice.[94] The MSRB further stated that it believes that the commenter's comments regarding the need to provide more clarity in this regard would be better addressed in an interpretation or other guidance separately issued under Rule G–17 that more narrowly considers the fair dealing obligations of dealers serving as primary distributors in a continuous offering of municipal fund securities.[95]

Consequently, rather than incorporating the specific text proposed by the commenter, the MSRB, in Amendment No. 1 and Amendment No. 2, incorporated a revision to the original proposed rule change that, the MSRB stated, would strike the relevant text incorporated from the Implementation Guidance, which, as filed, would clarify the application of the original proposed rule change to the circumstances of a continuous offering of municipal fund securities.[96] The proposed rule change, as amended by Amendment No.1 and Amendment No. 2, would replace this language with a statement that ''[t]his notice does not apply to a dealer acting as a primary distributor in a continuous offering of municipal fund securities.'' [97] The MSRB further states that it intends to make clear that the specific fair practice duties outlined in the Revised Interpretive Notice articulating the delivery of certain disclosures at particular times during the course of an underwriting transaction would not be applicable to the situations of a dealer serving as a primary distributor in a continuous offering of municipal fund securities.[98]

B. Delivery of Complex Municipal Securities Financing Disclosures

In response to the Notice of Filing, one commenter expressed concern that the text of the original proposed rule change did not identify ''who needs to provide transaction specific disclosures for a swap recommendation if not made

[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *See* Notice of Filing, Amendment No. 1, Amendment No. 2.
[85] *See* Notice of Filing.
[86] *See* Amendment No. 1, Amendment No. 2.
[87] *See* First Response Letter.
[88] *See* Second Response Letter.
[89] *See* First NAMA Letter.
[90] *See* Second NAMA Letter.
[91] *See* Notice of Filing.
[92] *See* ICI Letter.
[93] *Id.*
[94] *See* First Response Letter.
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*

by the syndicate manager or sole manager.'' [99] This commenter encouraged the MSRB to amend the original proposed rule change to make clear that ''the duty to provide such disclosures should remain with the underwriter or dealer providing or recommending the derivatives, even after a syndicate is formed.'' [100] The commenter stated that ''recommendations on derivatives require specialized knowledge and . . . in this case, the underwriter or dealer making the recommendation and otherwise providing the derivative product be responsible for making the appropriate transaction-specific disclosures on the material aspects of this financing structure to the issuer.'' [101]

The MSRB stated that it believes that there is merit to this point and agreed with the commenter's suggestion that the original proposed rule change should be amended to clarify in the amended revised interpretive notice that, except in limited circumstances, the underwriter making a financing recommendation to an issuer has a fair dealing obligation to deliver the requisite transaction-specific disclosures.[102] More specifically, the MSRB agreed with the commenter's view that the duty to provide a complex municipal securities financing disclosure generally should remain with the dealer ''recommending'' a financing structure and/or ''providing'' a specific product within that structure (such as a derivative product), ''even after the syndicate is formed.'' [103]

Accordingly, pursuant to Amendment No. 1, the MSRB revised the original proposed rule change to make clear that: (1) The underwriter making a recommendation to the issuer regarding a financing structure has the fair dealing obligation to deliver the applicable transaction-specific disclosures, and (2), conversely, when the syndicate manager (or any other underwriter in the syndicate) is not the underwriter making such a recommendation to the issuer, then such underwriter does not have a fair dealing obligation under the amended revised interpretive notice to deliver the transaction-specific disclosures.[104] The MSRB stated that it believes that these revisions in Amendment No. 1 are responsive to this comment and are consistent with the goal of the Board's retrospective review of the 2012 Interpretive Notice.[105] The MSRB also believes that these revisions in Amendment No. 1 will continue to reduce the number of duplicative disclosures that an issuer receives during the course of a transaction involving an underwriting syndicate.[106]

C. Application to Underwriters Serving as Placement Agents

In the original proposed rule change, the MSRB proposed to revise the 2012 Interpretive Notice to incorporate existing language from the Implementation Guidance that clarifies the application of the 2012 Interpretive Notice to circumstances in which a dealer serves as an agent of an issuer in the placement of the issuer's municipal securities.[107] In response to the Notice of Filing, one commenter expressed concerns regarding this portion of the original proposed rule change.[108] The commenter encouraged the MSRB to strike the language in footnote 12 of Exhibit 5 of the original proposed rule change and replace it with language that grants dealers the flexibility to omit and disclaim certain fair dealing disclosures when an engagement with an issuer to place municipal securities makes such disclosures not true.[109] Specifically, the commenter requested that the proposed language in footnote 12 of Exhibit 5 be replaced with the following statement, ''[i]f the nature of the engagement makes one or more of the required disclosures not true, then it should be permissible to omit such disclosures and disclaim such in the relevant engagement letter.'' [110]

The MSRB stated that it believes there is merit to the commenter's concern that the Revised Interpretive Notice should not be interpreted to require a dealer serving as an agent to an issuer in the placement of the issuer's municipal securities to deliver inaccurate disclosures.[111] Therefore, the MSRB proposed in Amendment No. 1, to revise the original proposed rule change to supplement the existing language with the following text, ''[a]s a threshold matter, the disclosures delivered by an underwriter to an issuer must not be inaccurate or misleading, and nothing in this notice should be construed as requiring an underwriter to make a disclosure to an issuer that is false.'' [112] The MSRB stated that it believes this revision to be a clarifying change, because an underwriter's overarching fair dealing obligation under Rule G–17 prohibits it from engaging in any deceptive or dishonest practice.[113]

D. Certain Standardized Disclosures for Complex Municipal Securities Financing

In response to Amendment No. 1, two commenters raised concerns about the standardized disclosures with respect to complex municipal securities financings.[114] One commenter expressed concerns that the proposed rule change would create a vague and imprecise standard for determining what is a complex municipal securities financing and what kinds of information related to the transaction would need to be disclosed and under what conditions.[115] The commenter stated that underwriters need more precision and guidance around this standard in order to implement sound compliance and consistent disclosures, and urged the MSRB to revise this element of the proposed rule change.[116] Another commenter stated that its members read the term ''individualized'' in the proposed rule changed to mean that standard or model disclosures are designed to be clear, concise and tailored to the specific type or class of financing, and not a book of disclosures relating to all potential types of financings, and requested confirmation from the MSRB that this interpretation is accurate.[117]

The MSRB stated that it generally agrees with the statement that it would be consistent with the current text of the proposed rule change, as well as the intent of the original proposed rule change, for an underwriter to develop policies and procedures that provide for the development and delivery of certain standardized transaction-specific disclosures for complex municipal securities financings for which an underwriter anticipates commonly recommending to its issuer clients (''Standardized Complex Municipal Securities Transaction Disclosures'').[118] The MSRB further provided that, assuming that the content of such Standardized Complex Municipal Securities Transaction Disclosure is (a) drafted in a clear and concise manner for issuer personnel of both greater and lesser degrees of sophistication and (b) otherwise consistent with the requirements of the Revised Interpretive

[99] *See* First SIFMA Letter.
[100] *Id.*
[101] *Id.*
[102] *See* First Response Letter.
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *See* Notice of Filing.
[108] *See* First SIFMA Letter.
[109] *Id.*
[110] *Id.*
[111] *See* First Response Letter.
[112] *Id.*
[113] *Id.*
[114] *See* BDA Letter, Second SIFMA Letter.
[115] *See* BDA Letter.
[116] *Id.*
[117] *See* Second SIFMA Letter.
[118] *See* Second Response Letter.

Notice, the proposed rule change would only require the underwriter to tailor the content of such Standardized Complex Municipal Securities Transaction Disclosure to the extent that such disclosure did not fully describe the material financial features and risks unique to that particular recommended financing in such a clear and concise manner for the issuer personnel receiving the disclosure.[119] The MSRB stated that it does not need to amend the proposed rule change to address this comment because, as outlined in the Second Response Letter and as noted by the commenter, the concept can be reasonably understood from the existing language of the amended proposed rule change.[120]

In response to the commenter's concern that the standard for determining what is a complex municipal securities financing is vague, the MSRB stated that it previously has addressed these concerns in its previous statements.[121]

E. Tiered Disclosure Requirements Based on Issuer Characteristics

In response to the Notice of Filing, and again in response to Amendment No. 1, one commenter stated that it believes that tiered disclosure requirements may be beneficial to issuers and underwriters.[122] The commenter requested that the MSRB ''provide examples of concrete hypotheticals in order to provide clarity to regulated dealers regarding how the content of [the] transaction-based disclosures may potentially vary by issuer sophistication and still survive regulatory scrutiny.'' [123]

The MSRB noted that the proposed rule change sets out a principles-based approach to an underwriter's fair dealing obligation to deliver certain disclosures and incorporates existing hypothetical examples from the Implementation Guidance and FAQs.[124] The MSRB stated that it evaluated formal disclosure tiers and declined to adopt such tiers or other disclosure requirements based on rigid issuer classifications in response to prior stakeholder comments because the MSRB believes there is not an obvious, appropriate methodology for classifying issuers in a manner that would advance the policies underlying the 2012 Interpretive Notice or that would materially relieve burdens for underwriters or issuers, and requiring different disclosure standards for different issuers may have unintended consequences that compromise issuer protections.[125] The MSRB stated that the comments do not alter the MSRB's conclusions in this regard.[126]

F. Standard for the Disclosure of Potential Material Conflicts of Interest

In response to the Notice of Filing, and again in response to Amendment No. 1, two commenters requested that the MSRB amend the original proposed rule change to require only disclosures of actual conflicts of interest.[127] The MSRB noted that the 2012 Interpretive Notice currently requires the underwriter to disclose to the issuer any actual material conflicts of interest and any potential material conflicts of interest, which requirement is triggered if: The new issue is sold in a negotiated underwriting; the matter to be disclosed represents a conflict of interest, either in reality or potentially; and any such actual or potential conflict of interest is material.[128] The MSRB stated that these aspects of the 2012 Interpretive Notice would remain applicable under the proposed rule change. However, the proposed rule change would provide that an underwriter's potential material conflict of interest must be disclosed as part of the dealer-specific disclosures if, but only if, the potential material conflict of interest is ''reasonably likely'' to mature into an actual material conflict of interest during the course of that specific transaction.[129] This MSRB further noted that this revision would reduce a dealer's burden by narrowing the dealer-specific disclosures currently required under the 2012 Interpretive Notice from all potential material conflicts to those potential material conflicts that meet this more focused standard.[130]

The MSRB reiterated that, as indicated in the Notice of Filing, it believes that the disclosure of material conflicts of interest remains significant to an issuer's evaluation of the dealer providing underwriting services, which justifies the obligation for underwriters to continue to provide these disclosures.[131] To the degree that an underwriter has knowledge that a material conflict of interest does not currently exist, but is reasonably likely to ripen into an actual material conflict of interest during the course of the underwriting transaction, the MSRB stated that it continues to believe that the municipal securities market is best served by the underwriter providing advanced notification to the issuer of the likelihood of such material conflict of interest, rather than waiting to disclose the conflict until it has ripened into an actual conflict.[132]

G. Standard Disclosure Regarding the Engagement of a Municipal Advisor

In response to the Notice of Filing, and again in response to Amendment No. 1, two commenters requested that the MSRB amend the original proposed rule change to eliminate the new standard disclosure that ''the issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the issuer's interests in the transaction.'' [133] One commenter also stated that the Revised Interpretive Notice should make clear that neither municipal advisors nor underwriters may misrepresent the services and duties that the other is permitted to provide.[134] The MSRB reiterated that it believes that this additional disclosure will further clarify the distinctions between an underwriter—who is subject to a duty of fair dealing when providing advice regarding the issuance of municipal securities to municipal entities—and a municipal advisor—who is subject to a federal statutory fiduciary duty when providing advice regarding the issuance of municipal securities to municipal entities—and, thereby, would promote the protection of municipal entity issuers in accordance with the MSRB's statutory mandate at a relatively minimal burden to underwriters.[135] The MSRB acknowledged that the additional disclosure would cause underwriters to incur costs associated with revising their policies and procedures and delivering the new disclosure in their standard disclosures during transactions; however, the MSRB concluded that any costs associated with the proposed rule change would be outweighed by its benefits.[136] The MSRB further stated that, because the Revised Interpretive Notice is limitedly focused on underwriters' fair dealing obligations to issuers, not the duties of loyalty and care that municipal advisors

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *See* First SIFMA Letter, Second SIFMA Letter.

[123] *See* First SIFMA Letter.

[124] *See* First Response Letter.

[125] *See* First Response Letter, Second Response Letter.

[126] *Id.*

[127] *See* First SIFMA Letter, Second SIFMA Letter, BDA Letter.

[128] *See* First Response Letter.

[129] *Id.*

[130] *Id.*

[131] *See* First Response Letter, Second Response Letter.

[132] *Id.*

[133] *See* First SIFMA Letter, Second SIFMA Letter, BDA Letter.

[134] *See* Second SIFMA Letter.

[135] *See* First Response Letter, Second Response Letter.

[136] See Second Response Letter.

owe their municipal entity clients, the Revised Interpretive Notice is not the appropriate vehicle to address the duties of municipal advisors, recognizing that MSRB Rule G–42, on the duties of non-solicitor municipal advisors, effectively prohibits a municipal advisor from knowingly misrepresenting its services or the services of an underwriter.[137]

H. Interaction of Proposed Rule Change With Pending Matters

In response to the Notice of Filing, and again in response to Amendment No. 1, two commenters expressed concerns about the interaction of the proposed rule change with other pending matters.[138] One commenter [139] expressed concerns that the text of the proposed rule change may ''front-run'' a related issue that is now under consideration by the Commission regarding the duties of municipal placement agents under the federal securities laws.[140] Another commenter expressed the belief that the MSRB missed an important and timely opportunity to provide substantial compliance efficiencies by combining and integrating underwriter disclosures required under MSRB Rules G–17 and G–23, and urged the MSRB to do so.[141] The MSRB declined to address these concerns, stating that the matters that commenters requested the MSRB address are outside the scope of the proposed rule change, which does not pertain to the duties of municipal advisors.[142]

I. Compliance Date for the Proposed Rule Change

In response to Amendment No. 1, one commenter requested that the MSRB set a compliance date of one year from the date the proposed rule change's amendments to the 2012 Interpretive Notice are final.[143] The commenter requested this timeframe to allow ''sufficient time'' for dealers to implement the proposed rule change's amendments and revise their policies and procedures.[144] The MSRB noted that it had indicated in the original proposed rule change that, if the proposed rule change is approved by the Commission, it will publish a regulatory notice within 90 days of the publication of such approval in the **Federal Register** and such notice would specify the compliance date for the amendments described in the proposed rule change, which in any case would be not less than 90 days, nor more than one year, following the date of the regulatory notice.[145] The MSRB stated that this is consistent with the commenter's request.[146] The MSRB will work with stakeholders, as needed, to determine reasonable compliance dates for the changes, recognizing the commenter's request for at least a one-year compliance timeline given that policy and procedures would need to be updated to conform to the proposed rule change.[147]

IV. Discussion and Commission Findings

The Commission has carefully considered the original proposed rule change, the comment letters received, the MSRB Response Letters, Amendment No. 1, and Amendment No. 2. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change, as modified by Amendment No. 1 and Amendment No. 2, is consistent with Section 15B(b)(2)(C) of the Act.[148] Section 15B(b)(2)(C) of the Act requires that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and in general, to protect investors, municipal entities, obligated persons, and the public interest.[149]

The Commission believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the Act because it will protect municipal entities from fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market, and promote just and equitable principles of trade.

The Commission believes that the proposed rule change would promote the protection of municipal entities by protecting them from fraudulent and manipulative acts and practices. By (i) Specifying which underwriters are obligated to deliver the ''standard disclosures,'' ''transaction-specific disclosures'' and ''dealer-specific disclosures'';, (ii) requiring the separate identification and formatting of the standard disclosures by underwriters; and (iii) requiring that disclosures be clear and concise, the proposed rule change will enable issuers to more efficiently and carefully evaluate the information contained in the disclosures they do receive, which may result in better-informed issuers. Further, the Commission believes the addition by the proposed rule change of a new standard disclosure that the issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the issuer's interests in the transaction will promote the protection of municipal entities by expressly informing them that they may obtain the advice of a municipal advisor, who would serve as a fiduciary to the issuer.

The Commission believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, and promote just and equitable principles of trade by clarifying and streamlining underwriters' disclosure obligations to municipal entity issuers, thereby facilitating more efficient compliance with those obligations. By incorporating certain provisions of the Implementation Guidance and FAQs, with certain revisions, into the Revised Interpretive Notice, the proposed rule change provides for a single consolidated document to which underwriters may look, facilitating the efficient identification of any applicable fair dealing obligations. By (i) specifying that the standard disclosures and many transaction-specific disclosures should be sent to issuers only from the syndicate manager or sole underwriter; (ii) clarifying that underwriters are not obligated to provide written disclosures regarding the conflicts of issuer personnel or other parties to the transaction; and (iii) providing that disclosures must be made in a clear and concise manner, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, and promote just and

[137] *Id.*

[138] *See* First SIFMA Letter, Second SIFMA Letter, BDA Letter.

[139] *See* First SIFMA Letter, Second SIFMA Letter.

[140] *See* ''Notice of Proposed Exemptive Order Granting a Conditional Exemption from the Broker Registration Requirements of Section l5(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors,'' Exchange Act Release No. 87204 (Oct. 2, 2019), 84 FR 54062 (Oct. 9, 2019).

[141] *See* BDA Letter.

[142] *See* First Response Letter, Second Response Letter.

[143] *See* Second SIFMA Letter.

[144] *Id.*

[145] *See* Second Response Letter.

[146] *Id.*

[147] *Id.*

[148] 15 U.S.C. 78*o*–4(b)(2)(C).

[149] *Id.*

equitable principles of trade, by eliminating certain redundant and generic disclosures currently delivered by underwriters to issuers that provide little, if any, informational benefits to issuers, but do create non-trivial compliance and recordkeeping burdens on underwriters. By clarifying the definition of Complex Municipal Securities Financing Recommendation, and specifying the particular underwriter that must provide these particularized transaction-specific disclosures to issuers, the proposed rule change would promote just and equitable principles of trade by eliminating legal ambiguity under the Revised Interpretive Notice, thereby reducing the compliance burden for underwriters without diminishing the protection of municipal entities. By specifying that the underwriter making a Complex Municipal Securities Financing Recommendation must provide the transaction-specific disclosure for that recommendation, the proposed rule change may improve the accuracy and usefulness of such disclosures to municipal entities.

The Commission further believes that proposed rule change would remove impediments to and perfect the mechanism of a free and open market by clarifying which potential material conflicts of interest must be disclosed by underwriters and at what time. This portion of the proposed rule change may reduce the volume of initial conflicts disclosures that must be provided, limiting such disclosures to those conflicts that are most concrete and probable, and therefore most useful to issuers at that time.

The Commission further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, and facilitate transactions in municipal securities, by permitting an email read receipt to serve as the issuer's acknowledgement of receipt of the applicable disclosures under the Revised Interpretive Notice. This provision of the proposed rule change would improve the efficiency of the disclosure process by allowing underwriters to seek, and issuers to provide, acknowledgement electronically through the built-in, automatic process of an email system. The Commission believes that municipal entities would continue to be protected under the Revised Interpretive Notice because the underwriter would have a fair dealing obligation to receive the email read receipt from a specific official identified as the issuer's primary contact for the receipt of such disclosures or from an issuer official that the underwriter reasonably believes has authority to bind the issuer by contract with the underwriter. In addition, the proposed rule change would not permit an underwriter to rely on an email read receipt as an issuer's acknowledgement where such reliance is unreasonable under all of the facts and circumstances, such as where the underwriter is on notice that the issuer official to whom the email is addressed has not in fact received or opened the email. Further, the recipient of such an automatic email read receipt request would still have the option to not provide this form of acknowledgement.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change, on efficiency, competition, and capital formation.[150] The Commission believes that the proposed rule change clarifies underwriter disclosure obligations and will streamline certain obligations specified in the 2012 Interpretive Notice and, thereby, reduce the burdens associated with those obligations, including the obligation of underwriters to make, and the burden on issuers to acknowledge and review, written disclosures that are duplicative, itemize risks and conflicts that are not reasonably likely to materialize during the course of a transaction, and/or are not unique to a particular transaction or underwriting engagement. The Commission further believes that the proposed rule change may increase the efficiency of certain market practices, such as enhancing the ability of issuers to efficiently and properly evaluate the risks associated with a given transaction (thereby improving the protection of issuers), including by separately identifying the different categories of disclosures, providing additional clarity to underwriters regarding the scope of their regulatory obligations to municipal entity issuers, and permitting an email read receipt to serve the issuer's acknowledgment of receipt of disclosures in certain circumstances, thereby reducing the burdens of obtaining acknowledgment in those cases.

As noted above, the Commission received three comment letters on the Notice of Filing and three comment letters on Amendment No. 1. The Commission believes that the MSRB, through its responses and through Amendment No. 1 and Amendment No. 2, has addressed commenters' concerns.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

[150] 15 U.S.C. 78c(f).

V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use of the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2019–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2019–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2019–10 and should be submitted on or before December 4, 2019.

VI. Accelerated Approval of Proposed Rule Change

The Commission finds good cause for approving the original proposed rule

change, as modified by Amendment No. 1 and Amendment No. 2, prior to the 30th day after the date of publication of the Notices of Amendment No. 1 and Amendment No. 2 in the **Federal Register**. As discussed above, Amendment No. 1 proposes to revise the original proposed rule change to state that (1) the underwriter making a recommendation to the issuer regarding a financing structure, including, when applicable, a Complex Municipal Securities Financing Recommendation, has the fair dealing obligation to deliver the applicable transaction-specific disclosures and (2) the notice does not apply to a dealer acting as a primary distributor in a continuous offering of municipal fund securities. Amendment No. 1 and Amendment No. 2 otherwise propose to revise the original proposed rule change with technical modifications intended to more precisely define the scope of its application and/or to promote clarity in its interpretation. The MSRB has stated that it believes that the modifications to the original proposed rule change are responsive to commenters, and are consistent with the original proposed rule change.[151]

For the foregoing reasons, the Commission finds good cause for approving the original proposed rule change, as modified by Amendment No. 1 and Amendment No. 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[152] that the proposed rule change (SR–MSRB–2019–10) be, and hereby is, approved on an accelerated basis.

For the Commission, pursuant to delegated authority.[153]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24601 Filed 11–12–19; 8:45 am]

BILLING CODE 8011–01–P

[151] *See* Amendment No. 1, Amendment No. 2.

[152] 15 U.S.C. 78s(b)(2).

[153] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87482; File No. 265–30]

Fixed Income Market Structure Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Federal Advisory Committee renewal.

SUMMARY: The Securities and Exchange Commission is publishing this notice to announce that the Chairman of the Commission, with the concurrence of the other Commissioners, has approved the renewal of the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee.

FOR FURTHER INFORMATION CONTACT: David Dimitrious, Senior Special Counsel, at (202) 551–5131, or Arisa Kettig, Special Counsel, at (202) 551–5676, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App, the Commission is publishing this notice that the Chairman of the Commission, with the concurrence of the other Commissioners, has approved the renewal of the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (the ''Committee''). The Chairman of the Commission affirms that the renewal of the Committee is necessary and in the public interest.[1]

The Committee's objective is to provide the Commission with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure.

No more than 21 voting members will be appointed to the Committee. Such members shall represent a cross-section of those directly affected by, interested in, and/or qualified to provide advice to the Commission on matters related to fixed income market structure. The Committee's membership will continue to be balanced fairly in terms of points of view represented. Non-voting members may also be named.

The charter provides that the duties of the Committee are to be solely advisory. The Commission alone will make any determinations of actions to be taken and policies to be expressed with respect to matters within the Commission's jurisdiction. The Committee will meet at such intervals as are necessary to carry out its functions. The charter contemplates that the full Committee will meet four times. Meetings of subgroups or subcommittees of the full Committee may occur more frequently.

The Committee will operate for one year from the date it is renewed or such earlier date as determined by the Commission unless, before the expiration of that time period, it is renewed in accordance with the Federal Advisory Committee Act. A copy of the charter for the Committee has been filed with the Committee on Banking, Housing, and Urban Affairs of the United States Senate, the Committee on Financial Services of the United States House of Representatives, and the Committee Management Secretariat of the General Services Administration. A copy of the charter as so filed also will be filed with the Chairman of the Commission, furnished to the Library of Congress, and posted on the Commission's website at *www.sec.gov.*

By the Commission.

Dated: November 7, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–24653 Filed 11–12–19; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* 41 CFR 102–3.30(a).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87474; File No. SR–DTC–2019–010]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change in Connection With Changes to the Account Structure of Euroclear Bank at The Depository Trust Company

November 6, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2019, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[5] of DTC would make technical amendments to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the

Rule 34 (EB Link) in connection with changes to the account structure of Euroclear Bank SA/NV (''EB'') at DTC, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposal would make technical amendments to Rule 34 (EB Link) in connection with changes to the account structure of EB at DTC, as described below.

(i) Background

EB was accepted by DTC as a Participant on February 18, 2016. At the time, the purpose of EB's membership was to establish a free-of-payment (''FOP'') Account at DTC (''EB CP Account'')[6] to facilitate the positioning of securities (''CP Securities'') held at DTC (''EB Collateral Positioning'') for transfers on the books of EB in connection with EB collateral management services.[7] To support EB Collateral Positioning, DTC filed Rule 34, which was approved by the Commission on July 19, 2016.[8]

Under Rule 34, a DTC Participant that is also a participant of EB (''CP Participant'') may designate a sub-account at DTC (''CP Sub-Account'') for use under Rule 34, thereby authorizing EB as its representative (''CP Representative''), and authorizing DTC to provide position and transaction information to EB and to accept EB instructions submitted on behalf of such CP Participant, with respect to the CP Sub-Account of the CP Participant.[9]

The CP Participant instructs DTC to deliver securities from the CP Participant's Securities Account to its CP Sub-Account, in order to identify the securities that it wishes to make available for EB Collateral Positioning and collateral transfers on the books of EB (''EB Collateral Transactions''). After the CP Securities have been credited to the CP Sub-Account, EB, as CP Representative of the CP Participant, instructs DTC to make a FOP delivery of the CP Securities from the CP Sub-Account to the EB CP Account. After CP Securities have been credited to the EB CP Account, it is then EB's responsibility to credit them to an account at EB maintained for the CP Participant, as an EB participant using EB collateral management services (''EB Collateral Participant''), for EB Collateral Transactions.

Pursuant to Rule 34, EB may also instruct DTC to make a FOP delivery of CP Securities from the EB CP Account to the Securities Account of a Participant that EB has designated to DTC as EB's global custodian (''EB Global Custodian'') in order to liquidate CP Securities, if a CP Participant that is an EB Collateral Participant has defaulted on its obligations in respect of any EB Collateral Transaction (''EB Liquidating Transaction'').

(ii) Proposed Rule Change

EB has now applied to DTC for a delivery-versus-payment (''DVP'') Account, and its application was approved by DTC on September 20, 2019. With a DVP Account, EB will be permitted to engage in other transactions, including DVP transactions, at DTC, in addition to the FOP deliveries provided for under Rule 34.[10] EB has also requested that the new DVP Account (''New EB Account'') become its main Securities Account, and that the EB CP Account become a sub-account of the New EB Account.

In light of this development, DTC has reviewed Rule 34 and determined that, although no substantive changes may be necessary, it would be preferable to clarify certain provisions of Rule 34 to more accurately reflect the new EB account structure. Specifically, DTC is proposing to make minor technical amendments to Rule 34 that would (i) more clearly differentiate between the EB CP Account and other Securities Accounts of EB, and (ii) expressly provide EB with the option to instruct DTC to deliver CP Securities from the EB CP Account to another Securities Account of EB for EB Liquidating Transactions if a CP Participant that is an EB Collateral Participant has defaulted on one of its EB Collateral Transaction obligations.

A. EB Collateral Positioning

Currently, the language of Rule 34 reflects that the EB CP Account is the only EB Account at DTC.[11] In particular, Rule 34 defines the Securities Account established by EB for purposes of Rule 34 as the ''EB Account.'' However, because EB's application to establish a DVP Account has been approved by DTC, the Securities Account established by EB for Rule 34 will no longer be the only EB Account. Therefore, to more clearly differentiate between the EB CP Account and other Securities Accounts of EB that may be established, including, but not limited to the New EB Account, DTC is proposing to change the defined term in Rule 34 from ''EB Account'' to ''EB CP Account.'' In addition, to conform with that change, DTC is proposing to replace the current title of Rule 34, ''EB Link,'' with a new title, ''EB Collateral Positioning,'' and to delete the defined term ''EB Link'' from Rule 34.

Rules, By-Laws and Organization Certificate of The Depository Trust Company (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx*.

[6] Rule 34 provides that the adjectival use of ''CP'' in Rule 34 refers to terms or matters relating and limited to ''Collateral Positioning'' under Rule 34. *See id.*

[7] Prior to the establishment of the EB CP Account, EB had not been a DTC Participant nor had an Account at DTC.

[8] *See* Securities Exchange Act Release No. 78358 (July 19, 2016), 81 FR 48482 (July 25, 2016) (SR–DTC–2016–004) (''Rule 34 Approval Order'').

[9] In addition, Rule 34 provides that the CP Participant has to be a user of the DTCC Euroclear Global Collateral Ltd. (''DEGCL'') Inventory Management Service (''DEGCL IMS''). DEGCL is a United Kingdom joint venture of The Depository Trust & Clearing Corporation, the corporate parent of DTC, and Euroclear S.A./N.V. (''Euroclear''). As noted in the Rule 34 Approval Order, DTC understands that by providing Participants with a mechanism for EB Collateral Positioning, Rule 34 indirectly supports the DEGCL IMS service. DEGCL IMS is operated by EB and other entities in the Euroclear group, as the service provider to DEGCL, in accordance with appropriate agreements among them and in compliance with applicable regulatory requirements. There is no direct relationship between DTC and DEGCL IMS.

[10] DTC understands that EB performs certain functions of a clearing agency with respect to U.S. securities for its U.S. participants pursuant to an exemption from clearing agency registration approved by the Commission (the ''EB Exemption''). *See* Self-Regulatory Organizations; Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System; Order Approving Application for Exemption From Registration as a Clearing Agency, Securities Exchange Act Release No. 39643 (February 11, 1998), 63 FR 8232 (February 18, 1998); Self-Regulatory Organizations; Morgan Guaranty Trust Company, Brussels Office, as Operator of the Euroclear System and Euroclear Bank, S.A.; Order Approving Application to Modify an Existing Exemption From Clearing Agency Registration, Securities Exchange Act Release No. 43775 (December 28, 2000), 66 FR 819 (January 4, 2001); and Euroclear Bank SA/NV; Order of the Commission Approving an Application To Modify an Existing Exemption From Clearing Agency Registration, Securities Exchange Act Release No. 79577 (December 16, 2016), 81 FR 93994 (December 22, 2016) (File No. 601–01).

[11] *See supra* note 7.

B. EB Liquidating Transactions

Rule 34 currently provides that EB may instruct DTC to deliver CP Securities from the EB CP Account to the EB Global Custodian in connection with an EB Liquidating Transaction. With its new account structure, EB may process EB Liquidating Transactions through its own DVP Securities Accounts, including the New EB Account, and may no longer require an EB Global Custodian. Therefore, DTC is proposing to amend Rule 34 to expressly provide EB with the option to deliver CP Securities from the EB CP Account to another Securities Account of EB for EB Liquidating Transactions. Specifically, the proposed rule change would provide that ''EB may, from time to time . . . (iii) in connection with an EB Liquidating Transaction, instruct the Corporation to make a Free Delivery of CP Securities from the EB CP Account [12] to the Securities Account of the EB Global Custodian *or to another Securities Account of EB,* whereupon such Securities shall no longer be CP Securities [emphasis added].''

In addition, DTC is proposing to make conforming changes to the definitions of ''CP Securities'' and ''EB Global Custodian.''

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) of the Act.[13]

Section 17A(b)(3)(F) of the Act requires, *inter alia,* that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[14] The proposed rule change would make minor technical amendments to Rule 34 in connection with changes requested by EB to its account structure at DTC in order to (i) clearly differentiate between the EB CP Account and other Securities Accounts of EB, and (ii) expressly provide EB with the option, under specific circumstances, to instruct DTC to deliver securities from the EB CP Account to another Securities Account of EB. By amending Rule 34 in this manner, the proposed rule change would enhance the clarity and transparency of Rule 34 so that Participants may better understand how to use Rule 34 for EB Collateral Positioning, which would allow Participants to more accurately and efficiently deploy their securities collateral for EB Collateral Transactions. Therefore, DTC believes that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities collateral transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC believes that the proposed rule change would not have an impact on competition.[15] The proposed rule change would make minor technical amendments to Rule 34 in connection with changes requested by EB to its account structure at DTC by (i) clearly differentiating between the EB CP Account and other Securities Accounts of EB, and (ii) expressly providing EB with the option, under specific circumstances, to instruct DTC to deliver securities from the EB CP Account to another Securities Account of EB. The proposed rule change would not make any substantive changes to the rights and obligations of Participants or other interested parties under Rule 34, and so would not affect such rights and obligations. Therefore, DTC believes that the proposed rule change to make technical amendments to Rule 34 would not have an impact on competition.[16]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2019–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2019–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2019–010 and should be submitted on or before December 4, 2019.

[12] As noted above, pursuant to the proposed rule change, DTC would change the defined term ''EB Account'' to ''EB CP Account.''

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] *Id.*

[15] 15 U.S.C. 78q–1(b)(3)(I).

[16] *Id.*

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24600 Filed 11–12–19; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16145 and #16146; SOUTH CAROLINA Disaster Number SC–00060]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4464–DR), dated 09/30/2019.

Incident: Hurricane Dorian.

Incident Period: 08/31/2019 through 09/06/2019.

DATES: Issued on 11/05/2019.

Physical Loan Application Deadline Date: 11/29/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 06/30/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Carolina, dated 09/30/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Allendale.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–24622 Filed 11–12–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 10933]

60-Day Notice of Proposed Information Collection: Evaluation of the Professional Fellows Program

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to January 13, 2020.

ADDRESSES: You may submit comments by the following methods:

- *Web:* persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2019–0038'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, who may be reached on (202) 632- 6193 or at *DonahueNR@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Evaluation of the Professional Fellows Program (PFP).
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Educational and Cultural Affairs (ECA/P/V).
- *Form Number:* No form.
- *Respondents:* Contacts at institutions and organizations that hosted and interacted with foreign Fellows; families that hosted PFP fellows in their homes.
- *Estimated Number of Professional Contact Survey Respondents:* 1,526.
- *Estimated Number of Professional Contact Survey Responses:* 300.
- *Average Time per Professional Contact Survey Response:* 20 minutes.
- *Total Estimated Burden Time for Professional Contact Survey:* 100 hours.
- *Estimated Number of Professional Contact Interviews:* 40.
- *Estimated Number of Number of Professional Contact Interview Responses:* 40.
- *Average Time per Professional Contact Interview:* 40 minutes.
- *Total Estimated Burden Time for Professional Contact Interviews:* 26.7 hours.
- *Estimated Number of Host Family Survey Respondents:* 855.
- *Estimated Number of Host Family Survey Responses:* 86.
- *Average Time per Host Family Survey Response:* 15 minutes.
- *Total Estimated Burden Time for Host Family Survey Response:* 21.5 hours.
- *Estimated Number of Homestay Host Interviews:* 40.
- *Estimated Number of Homestay Host Interview Responses:* 40.
- *Average Time per Homestay Host Interview:* 30 minutes.
- *Total Estimated Burden Time for Homestay Host Interviews:* 20 hours.
- *Total Estimated Burden Time (All Instruments for U.S Audiences):* 168 hours.
- *Frequency:* Once.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The PFP is a two-way, global exchange program for mid-level emerging leaders from select foreign countries. The PFP is managed by the Professional Fellows Division of the Bureau of Educational and Cultural Affairs. Foreign fellows come to the United States for a five- to six-week

fellowship, including a minimum four-week tailored placement in a relevant professional organization (NGO's, business, government, etc.) and an end of program conference in Washington, DC. While in the Unites States, the foreign fellows volunteer in their local community, stay with local families, and create follow-on project plans to implement back in their home country. A select number of U.S. counterparts travel overseas on an outbound program that is approximately two weeks in length to directly support foreign fellows' follow-on projects. This program is funded pursuant to the Mutual Educational and Cultural Exchanges Act of 1961 (22 U.S.C. 2451–2464).

To fully evaluate the effectiveness and impacts of the program, the U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) intends to collect data to include the perspectives of:

- The foreign fellows who participated in the PFP between 2013 and 2018;
- U.S. professionals who interacted the foreign fellows during their exchange in the United States; and
- U.S. families who hosted the foreign fellows during their stay.

In order to do so, ECA contracted with GDIT to administer surveys and conduct face-to-face interviews with the stakeholders listed above.

Methodology

Data will be collected with a focus on answering how the program is advancing DoS strategic policy priorities, how well the program is meeting its goals and how alumni have operationalized skills and knowledge learned during their exchange experience to promote mutual understanding, create positive change, and build collaborative networks.

The evaluation will employ a mixed-methods data collection strategy, including face-to face interviews and online surveys. Online surveys will be administered to all foreign fellows, U.S. professionals and U.S. homestay hosts. To collect more in depth responses, face-to-face interviews will be conducted with a subset of foreign fellows, foreign colleagues, U.S. professional contacts and U.S. homestay hosts. The combination of methods will allow GDIT to generate a quantitative profile of the program and at the same time, capture rich qualitative data.

Nini Forino,

Acting Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–24638 Filed 11–12–19; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: In September of 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice.

DATES: The product exclusions announced in this notice will apply as of the September 24, 2018, effective date of the $200 billion action, to August 7, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), and 84 FR 57803 (October 28, 2019).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders can request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $200 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative would periodically announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September and October 2019. *See* 84 FR 49591 and 84 FR 57803. The Office of the United States Trade Representative (USTR) regularly updates the status of each pending request on the USTR Exclusions Portal at *https://exclusions.ustr.gov/s/PublicDocket.*

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the June 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in two 10-digit HTSUS subheadings and 34 specially prepared product descriptions, which cover 42 separate exclusion requests.

In accordance with the June 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(5) are conforming amendments to the HTSUS reflecting the modification made by the Annex.

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018, to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. By inserting the following new heading 9903.88.34 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1—General'', respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
"9903.88.34	Articles the product of China, as provided for in U.S. note 20(mm) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable sub-heading".	.....	.....

2. by inserting the following new U.S. note 20(mm) to subchapter III of chapter 99 in numerical sequence:

''(mm) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.03 and provided for in U.S. notes 20(e) and (f) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.03. See 83 FR 47974 (September 21, 2018) and 84 FR 29576 (June 24, 2019). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.03 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

(1) 8409.91.3000

(2) 8708.50.9500

(3) Floor coverings of polyvinyl chloride, presented in the form of tiles or planks designed to snap together during installation (described in statistical reporting number 3918.10.1000)

(4) Vinyl floor tiles of polymers of vinyl chloride, designed to click together during installation, each measuring 4.7 mm or more but not over 8 mm in thickness, 18 cm or more but not over 23 cm in width and 120 cm or more but not over 182 cm in length (described in statistical reporting number 3918.10.1000)

(5) Vinyl floor tiles of polymers of vinyl chloride, designed to click together during installation, measuring 7 mm in thickness, 18 cm or more but not over 19 cm in width and 120 cm or more but not over 125 cm in length (described in statistical reporting number 3918.10.1000)

(6) Dog and cat leashes, collars, harnesses, retractable leashes, muzzles, and head halters of nylon, polyester or soy-based webbing of various sizes; and tie out cables, stakes and aerials of iron or steel of various sizes, such cables, stakes and aerials presented in a form to be sold individually or in sets (described in statistical reporting number 4201.00.3000)

(7) Standard wood moldings, of oak (described in statistical reporting number 4409.29.4100)

(8) Engineered flooring, of oak, consisting of a 1.2 mm thick oak veneer top layer, 5.8 mm stone-plastic composite core and a 2 mm polyethylene backing, such flooring coated with aluminum oxide, measuring not over 191 cm long by 19 cm wide by 0.9 cm thick (described in statistical reporting number 4412.99.5105)

(9) Flooring panels constructed of a hardwood veneer measuring 0.6 mm or more but not over 1.2 mm in thickness laminated onto a waterproof stone-polymer composite base, with the thickness of each panel between 5 mm and 7.5 mm, with tongue and groove mechanism for installation and an attached foam pad (described in statistical reporting number 4412.99.5105)

(10) Assembled fence sections, of reeds held together with rows of wire, each section measuring 1.8 m or more but not over 1.9 m in height and 4.5 m or more but not over 4.6 m in width, or measuring not over 1.3 m in height and

not over 2.5 m in width (described in statistical reporting number 4421.91.7020)

(11) Rigid boxes of paperboard weighing 1.2 kg per m^2 covered with paper with a decorative design, each presented with hang tag, a handle and two imitation leather straps with snaps, such boxes measuring 21 cm or more but not over 23 cm in height, 21 cm or more but not over 23 cm in length and 5 cm or more but not over 9 cm in depth (described in statistical reporting number 4819.50.4040)

(12) Silk fabrics, containing 85 percent or more by weight of silk or of silk waste other than noil silk, the foregoing not printed, not jacquard woven, measuring over 127 cm in width (described in statistical reporting number 5007.20.0065)

(13) Silk fabrics, containing 85 percent or more by weight of silk or of silk waste other than noil silk, the foregoing not printed, not jacquard woven, measuring 107 cm or more but not over 127 cm in width (described in statistical reporting number 5007.20.0085)

(14) High tenacity single yarn of polyester multifilament, of 554 decitex or more but not over 556 decitex, with twist of 5 turns or more per meter (described in statistical reporting number 5402.20.3030)

(15) Sinks, of cast iron enameled with porcelain (described in statistical reporting number 7324.90.0000)

(16) Portable drill presses for use with hand drills of subheading 8467.21 (described in statistical reporting number 8467.99.0190)

(17) Static converters designed for wireless (inductive) charging of telecommunication apparatus (described in statistical reporting number 8504.40.8500)

(18) Gas ignition safety controls, measuring 3.8 to 5.3 cm in height, 6.4 to 10.1 cm in width and 13.2 to 13.9 cm in depth; weighing 160 g to 380 g each; and valued not over $26 each; of a kind used in patio heaters, agricultural heaters or clothes dryers (described in statistical reporting number 8537.10.9170)

(19) Extension cords, as defined in statistical note 6 to chapter 85, for a voltage not exceeding 1,000 V, each with a receptacle at one end and a male plug at the other with prongs perpendicular to the rest of the cord, the plug under a cover of plastics measuring 115 mm in length and 70 mm in width (described in statistical reporting number 8544.42.9010)

(20) Casters, with diameter (including, where appropriate, tires) of 20 cm or more but not over 23 cm (described in statistical reporting number 8716.90.3000)

(21) Bicycle speedometers designed to be handlebar mounted, wired, with a digital display, capable of measuring the following seven variables: Current speed, average speed, maximum speed, trip distance, total distance, elapsed time and time (described in statistical reporting number 9029.20.2000)

(22) Folding chairs with frames of steel and/or aluminum, each measuring 30 cm or more but not over 97 cm in width, 20 cm or more but not over 89 cm in depth and 30 cm or more but not over 117 cm in height (described in statistical reporting number 9401.79.0015)

(23) Foldable stools with frames of steel or aluminum, each measuring not over 30.5 cm in width, 26 cm in depth and 39 cm in height (described in statistical reporting number 9401.79.0035)

(24) Fiberboard sheets, containing phenolic resin, each not exceeding 0.635 mm in thickness (described in statistical reporting number 4411.93.9090)

(25) Circular knitted fabrics of polyester and spandex, printed, other than of double knit or interlock construction, on rolls (described in statistical reporting number 6006.34.0080)

(26) Cutting pliers, each weighing 90 g or more but not over 545 g, measuring not over 32 cm in length, not over 10.5 cm in width and not over 3 cm in thickness (described in statistical reporting number 8203.20.6030)

(27) Bolt-on tips of carbon alloy steel of a kind used in tub or horizontal grinders (described in statistical reporting number 8207.90.7585)

(28) Tool tips, strips and sticks of tungsten carbide (described in statistical reporting number 8209.00.0030)

(29) Mountings, each weighing less than 2 kg, designed for use in motor vehicles primarily used for amusement, recreation, sporting and off-road transportation classified in heading 8703 or motorcycles in heading 8711 (described in statistical reporting number 8302.30.3060)

(30) Ratcheting chain hoists, other than skip hoists or hoists of a kind used for raising motor vehicles, such chain hoists not powered by an electric motor (described in statistical reporting number 8425.19.0000)

(31) Ultrasonic cleaners, with tanks of stainless steel and of a liquid capacity not over 32 liters (described in statistical reporting number 8479.89.9485)

(32) Static converters of a kind used to charge telecommunication apparatus in cars or homes, valued not over $2 each (described in statistical reporting number 8504.40.8500)

(33) Electrical insulators of glass (described in statistical reporting number 8546.10.0000)

(34) Road wheels of aluminum for motor vehicles of subheading 8703.21.01, each measuring 30 cm or more but not over 51 cm in diameter and 14 cm or more but not over 28 cm in width (described in statistical reporting number 8708.70.4545)

(35) Drive shafts, also known as propeller shafts, that connect a transmission to a differential, allowing a vehicle to move, designed for use in the manufacture of motor vehicles primarily used for amusement, recreation, sporting and off-road transportation classified in heading 8703 (described in statistical reporting number 8708.99.6805)

(36) Tension pole shower caddies, each of which adjusts to a height not to exceed 305 cm, and consists of 5 steel poles, 3 steel wire baskets and small plastic parts to hold the shelves on the poles (described in statistical reporting number 9403.20.0050)''

3. by amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99:

a. By deleting the word ''or'' where it appears after the phrase ''U.S. note 20(w) to subchapter III of chapter 99;''; and

b. by inserting the phrase ''; or (4) heading 9903.88.34 and U.S. note 20(mm) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(ll to subchapter III of chapter 99''.

4. by amending U.S. note 20(f) to subchapter III of chapter 99;

a. by deleting the word ''or'' where it appears after the phrase ''U.S. note 20(w) to subchapter III of chapter 99;''; and

b. by inserting the phrase ''; or (4) heading 9903.88.34 and U.S. note 20(mm) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(ll) to subchapter III of chapter 99''.

5. by amending the Article Description of heading 9903.88.03:

a. By deleting ''9903.88.18 or'' and inserting ''9903.88.18,'' in lieu thereof; and

b. by inserting ''or 9903.88.34,'' after ''9903.88.33,''.

[FR Doc. 2019–24623 Filed 11–12–19; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2019–001]

Surface Transportation Project Delivery Program; Ohio Department of Transportation Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice makes available the final report of Ohio Department of Transportation's (ODOT) third audit under the program.

FOR FURTHER INFORMATION CONTACT: Mr. James G. Gavin, Office of Project Development and Environmental Review, (202) 366–1473, *James.Gavin@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, or Mr. David Sett, Office of the Chief Counsel, (404) 562–3676, *david.sett@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 60 Forsyth Street 8M5, Atlanta, GA 30303. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's responsibilities for environmental review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The ODOT published its application for assumption under the NEPA Assignment Program on April 12, 2015, and made it available for public comment for 30 days. After considering public comments, ODOT submitted its application to FHWA on May 27, 2015. The application served as the basis for developing the memorandum of understanding (MOU) that identifies the responsibilities and obligations that ODOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on October 15, 2015, at 80 FR 62153, with a 30-day comment period to solicit the views of the public and Federal agencies. After the comment period closed, FHWA and ODOT considered comments and executed the MOU.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The results of each audit must be made available for public comment. The FHWA published a notice in the **Federal Register** on March 8, 2018, at 84 FR 8560, soliciting public comment for 30 days, pursuant to 23 U.S.C. 327(g). The FHWA received comments on the draft report from the American Road and Transportation Builders Association (ARTBA). The ARTBA's comments were supportive of the Surface Transportation Project Delivery Program and did not relate specifically to Audit 3. The team has considered these comments in finalizing this audit report. This notice makes available the final report of ODOT's third audit under the program.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program

FHWA Audit of the Ohio Department of Transportation

August 5, 2017, to August 10, 2018

Executive Summary

This is the third audit of the Ohio Department of Transportation's (ODOT) assumption of National Environmental Policy Act (NEPA) responsibilities, conducted by a team of Federal Highway Administration (FHWA) staff (the team). The ODOT made the effective date of the project-level NEPA and environmental review responsibilities it assumed from FHWA on December 28, 2015, as specified in a memorandum of understanding (MOU) signed on December 11, 2015, and amended on June 6, 2018. Within ODOT, the Division of Planning Office of Environmental Services (OES) is responsible to manage and deliver the environmental program. This audit examined ODOT's performance under the MOU regarding responsibilities and obligations assigned therein.

Prior to the on-site visit, the team performed reviews of ODOT's project NEPA approval documentation in EnviroNet (ODOT's official electronic environmental document filing system). This audit consisted of a review of a sample of 39 higher-risk project files out of 1,042 approved documents for Federal projects in ODOT's EnviroNet system with an environmental approval date between April 1, 2017, and March 31, 2018. The team also reviewed ODOT's response to the pre-audit information request (PAIR) and ODOT's Self-Assessment report. In addition, the team reviewed ODOT's environmental processes, manuals, and guidance; ODOT NEPA Quality Assurance and Quality Control (QA/QC) Processes and Procedures; and the ODOT NEPA Assignment Training Plan (collectively, ''ODOT procedures''). The team conducted an on-site review during the week of August 6 to August 10, 2018. The team conducted interviews with ODOT's central office staff on August 6, 2018, and with three district office staffs on August 7, 2018. The team also interviewed staff with the Ohio Department of Natural Resources (ODNR) on July 23, 2018, as part of the review.

Overall, the team found evidence that ODOT continues to make reasonable progress in implementing the NEPA Assignment Program based on Audit 1 and Audit 2 observations and demonstrated commitment to success of the program. The team found zero non-compliance observations but did note six general observations.

Background

The Surface Transportation Project Delivery Program (NEPA Assignment Program) allows a State to assume FHWA's responsibilities for review, consultation, and compliance with environmental laws for Federal-aid highway projects. When a State assumes these responsibilities, it becomes solely responsible and liable for carrying out the responsibilities assumed, in lieu of FHWA.

The State of Ohio represented by ODOT completed the application process and entered an MOU with

FHWA on December 28, 2015, and amended on June 6, 2018. With this agreement, ODOT assumed FHWA's project approval responsibilities under NEPA and NEPA-related Federal environmental laws.

The FHWA is obligated to conduct four annual compliance audits of ODOT's compliance with the provisions of the MOU. Audits serve as FHWA's primary mechanism of determining ODOT's compliance with the MOU, applicable Federal laws and policies, evaluating ODOT's progress toward achieving the performance measures identified in the MOU, and collecting information needed for the Secretary's annual report to Congress.

The team provided a draft of this report to ODOT for its review and the team considered the resulting comments in preparing the draft which was made available for public review and comment. The FHWA considered public comments on the draft in finalizing this report.

Scope and Methodology

The team conducted a careful examination of the ODOT NEPA Assignment Program through a review of ODOT procedures and project documentation, ODOT's PAIR response, and the self-assessment summary report, as well as interviews with ODOT central office and district environmental staff and resource agency staff. This review focuses on the following six NEPA Assignment Program elements: (1) Program management; (2) documentation and records management; (3) QA/QC; (4) legal sufficiency; (5) performance measurement; and (6) training.

The PAIR consisted of 18 questions, based on the responsibilities assigned to ODOT in the MOU. The team reviewed ODOT's response and compared the responses to ODOT's written procedures. The team utilized ODOT's responses to draft interview questions to clarify information in ODOT's PAIR response.

The ODOT provided its NEPA Assignment Self-Assessment summary report 30 days prior to the team's on-site review. The team considered this summary report both in focusing on issues during the project file reviews and in drafting interview questions. The report was compared against the previous year's self-assessment report and the requirements in the MOU to identify any trends.

Between March 16 and May 31, 2018, the team conducted a project file review by identifying and reviewing 39 higher-risk project files out of 1,042 approved documents of Federal-aid projects in ODOT's EnviroNet system with an environmental approval date between April 1, 2017, and March 31, 2018. The selection of these projects was based on a 100 percent sampling of d-listed Categorical Exclusions (CE), as well as all Environmental Assessments (EA) and Environmental Impact Statements. The team excluded from review those projects approved by ODOT under 23 CFR 771.117(c) (c-listed CEs) based on the review performance of those types of projects since ODOT assumed NEPA responsibilities in 2015. The projects reviewed represented all remaining NEPA classes of action available, including projects representing 9 out of 12 ODOT Districts and the Ohio Rail Development Commission.

In addition, the team reviewed ODOT's project file review associated with its self-assessment to determine if ODOT evaluated its projects in a similar fashion and using similar standards to that of the Federal portion of this review. The ODOT reviewed projects within the same sampling period as FHWA, however, ODOT samples included Federal-aid and State-only funded projects. The ODOT conducts NEPA on all projects regardless of funding source as they routinely convert funding from State to Federal later via the Advanced Construction process. The ODOT reviewed 248 projects, including 186 c-listed projects, 61 d-listed projects, and 1 EA. The team determined the State performed a rigorous annual QA review of its own projects.

During the on-site review week, the team conducted interviews with 21 ODOT staff members at the central office and three districts: District 6 (Delaware); District 7 (Sydney); and District 10 (Marietta). Interviewees included ODOT OES management and subject matter experts, Office of Diversity and Inclusion (ODI), District Environmental Coordinators (DEC), environmental staff, and public information officers, representing a diverse range of expertise and experience. These interviews focused on NEPA Assignment with emphasis on items where additional information was deemed necessary to complete the review.

The team conducted interviews 2 weeks prior to the on-site review with personnel from the ODNR. The ODNR staff provided valuable insight to the review team regarding ODOT's performance and relationships with partner resource agencies.

The team identified gaps between the information from the desktop review of ODOT procedures, PAIR, self-assessment, project file review, and interviews. The team documented the results of its reviews and interviews and consolidated the results into related topics or themes. From these topics or themes, the team developed the review observations and successful practices. The audit results are described below.

Overall, the team found evidence that ODOT continues to make reasonable progress in implementing the NEPA Assignment Program based on the Audit 1 and Audit 2 observations and demonstrated commitment to success of the program. The team found zero non-compliance observations but did note six general observations.

The FHWA team urges ODOT to monitor and make additional improvements to the program for continued successes of the program.

Observations and Successful Practices

Program Management

Observation 1: Opportunities Exist To Strengthen Coordination Between ODOT OES and ODOT ODI.

The team encourages ODOT to ensure that a proper level of communication exists between OES and ODI in order to facilitate the coordination of OES guidance and training with the ongoing ODOT-wide Title VI program enhancements. The FHWA recognizes and is supportive of the coordination and partnering efforts between OES and ODI undertaken to date and stands ready to contribute to these efforts, where appropriate.

Observation 2: There Are Inconsistencies in the Communication and Management of ODOT Policy, Manuals, Procedures, and Guidance

The ODOT developed and implemented over 140 procedures to implement NEPA Assignment, manage the program, and provide detailed instruction for completion of environmental actions to document preparers and reviewers. The ODOT shares these documents and other guidance with NEPA practitioners on a quarterly basis via email, NEPA chats and DEC Meetings, and via training. In addition, these documents are saved on a local drive accessible by ODOT environmental staff and posted to ODOT's website for consultants and local public agencies.

The FHWA found that policies, manuals, and other guidance documents are readily available. However, interviews with district staff indicate that opportunities exist to improve upon the communication of this documentation in order to ensure more consistent implementation. In addition, there are examples of training materials

containing information that is not included in the related guidance documents. In these cases, some environmental staff indicated they rely on the information in the guidance while others indicated they rely on OES instruction provided verbally or through email. Information prepared for ODOT staff should exhibit consistency, regardless of the form in which its presented.

Observation 3: Inconsistencies Remain in Public Involvement (PI) Activities Specifically Regarding Outreach Activities to Underserved and Protected Populations

The team notes and appreciates ongoing efforts by ODOT in response to previous audit recommendations for improvement and enhancement of the PI process. The team was provided examples of effective PI efforts during the interviews with district staff. However, as demonstrated in the project file reviews and the interviews, there remain areas of note in application and consistency of public involvement efforts and activities.

During FHWA's review, ODOT stated that the intent of its process regarding Environmental Justice (EJ) is to identify any disproportionately high and adverse impacts and disparate impacts on the associated populations. Although OES staff indicated that they have updated the guidance, developed new training, and provided forums for instructive discussion for all environmental staff, consultants, and Local Public Agencies, it is not clear how ODOT will ensure that outreach efforts and activities are commensurate with the level of impact or potential mitigation, as there is no discussion of outreach efforts in the *ODOT–OES' Underserved Populations Guidance.* It is unclear that the distinctions and specific requirements of protected populations are fully discerned and distinguished from each other in the guidance document, including thresholds and requirements. In addition, interview responses within OES indicated a difference of opinion in terms of what constituted outreach to underserved and protected populations.

At the district level, ODOT District environmental staff indicated that they had inconsistent information on how to determine if there were protected populations and how to conduct the required outreach activities, even if there were no disproportionately negative impacts. However, OES is trusting the districts, on projects with a lower level of NEPA classification, to ensure full and fair participation by underserved and protected populations in public involvement, NEPA and the transportation decisionmaking processes.

Documentation and Records Management

Observation 4: Opportunities Exist To Continue Improving Documentation in the Areas of PI, EJ, and Environmental Commitments

In response to previous audits and self-assessments, ODOT updated many procedures relating to the NEPA process to improve its processes and meet Federal requirements. The updates included changes to ODOT's internal documentation and filing guidelines and updates to EnviroNet. The review team thinks these changes have positively impacted the program since Audits 1 and 2.

The quality of documentation for projects is trending in a positive direction since Audits 1 and 2, as approximately 50 percent of all projects reviewed had zero deficiencies noted by the team. However, although there were examples of high quality PI, EJ reviews, development of environmental commitments, and documentation for some projects, these same elements were lacking in others. For the projects reviewed, 42 percent of substantive comments made by the team related to EJ, 22 percent to PI, 17 percent to environmental commitments, 11 percent to QA/QC, and 8 percent to documentation. This demonstrates inconsistencies in practice, which may indicate additional training, guidance, and/or quality controls may be needed to improve consistency in application of documentation statewide.

The team met with ODOT to discuss individual deficiencies noted by both FHWA and ODOT OES during this audit. The ODOT evaluated these deficiencies at OES and then communicated them individually with the districts. The ODOT remains committed to improvements in documentation, with plans to continue updates to EnviroNet and guidance, as needed, and with the training required to deliver results.

Quality Assurance/Quality Control

Observation 5: There Are Variations in Awareness, Understanding, and Implementation of QA/QC Process and Procedures

The inconsistencies and missing information noted in the Documentation and Records Management section are an indication of inconsistency in ODOT's QA/QC process. The team found inconsistencies in awareness and use of peer reviews in the ODOT Districts, as well as use of comments in EnviroNet. Selected ODOT OES and district environmental staff said that they rely on the ODOT Central Office for QC support. No training is provided exclusively for QA/QC.

Legal Sufficiency Review

The ODOT utilized its guidance for legal sufficiency to review one Environmental Impact Statement Re-evaluation, one EA, and two Individual Section 4(f) approvals.

Performance Measures

The development of Performance Measures is required in MOU Section 10.2. The ODOT has refined its Performance Measures to provide a better overall indication of ODOT's execution of its responsibilities as assigned by the MOU. The team found evidence that the results obtained through the Performance Measures are beginning to provide actionable feedback, allowing ODOT to make appropriate changes as it manages its environmental program.

Training Program

During the previous audits, it was noted that ODOT has a robust environmental training program and provides adequate budget and time for staff to access a variety of internal and external training. To add to the training program and plan, ODOT has complemented its traditional, instructor-based training courses, quarterly DEC meetings, and monthly NEPA chats with the development of several online courses. During the audit, ODOT reported that 10 online courses are anticipated to be available in August 2018, with an additional 19 online courses anticipated to be developed within the year. As of October 2018, it is not evident that these courses were yet deployed.

Observation 6: Opportunities Exist To Expand Required and Continuous Training to Additional Staff and Develop Additional Instructor-Led or Online Training in NEPA-Related Subject Areas

Also, during the previous audit, it was noted ODOT's training plan states that all ODOT environmental staff (both central and district offices) and environmental consultants are required to take the pre-qualification training courses. The ODOT should consider extending this requirement to NEPA project managers and public involvement officers. Extending the training to additional staff may improve public outreach efforts and overall program delivery. The ODOT should focus on training in NEPA and NEPA-

related subject areas such as Limited English Proficiency and Public Involvement. The FHWA encourages ODOT to include specific EJ training opportunities in its training plan, such as the Web-based course currently under development.

Finalization of Report

The FHWA received one response to the **Federal Register** Notice during the public comment period for the draft report. This response, from the American Road and Transportation Builders Association, was supportive of the Surface Transportation Delivery Program and did not relate specifically to Audit 3. This final report is substantively the same as the draft version.

[FR Doc. 2019–24654 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2019–0009]

Surface Transportation Project Delivery Program; Utah Department of Transportation Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice finalizes the findings of the second audit report for the Utah Department of Transportation (UDOT).

FOR FURTHER INFORMATION CONTACT: Ms. Deirdre Remley, Office of Project Development and Environmental Review, (202) 366–0524, *Deirdre.Remley@dot.gov,* 1200 New Jersey Avenue SE, Washington, DC 20590; or Mr. David Sett, Office of the Chief Counsel, (404) 562–3676, *David.Sett@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 60 Forsyth Street 8M5, Atlanta, GA 30303. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The UDOT published its application for NEPA assumption on October 9, 2015, and made it available for public comment for 30 days. After considering public comments, UDOT submitted its application to FHWA on December 1, 2015. The application served as the basis for developing a memorandum of understanding (MOU) that identified the responsibilities and obligations that UDOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on November 16, 2016, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and UDOT considered comments and proceeded to execute the MOU. Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The FHWA must make the results of each audit available for public comment. This notice finalizes the findings of the second audit report for UDOT participation in the NEPA Assignment program. The FHWA published a draft version of this report in the **Federal Register** on April 16, 2019, at 84 FR 15663, and made it available for public review and comment for 30 days in accordance with 23 U.S.C. 327(g). The FHWA did not receive any responses to the **Federal Register** notice during the public comment period for the draft report. This final version of the audit report incorporates the results of the draft report unchanged.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program

FHWA Audit of the Utah Department of Transportation

June 10, 2017–June 30, 2018

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) second audit of the Utah Department of Transportation's (UDOT) National Environmental Policy Act (NEPA) review responsibilities and obligations that FHWA has assigned and UDOT has assumed pursuant to 23 United States Code (U.S.C.) 327. Throughout this report, FHWA uses the term ''NEPA Assignment Program'' to refer to the program codified at 23 U.S.C. 327. Under the authority of 23 U.S.C. 327, UDOT and FHWA executed a memorandum of understanding (MOU) on January 17, 2017, to memorialize UDOT's NEPA responsibilities and liabilities for Federal-aid highway projects and certain other FHWA approvals for transportation projects in Utah. The FHWA's only NEPA responsibilities in Utah are oversight and review of how UDOT executes its NEPA Assignment Program obligations. The section 327 MOU covers environmental review responsibilities for projects that require the preparation of environmental assessments (EA), environmental impact statements (EIS), and non-designated documented categorical exclusions (DCE). A separate MOU, pursuant to 23 U.S.C. 326, authorizes UDOT's environmental review responsibilities for other categorical exclusions (CE), commonly known as CE Program Assignment. This audit does not cover the CE Program Assignment responsibilities and projects.

As part of its review responsibilities under 23 U.S.C. 327, FHWA formed a team (the ''Audit Team'') in July 2018 to plan and conduct an audit of NEPA responsibilities UDOT assumed. Prior to the on-site visit, the Audit Team reviewed UDOT's NEPA project files, UDOT's response to FHWA's pre-audit information request (PAIR), UDOT's self-assessment of its NEPA Program, UDOT's NEPA Quality Assurance/Quality Control (QA/QC) Guidance, its NEPA Assignment Training Plan, and

its NEPA Assignment Self-Assessment Report. The Audit Team conducted an on-site review during the week of October 15 to October 18, 2018. The Audit Team conducted interviews with seven members of UDOT central office staff, three staff members of UDOT's legal counsel, and two staff members from the Utah State Historic Preservation Office as part of this on-site review.

Overall, the Audit Team found that UDOT is successfully adding DCE, EA, and EIS project review responsibilities to an already successful CE review program. The UDOT has made efforts to respond to FHWA findings of the first audit, including improving document management, internal communication, and use of terms related to Section 4(f). In the first audit, FHWA Audit Team made the observation that there was inconsistent understanding of QA/QC procedures among UDOT staff. In the second audit, FHWA Audit Team identified an observation related to four instances of UDOT's lack of adherence to its QA/QC procedures. In addition, although UDOT has improved its document management, the second audit found that UDOT continues to lack procedures for retaining draft and deliberative materials for project records.

The Audit Team identified two observations as well as several successful practices. The Audit Team finds UDOT is carrying out the responsibilities it has assumed and is in substantial compliance with the provisions of the MOU.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal-aid highway projects and certain FHWA approvals. Under 23 U.S.C. 327, a State that assumes these Federal responsibilities becomes solely responsible and solely liable for carrying them out. Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA and other related environmental laws. Examples of responsibilities UDOT has assumed in addition to NEPA include section 7 consultation under the Endangered Species Act and consultation under section 106 of the National Historic Preservation Act.

Following this second audit, FHWA will conduct two more annual audits to satisfy provisions of 23 U.S.C. 327(g) and Part 11 of the MOU. Audits are the primary mechanism through which FHWA may oversee UDOT's compliance with the MOU and the NEPA Assignment Program requirements. This includes ensuring compliance with applicable Federal laws and policies, evaluating UDOT's progress toward achieving the performance measures identified in MOU Section 10.2, and collecting information needed for the Secretary's annual report to Congress. The FHWA must present the results of each audit in a report and make it available for public comment in the **Federal Register**.

The Audit Team consisted of NEPA subject matter experts from FHWA Utah Division, as well as additional FHWA Division staff from California, the District of Columbia, Georgia, and Alaska. These experts received training on how to evaluate implementation of the NEPA Assignment Program.

Scope and Methodology

The Audit Team conducted an examination of UDOT's NEPA project files, UDOT responses to the PAIR, and UDOT self-assessment. The audit also included interviews with staff and reviews of UDOT policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements: Program management; documentation and records management; QA/QC; legal sufficiency; training; and performance measurement.

The focus of the audit was on UDOT's process and program implementation. Therefore, while the Audit Team reviewed project files to evaluate UDOT's NEPA process and procedures, the Audit Team did not evaluate UDOT's project-specific decisions to determine if they were, in FHWA's opinion, correct or not. The Audit Team reviewed 23 NEPA Project files with DCEs, EAs, and EISs, representing all projects with decision points or other actionable items between June 10, 2017, and June 30, 2018. The Audit Team also interviewed environmental staff in UDOT's headquarters office.

The PAIR consisted of 29 questions about specific elements in the MOU. The Audit Team used UDOT's response to the PAIR to develop specific follow-up questions for the on-site interviews with UDOT staff.

The Audit Team conducted seven in-person interviews with UDOT environmental staff, one in-person interview with two staff members of the UDOT State Historic Preservation Office, two phone interviews with UDOT's outside legal counsel, and one interview with legal counsel from the Utah Attorney General's office. The Audit Team invited UDOT staff, middle management, and executive management to participate to ensure the interviews represented a diverse range of staff expertise, experience, and program responsibility.

Throughout the document reviews and interviews, the Audit Team verified information on the UDOT NEPA Assignment Program including UDOT policies, guidance, manuals, and reports. This included the NEPA QA/QC Guidance, the NEPA Assignment Training Plan, and the NEPA Assignment Self-Assessment Report.

The Audit Team compared the procedures outlined in UDOT environmental manuals and policies to the information obtained during interviews and project file reviews to determine if there were discrepancies between UDOT's performance and documented procedures. The Audit Team documented observations under the six NEPA Assignment Program topic areas. Below are the audit results.

Overall, UDOT has carried out the environmental responsibilities it assumed through the MOU and the application for the NEPA Assignment Program, and as such the Audit Team finds UDOT is substantially compliant with the provisions of the MOU.

Observations and Successful Practices

This section summarizes the Audit Team's observations of UDOT's NEPA Assignment Program implementation, including successful practices UDOT may want to continue or expand. Successful practices are positive results FHWA would like to commend UDOT for developing. These may include ideas or concepts that UDOT has planned but not yet implemented. Observations are items the Audit Team would like to draw UDOT's attention to, which may benefit from revisions to improve processes, procedures, or outcomes. The UDOT may have already taken steps to address or improve upon the Audit Team's observations, but at the time of the audit they appeared to be areas where UDOT could make improvements. This report addresses all six MOU topic areas as separate discussions. Under each area, this report discusses successful practices followed by observations.

This audit report provides an opportunity for UDOT to implement actions to improve its program. The FHWA will consider the status of areas identified for potential improvement in this audit's observations as part of the scope of Audit #3. The third audit report will include a summary discussion that describes progress since the last audit.

Program Management

Successful Practices

The UDOT and FHWA Division office meet on a quarterly basis to keep staff updated on current topics related to UDOT implementing the NEPA Assignment Program. During FHWA/UDOT quarterly meetings, the agencies work to ensure project delivery schedules of non-assigned Federal actions, such as Federal land transfers and Interstate access change requests as they relate to projects assigned to UDOT under the MOU. This meeting is also used to address program-level NEPA Assignment questions, such as clarifying starting dates of EAs for performance tracking.

Documentation and Records Management

Successful Practices

ProjectWise is a document database UDOT uses to maintain final project records for DCEs, EAs, and EISs. Though it was not developed specifically for producing and maintaining environmental documents, ProjectWise is accessible to all staff and can store final environmental documents and technical reports. Since the last audit, UDOT has started using organizational tools such as subfolders in ProjectWise to better organize final environmental documents. Once the environmental review process is complete for a project and the consultant has submitted final project files, UDOT uses project record checklists to confirm completeness of ProjectWise files.

Observation #1: Incomplete Retention of Environmental Project Records

The project reviews and interviews determined UDOT retains final environmental documents such as EAs, Draft EISs, Final EISs, Findings of No Significant Impact, and Records of Decision, and certain technical reports in ProjectWise. There is, however, no procedure for retaining other types of supporting materials that inform NEPA decisions and other environmental determinations. Other records, such as meeting summaries documenting coordination with resource agencies and stakeholders or telephone memos documenting conversations used to gather substantive information related to environmental decisions, were generally absent from the ProjectWise files reviewed. Some environmental staff said they store these types of documents on personal drives, local servers, or as hardcopy in filing cabinets. This dispersal and inconsistency of recordkeeping could result in document loss and difficulty of retrieval, hampering the ability to demonstrate support for Agency decisions, including compilation of administrative records in legal challenges.

Quality Assurance/Quality Control

Observation #2: Inconsistent Application of UDOT's QA/QC Procedures

Section 8.2.4 of the MOU requires UDOT to develop a QA/QC process. Project file reviews revealed that one of the two Draft EISs that UDOT approved for circulation during the audit period occurred prior to completion of the required QA/QC process. This approval was not in accordance with either the QA/QC Plan or the UDOT Manual of Instruction, which require the Environmental Document QC Form, signed by the Environmental Program Manager and the Director of Environment, be provided to the UDOT Signatory Official with the request for approval of the Draft EIS.

Project file reviews and interviews with UDOT staff revealed an inconsistent approach to conducting and documenting the QA/QC process for DCEs. The Audit Team reviewed project files for four DCEs. This review revealed three different approaches to conducting the required QA/QC for these projects. Two of these QA/QC reviews used one form, the third used a different form, and the fourth project had neither a form nor other documentation in ProjectWise. These inconsistencies in practice suggest that UDOT's QA/QC procedures may not be effective. The UDOT may also be unnecessarily increasing its risks when staff ignore stipulated quality control reviews prior to making NEPA decisions.

Legal Sufficiency

Successful Practices

During the audit period, outside counsel issued two findings of legal sufficiency per the requirements of 23 CFR 771.125(b) and 23 CFR 774.7(d), copies of which were provided to the Audit Team. Through interviews, the Audit Team learned UDOT has continued using the legal sufficiency process it put in place for both Section 326 CE and section 327 NEPA Assignment, which is contracting with outside counsel who have extensive experience in NEPA, other environmental laws, and Federal environmental litigation. The UDOT Environmental Managers work directly with outside counsel. Nevertheless, an Assistant AG assigned to UDOT is kept apprised of all communications between UDOT staff and outside counsel and reviews all bills submitted by outside counsel. Outside counsel have been included as part of the ''project team'' from the start of projects, and some have reviewed draft notices of intent for EISs. In addition, the UDOT, an Assistant AG, and outside counsel hold quarterly meetings at which UDOT staff apprise counsel of upcoming project reviews and anticipated review deadlines.

Training

Successful Practices

The UDOT has created a training plan that is customized to each employee's needs and disciplines to provide more focused training opportunities by specialty. The UDOT provides training on general environmental topics such as NEPA, and provides opportunities for subject matter experts to take training related to their disciplines.

Performance Measures

Successful Practices

The UDOT's self-assessment documented the performance management details of the NEPA Assignment program in Utah, which demonstrates UDOT's procedures under NEPA assignment have resulted in a 50 percent reduction in the time to complete DCEs, EAs, and EISs. The average time to complete environmental documents is 5 months for DCEs, 18 months for EAs, and 37 months for an EIS. Although these data are based on a limited number of completed UDOT NEPA reviews since January 2017 (nine DCEs, two EAs, and one EIS), UDOT's initial timeliness results are promising. The UDOT will continue to monitor its progress towards improving timeliness of environmental reviews as part of its performance under the NEPA Assignment Program.

Finalizing the Report

The FHWA published a draft version of this report in the **Federal Register** on April 16, 2019, at 84 FR 15663, and made it available for public review and comment for 30 days in accordance with 23 U.S.C. 327(g). The FHWA did not receive any responses to the **Federal Register** notice during the public comment period for the draft report. This version of the audit report incorporates the results of the draft report unchanged.

[FR Doc. 2019–24655 Filed 11–12–19; 8:45 am]

BILLING CODE 4910–22–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 219 November 13, 2019

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[EPA–HQ–OW–2017–0300; FRL–10001–16–OW]

RIN 2040–AF15

National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) proposes regulatory revisions to the National Primary Drinking Water Regulation (NPDWR) for lead and copper under the authority of the Safe Drinking Water Act (SDWA). This proposed rule provides more effective protection of public health by reducing exposure to lead and copper in drinking water. This proposed rule also strengthens procedures and requirements related to health protection and the implementation of the existing Lead and Copper Rule (LCR) in the following areas: Lead tap sampling; corrosion control treatment; lead service line replacement; consumer awareness; and public education. This proposal does not include revisions to the copper requirements of the existing LCR. In addition, this proposal includes new requirements for community water systems to conduct lead in drinking water testing and public education in schools and child care facilities.

DATES: Comments must be received on or before January 13, 2020. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 13, 2019.

ADDRESSES: Submit your comments identified by Docket ID No. EPA–HQ–OW–2017–0300, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *http://www.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 *https://www.epa.gov/dockets/commenting-epa-dockets.* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Erik Helm, Standards and Risk Management Division, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Mail Code 4607M, Washington, DC 20460; telephone number: (202) 566–1049 (TTY 800–877–8339); email address: *Helm.Erik@EPA.gov.* For more information visit *https://www.epa.gov/dwreginfo/lead-and-copper-rule.*

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I. General Information

The United States has made tremendous progress in lowering children's blood lead levels. As a result of multiple Federal laws and regulations, including the 1973 phase-out of lead in automobile gasoline (40 CFR part 80, subpart B), the 1978 Federal regulation banning lead paint for residential and consumer use (16 CFR part 1303), the 1991 LCR (40 CFR part 141, subpart I), and the 1995 ban on lead in solder in food cans (21 CFR 189.240), the median concentration of lead in the blood of children aged 1 to 5 years dropped from 15 micrograms per deciliter in 1976–1980 to 0.7 micrograms per deciliter in 2013–2014, a decrease of 95 percent.

Although childhood blood lead levels have been substantially reduced as a result of these actions, data evaluated by the National Toxicology Program (NTP), 2012 demonstrates that there is sufficient evidence to conclude that there are adverse health effects associated with low-level lead exposure. Sources of lead include lead-based paint, drinking water, and soil contaminated by historical sources. The Federal Action Plan (Action Plan) to Reduce Childhood Lead Exposures and Associated Health Impacts, issued in December 2018, provides a blueprint for reducing further lead exposure and associated harm through collaboration among Federal agencies and with a range of stakeholders, including States, tribes, and local communities, along with businesses, property owners, and parents. The Action Plan is the product of the President's Task Force on Environmental Health Risks and Safety Risks to Children (Task Force). The Task Force is comprised of 17 Federal departments and offices including the Department of Health and Human Services (HHS) and the Department of Housing and Urban Development, which co-chaired the development of the Action Plan with EPA.

Through this plan, the EPA committed to reducing lead exposures from multiple sources including: Paint, ambient air, and soil and dust contamination, especially children who are among the most vulnerable to the effects of lead. To reduce exposure to lead in paint, the EPA published new, tighter standards for lead in dust on floors and windowsills to protect children from the harmful effects of lead exposure (84 FR 32632). These revised, strengthened standards will reduce the amount of lead in dust that causes adverse health effects and that may warrant measures to reduce risks. To address lead in soil, the EPA will continue to remove, remediate, and take corrective actions at contaminated sites, expand the use of Soil Screening, Health, Outreach and Partnership (SoilSHOP) health education events, and manage lead contamination at Superfund, a Resource Conservation and Recovery Act (RCRA) Corrective Action, and other sites. The EPA will also continue to work with State and tribal air agencies to implement the National Ambient Air Quality Standards and evaluate the impacts of lead emissions from aviation fuel. The EPA is also focused on conducting critical research and improving public awareness by consolidating and streamlining Federal messaging.

Lead and copper enter drinking water mainly from corrosion of lead and copper containing plumbing materials. Lead was widely used in plumbing materials until Congress banned its use in 1986, and there are an estimated 6.3 to 9.3 million homes served by lead service lines (LSLs) in thousands of communities nationwide, in addition to millions of older buildings with lead solder, and brass/bronze fittings and faucets across the U.S. To reduce exposure to lead through drinking water, the Action Plan highlights several key actions, including the EPA's commitment to making regulatory changes to the definition of lead-free plumbing products and assisting schools and childcare centers with the 3Ts approach (Training, Testing and Taking Action) for lead in drinking water. The Action Plan also highlights the EPA's continued support to States and communities by providing funding opportunities through the Drinking Water State Revolving Fund and the Water Infrastructure Finance and Innovation Act loan program for updating and replacing drinking water infrastructure. In addition, the Action Plan highlights three newly authorized grant programs under the Water Infrastructure Improvements for the Nation Act, for which Congress appropriated $50 million in FY2018, to fund grants to small and disadvantaged communities for developing and maintaining infrastructure, for lead reduction projects, and to support the voluntary testing of drinking water in schools and child care centers. The Action Plan also highlights the importance of preventing lead exposure from drinking water by working with States, tribes, and local stakeholders to share best practices and tools to better implement the NPDWR for Lead and Copper. For more information about the Federal Lead Action Plan see *https://www.epa.gov/sites/production/files/2018-12/documents/fedactionplan_lead_final.pdf.*

Since the implementation of the Lead and Copper Rule (LCR), drinking water exposures have declined significantly, resulting in major improvements in public health. For example, the number of the nation's large drinking water systems that have exceeded the LCR action level of 15 parts per billion has decreased by over 90 percent and over 95 percent of the all water systems have not reported an action level exceedance in the last three years (EPA–815–F–19–007). Despite this progress, there is a compelling need to modernize and improve the rule by strengthening its public health protections and clarifying its implementation requirements to make it more effective and more readily enforceable. Also, due to the financial and practical challenges of wide-spread replacement of lead pipes around the country, it is important to use our nation's resources wisely, and thus target actions where they are most needed and can provide the most good.

The LCR is a more complicated drinking water treatment technique regulation due to the need to control corrosivity of treated drinking water as

it travels through often antiquated distribution and plumbing systems on the way to the consumer's tap. States and public water systems require expertise and resources to identify the sampling locations and to work with customers to collect samples for analysis. Even greater expertise is needed for systems and states to identify the optimal corrosion control treatment and water quality parameter monitoring to assure that lead and copper levels are reduced to the extent feasible. The current structure of the rule compels additional protective actions on the part of a water system only after a potential problem has been identified (*i.e.,* the lead action level is exceeded), which may result in periods where the public is exposed to elevated levels of lead while the system evaluates and implements the actions required.

Water systems cannot unilaterally implement the actions that are needed to reduce levels of lead in drinking water. Homeowners must be engaged to assure successful lead service line replacement because in most communities, LSLs are partially owned by the water system and partially owned by the homeowner. Water systems must also engage with consumers to encourage actions such as flushing that reduce their exposure to lead in drinking water. The ability of water systems to successfully engage with consumers to reduce lead exposure can pose challenges to achieving the goals of the LCR.

The EPA has sought input over an extended period on ways in which the Agency could address the challenges to achieving the goals for the LCR. Section VIII of this notice describes the engagements the Agency has had with small water systems, state and local officials, the Science Advisory Board and the National Drinking Water Advisory Council (NDWAC). The Science Advisory Board provided their recommendations in 2012 (SAB, 2012). The NDWAC provided extensive recommendations on potential LCR revisions to the EPA in December 2015 (NDWAC, 2015).

This notice's proposal includes a suite of actions that approach the problem of lead contamination in drinking water from different perspectives but that taken together can further reduce lead exposure in drinking water. This approach focuses on six key areas:

1. *Identifying areas most impacted.* To help identify areas most in need of remediation, the EPA is proposing that all water systems complete and maintain a lead service line (LSL) inventory and collect tap samples from homes with LSLs if present in the distribution system. To reduce elevated levels of lead in certain locations, the EPA proposes to require water systems to ''find-and-fix'' the causes of these elevated levels (see Section III.K. of this notice).

2. *Strengthening treatment requirements.* The EPA is proposing to revise requirements for corrosion control treatment (CCT) based on the tap sampling results. The EPA's proposal also establishes a new trigger level of 10 µg/L. At this trigger level, systems that currently treat for corrosion would be required to re-optimize their existing treatment. Systems that do not currently treat for corrosion would be required to conduct a corrosion control study.

3. *Replacing Lead Service Lines.* The EPA is proposing to require water systems to replace the water system-owned portion of an LSL when a customer chooses to replace their customer-owned portion of the line. The EPA is also proposing to require water systems to initiate full lead service line replacement programs where tap sampling shows that lead levels in tap water exceed the existing action level and the proposed trigger level. The proposal requires systems that are above the trigger level but at or below the lead action level to set an annual goal for conducting replacements and for systems that are above the action level to annually replace a minimum of three percent of the number of known or potential LSLs in the inventory at the time the action level exceedance occurs. The proposal also prevents systems from avoiding LSLR by ''testing out'' with an LSL sample as is allowed in the current LCR.

4. *Increasing sampling reliability.* The EPA is proposing to prohibit tap sampling instructions that call for pre-stagnation flushing, the cleaning or removing of faucet aerators, and a requirement that tap samples be collected in bottles with a wide-mouth configuration. The EPA is also changing the criteria for selecting homes with LSLs when collecting tap samples. For example, the EPA is proposing tap sample site selection focus on sites with LSLs rather than copper pipe with lead solder.

5. *Improving risk communication.* The EPA is proposing to require systems to notify customers of an action level exceedance within 24 hours. It also requires systems to conduct regular outreach to the homeowners with LSLs. The EPA is also proposing to require that the LSL inventory, which would include location identifiers, be made publicly available.

6. *Protecting children in schools.* Since children risk the most significant harm from lead exposure, the EPA is proposing that community water systems (CWS) sample drinking water outlets at each school and each child care facility served by the system. The system would be required to provide the results to the school or child care facility and to provide information about the actions the school or child care facility can take to reduce lead in drinking water.

Through strengthened treatment procedures, expanded sampling, and improved protocols for identifying lead, the EPA's proposed revisions will require more water systems to progressively take more actions to reduce lead levels at the tap. Additionally, by improving transparency and communication, the proposed rule is expected to increase community awareness and further reduce sources of lead through enhanced LSLR. By taking the collective actions discussed throughout the proposal, the EPA, States, and water systems will be implementing a proactive holistic approach to more aggressively manage lead in drinking water.

A. What is the EPA proposing?

The EPA is proposing revisions to the LCR that strengthen public health protection and improve implementation of the regulation in the following areas: Lead tap sampling; CCT; LSLR; consumer awareness; and public education (PE). This proposal adopts a regulatory framework recommended in part by State co-regulators through the Association of State Drinking Water Administrators (ASDWA) and incorporates many recommendations provided to the EPA by the National Drinking Water Advisory Council (NDWAC). NDWAC is a *Federal Advisory Committee* that provides EPA with advice and recommendations related to the national drinking water program. The Council was established under the *Safe Drinking Water Act of 1974.* The EPA is proposing revisions to the LCR that would require water systems to take actions at lower lead tap water levels than currently required to reduce lead in drinking water and better protect public health. The agency is proposing to establish a new lead ''trigger level'' of 10 µg/L in addition to the 15 µg/L lead action level in the current LCR. Public health improvements would be achieved by requiring more water systems to take a progressive set of actions to reduce lead levels at the tap. These proposed actions are designed to reduce lead and copper exposure by ensuring effective CCT and re-optimization of CCT when water

quality declines; enhanced water quality parameter WQP) monitoring; establishment of a ''find-and-fix'' provision to evaluate and remediate elevated lead at a site where the individual tap sample exceeds the lead action level requiring water systems to create an LSL inventory to ensure tap sampling pools are targeted to the sites with elevated lead, and making consumers aware of the presence of a LSL, if applicable, and to facilitate replacement of LSLs. The LCR proposed revisions are expected to improve tap sampling by better targeting higher risk sites for lead contamination, *i.e.,* sites with lead service lines or lead containing plumbing materials and improving the sampling protocol. The EPA also proposes revisions to the LCR PE and Consumer Confidence Report (CCR) requirements to improve communication with consumers. In addition, this proposal includes requirements for community water systems (CWSs) to conduct lead in drinking water testing and PE in schools and child care facilities.

Together, these proposed revisions to the framework and specific requirements of the current LCR would result in greater public health protection at all sizes CWSs and non-transient non-community water systems (NTNCWSs). Implementation of the proposed revisions would better identify when and where lead contamination occurs, or has the potential to occur, and require systems to take actions to address it more effectively and sooner than required under the current rule.

The following table compares the major differences between the current Lead and Copper Rule (LCR) and proposed Lead and Copper Rule revisions (LCRR). In general, requirements that are unchanged are not listed. Comparison of current LCR and proposed LCR revisions (LCRR).

Current LCR	Proposed LCRR
Action Level (AL) and Trigger Level (TL)	
• 90th percentile (P90) level above lead AL of 15 μg/L or copper AL of 1.3 mg/L requires additional actions.	• 90th percentile (P90) level above lead AL of 15 μg/L or copper AL of 1.3 mg/L requires more actions than the current rule. • Defines trigger level (TL) of P90 >10 and ≤15 μg/L that triggers additional planning, monitoring, and treatment requirements.
Lead and Copper Tap Monitoring	
Sample Site Selection: • Prioritizes collection of samples from sites with sources of lead in contact with drinking water. • Highest priority given to sites served by copper pipes with lead solder installed after 1982 but before the State ban on lead pipes and/or lead service lines (LSLs). • Systems must collect 50% of samples from LSLs, if available.	*Sample Site Selection:* • Changes priorities for collection of samples with a greater focus on lead service lines. • Prioritizes collecting samples from sites served by LSLs. • No distinction in prioritization of copper pipes with lead solder by installation date. • Systems must collect all samples from sites served by LSLs, if available.
Collection Procedure: • Requires collection of a one liter sample after water has sat stagnant for a minimum of 6 hours.	*Collection Procedure:* • Adds requirement that samples must be collected in wide-mouth bottles. • Prohibits sampling instructions that include recommendations for aerator cleaning/removal and pre-stagnation flushing prior to sample collection.
Monitoring Frequency: • Samples are analyzed for both lead and copper. • Systems must collect standard number of samples, based on population; semi-annually unless they qualify for reduced monitoring. • Systems can qualify for annual or triennial monitoring at reduced number of sites. Schedule based on number of consecutive years meeting the following criteria: ○ Serves ≤50,000 people and ≤ lead & copper ALs. ○ Serves any population size, meets State-specified optimal water quality parameters (OWQPs), and ≤ lead AL. • Triennial monitoring also applies to any system with lead and copper 90th percentile levels ≤0.005 mg/L and ≤0.65 mg/L, respectively, for 2 consecutive 6-month monitoring periods. • 9-year monitoring waiver available to systems serving ≤3,300.	*Monitoring Frequency:* • Some samples may be analyzed for lead only when lead monitoring is conducted more frequently than copper. • Copper follows the same criteria as the current rule. • Lead monitoring schedule is based on P90 level for all systems as follows: ○ *P90 >15 μg/L:* Semi-annually at the standard number of sites. ○ *P90 >10 to 15 μg/L:* Annually at the standard number of sites. ○ *P90 ≤10 μg/L:* ▪ Annually and triennially at reduced number of sites using same criteria as current rule except copper 90th percentile level is not considered. ▪ Every 9 years based on current rule requirements for a 9-year monitoring waiver.
Corrosion Control Treatment (CCT) and Water Quality Parameters (WQPs)	
CCT: • Systems serving >50,000 people were required to install treatment by January 1, 1997 with limited exception. • Systems serving ≤50,000 that exceed lead and/or copper AL are subject to CCT requirements (*e.g.*, CCT recommendation, study if required by Primacy Agency, CCT installation). They can discontinue CCT steps if no longer exceed both ALs for two consecutive 6-month monitoring periods. • Systems must operate CCT to meet any Primacy Agency-designated OWQPs that define optimal CCT. • There is no requirement for systems to re-optimize.	*CCT:* • Specifies CCT requirements for systems with P90 level >10 to ≤15 μg/L: ○ *No CCT:* Must conduct a CCT study if required by Primacy Agency. ○ *With CCT:* Must follow the steps for re-optimizing CCT, as specified in the rule. • Systems with P90 level >15 μg/L: ○ *No CCT:* Must complete CCT installation regardless of their subsequent P90 levels. ○ *With CCT:* Must re-optimize CCT.

Current LCR	Proposed LCRR
	• Community water systems (CWSs) serving ≤10,000 people and non-transient water systems (NTNCWSs) can select an option other than CCT to address lead. *See Small System Flexibility.*
CCT Options: Includes alkalinity and pH adjustment, calcium hardness adjustment, and phosphate or silicate-based corrosion inhibitor.	*CCT Options:* Removes calcium hardness as an option and specifies any phosphate inhibitor must be orthophosphate.
Regulated WQPs: • *No CCT:* pH, alkalinity, calcium, conductivity, temperature, orthophosphate (if phosphate-based inhibitor is used), silica (if silica-based inhibitor is used). • *With CCT:* pH, alkalinity, and based on type of CCT either orthophosphate, silica, or calcium.	*Regulated WQPs:* • Eliminates WQPs related to calcium hardness (*i.e.*, calcium, conductivity, and temperature).
WQP Monitoring: • Systems serving ≥50,000 people must conduct regular WQP monitoring at entry points and within the distribution system. • Systems serving ≤50,000 people conduct monitoring only in those periods > lead or copper AL. • Contains provisions to sample at reduced number of sites in distribution system less frequency for all systems meeting their OWQPs.	*WQP Monitoring:* • Systems serving ≥50,000 people must conduct regular WQP monitoring at entry points and within the distribution system. • Systems serving ≤50,000 people must continue WQP monitoring until they no longer > lead and/or copper AL for two consecutive 6-month monitoring periods. • To qualify for reduced WQP distribution monitoring, P90 must be ≤10 μg/L and the system must meet its OWQPs.
Sanitary Survey Review: • Treatment must be reviewed during sanitary surveys; no specific requirement to assess CCT or WQPs.	*Sanitary Survey Review:* • CCT and WQP data must be reviewed during sanitary surveys against most recent CCT guidance issued by EPA.
Find and Fix: No required follow-up samples or additional actions if an individual sample exceeds 15 μg/L.	*Find and Fix:* If individual tap sample >15 μg/L, systems must: • Collect a follow-up sample at each location >15 μg/L. • Conduct WQP monitoring at or near the site >15 μg/L. • Perform needed corrective action.
LSL Inventory and LSLR Plan	
Initial LSL Program Activities: • Systems were required to complete a materials evaluation by the time of initial sampling. No requirement to update materials evaluation. • No LSLR plan is required.	*Initial LSL Program Activities:* • All systems must develop an LSL inventory or demonstrate absence of LSLs within first 3 years of final rule publication. • LSL inventory must be updated annually. • All systems with known or possible LSLs must develop an LSLR plan.
LSLR: • Systems with LSLs with P90 >15 μg/L after CCT installation must annually replace ≥7% of number of LSLs in their distribution system when the lead action level is first exceeded. • Systems must replace the LSL portion they own and offer to replace the private portion at the owner's expense. • Full LSLR, partial LSLR, and LSLs with lead sample results ≤15 μg/L ("test-outs") count toward the 7% replacement rate. • Systems can discontinue LSLR after 2 consecutive 6-month monitoring periods ≤ lead AL.	*LSLR:* • Rule specifies replacement programs based on P90 level for CWSs serving >10,000 people: ○ *If P90 >15 μg/L:* Must fully replace 3% of LSLs per year (mandatory replacement) for 4 consecutive 6-month monitoring periods. ○ *If P90 >10 to 15 μg/L:* Implement an LSLR program with replacement goals in consultation with the Primacy Agency for 2 consecutive 1-year monitoring periods. • Small CWSs and NTNCWSs that select LSLR as their compliance option must complete LSLR within 15 years if P90 >15 μg/L *See Small System Flexibility.* • Annual LSLR rate is based on number of LSLs when the system first exceeds the action level plus the current number of service lines of unknown materials. • Only full LSLR (both customer-owned and system-owned portion) count toward mandatory rate or goal-based rate. • All systems must replace their portion of an LSL if notified by consumer of private side replacement within 3 months of the private replacement. • Following each LSLR, systems must: ○ Provide pitcher filters/cartridges to each customer for 3 months after replacement. Must be provided within 24 hours for full and partial LSLRs. ○ Collect a lead tap sample at locations served by replaced line within 3 to 6 months after replacement.
LSL-Related Outreach: • When water system plans to replace the portion it owns, it must offer to replace customer-owned portion at owner's expense. • If system replaces its portion only: ○ Provide notification to affected residences within 45 days prior to replacement on possible elevated short-term lead levels and measures to minimize exposure. ○ Include offer to collect lead tap sample within 72 hours of replacement. ○ Provide test results within 3 business days after receiving results.	*LSL-Related Outreach:* • Inform consumers annually that they are served by LSL or service line of unknown material. • Systems subject to goal-based program must: ○ Conduct targeted outreach that encourages consumers with LSLs to participate in the LSLR program. ○ Conduct an additional outreach activity if they fail to meet their goal. • Systems subject to mandatory LSLR include information on LSLR program in public education (PE) materials that are provided in response to P90 > AL.

Current LCR	Proposed LCRR
Small System Flexibility	
No provisions for systems to elect an alternative treatment approach but sets specific requirements for CCT and LSLR.	Allows CWSs serving ≤10,000 people and all NTNCWSs with P90 >10 µg/L to elect their approach to address lead with Primacy Agency approval: • Systems can choose CCT, LSLR, or provision and maintenance of point-of-use devices. • NTNCWSs can also elect to replace all lead-bearing materials.
Public Education and Outreach	
• All CWSs must provide education material in the annual Consumer Confidence Report (CCR). • Systems with P90 > AL must provide PE to customers about lead sources, health effects, measures to reduce lead exposure, and additional information sources • Systems must provide lead consumer notice to individuals served at tested taps within 30 days of learning results.	• CWSs must provide updated health effects language and information regarding LSLR program in the CCR. • If P90 > AL: ○ Current PE requirements apply. ○ Systems must notify customers of P90 > AL within 24 hours. • In addition, CWSs must: ○ Improve public access to lead information including LSL locations and respond to requests for LSL information. ○ Deliver notice and educational materials to customers during water-related work that could disturb LSLs. ○ Provide increased information to healthcare providers. ○ Provide lead consumer notice to customers whose individual tap sample is >15 µg/L within 24 hours. • *Also see LSL-Related Outreach in LSLR section of table.*
Change in Source or Treatment	
Systems on a reduced tap monitoring schedule must obtain prior Primacy Agency approval before changing their source or treatment.	Systems on any tap monitoring schedule must obtain prior Primacy Agency approval before changing their source or treatment.
Source Water Monitoring and Treatment	
• Periodic source water monitoring is required for systems with: ○ Source water treatment; or ○ P90 > AL and no source water treatment.	• Primacy Agencies can waive continued source water monitoring if the: ○ System has already conducted source water monitoring for a previous P90 > AL; ○ Primacy Agency has determined that source water treatment is not required; *and* ○ System has not added any new water sources.
Lead in Drinking Water at Schools and Child Care Facilities	
• Does not include separate testing and education program for CWSs at schools and child care facilities. • Schools and child cares that are classified as NTNCWSs must sample for lead and copper.	• CWSs must conduct lead in drinking water testing and PE at 20% of K–12 schools and licensed child cares in service area every year. • Sample results and PE must be provided to each sampled school/child care, Primacy Agency and local or State health department. • Excludes facilities built after January 1, 2014.
Primacy Agency Reporting	
Primacy Agencies must report information to EPA that includes but is not limited to: • All P90 levels for systems serving >3,300 people, and only levels >15 µg/L for smaller systems. • Systems that are required to initiate LSLR and the date replacement must begin. • Systems for which optimal corrosion control treatment (OCCT) has been designated.	Expands current requirements to include: • All P90 values for all system sizes. • The current number of LSLs and service lines of unknown material for every water system. • OCCT status of all systems including Primacy Agency-specified OWQPs.

B. Does this action apply to me?

Entities that could potentially be affected include the following:

Category	Examples of potentially affected entities
Public water systems	Community water systems (CWSs) (a public water system that (A) serves at least 15 service connections used by year-round residents of the area served by the system; or (B) regularly serves at least 25 year-round residents).

Category	Examples of potentially affected entities
	Non-transient, non-community water systems (NTNCWSs) (a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year).
State and tribal agencies	Agencies responsible for drinking water regulatory development and enforcement.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be affected by this action. To determine whether your facility or activities could be affected by this action, you should carefully examine this proposed rule.

As part of this notice for the proposed rule, ''State'' refers to the agency of the State or tribal government which has jurisdiction over public water systems consistent with the definition of ''State'' in 40 CFR 141.2. During any period when a State or tribal government does not have primary enforcement responsibility pursuant to section 1413 of the Safe Drinking Water Act (SDWA), the term ''State'' means the Regional Administrator, U.S. Environmental Protection Agency. 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.

II. Background

A. Health Effects of Lead and Copper

Exposure to lead is known to present serious health risks to the brain and nervous system of children. Lead exposure causes damage to the brain and kidneys and can interfere with the production of red blood cells that carry oxygen to all parts of the body. Lead has acute and chronic impacts on the body. The most robustly studied and most susceptible subpopulations are the developing fetus, infants, and young children. Even low level lead exposure is of particular concern to children because their growing bodies absorb more lead than adults do, and their brains and nervous systems are more sensitive to the damaging effects of lead. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead (56 FR 26548, June 7, 1991). Infants who consume mostly mixed formula made from tap water can, depending on the level of lead in the system and other sources of lead in the home, receive 40 percent to 60 percent of their exposure to lead from drinking water used in the formula. Scientists have linked lead's effects on the brain with lowered IQ and attention disorders in children. During pregnancy, lead exposure may affect prenatal brain development. Lead is stored in the bones and it can be released later in life. Even at low levels of lead in blood, there is an increased risk of health effects in children (*e.g.,* <5 micrograms per deciliter) and adults (*e.g.,* <10 micrograms per deciliter).

The 2013 Integrated Science Assessment for Lead (USEPA, 2013) and the U.S. Department of Health and Human Services' National Toxicology Program Monograph on Health Effects of Low-Level Lead (National Toxicology Program, 2012) have both documented the association between lead and adverse cardiovascular effects, renal effects, reproductive effects, immunological effects, neurological effects, and cancer. The EPA's Integrated Risk Information System (IRIS) Chemical Assessment Summary provides additional health effects information on lead (USEPA, 2004a). For a more detailed explanation of the health effects associated with lead for children and adults see Appendix D of the Economic Analysis (reference EA).

Acute copper exposure causes gastrointestinal distress. Chronic exposure to copper is particularly a concern for people with Wilson's disease because they are prone to copper accumulation in body tissue, which can lead to liver damage, neurological, and/or psychiatric symptoms.

B. Statutory Authority

The EPA is publishing these proposed revisions to the LCR under the authority of the Safe Drinking Water Act (SDWA), including sections 1412, 1413, 1414, 1417, 1445, and 1450 of the SDWA. 42 U.S.C. 300f *et seq.*

Section 1412(b)(7)(A) of the SDWA authorizes the EPA to promulgate a treatment technique ''which in the Administrator's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible.'' 42 U.S.C. 300g–1(b)(7)(A). Section 1412(b)(9) provides that ''[T]he Administrator shall, not less often than every six years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.'' 42 U.S.C. 300g–1(b)(9). In promulgating a revised NPDWR, the EPA follows the applicable procedures and requirements described in section 1412 of the SDWA, including those related to (1) the use of the best available, peer-reviewed science and supporting studies; (2) presentation of information on public health effects; and (3) a health risk reduction and cost analysis of the rule in 1412(b)((3)(A), B), (C) of the SDWA, 42 U.S.C. 300g–1(b)(3)(A)–(C).

Section 1414(c) of the SDWA, as amended by the Water Infrastructure Improvements for the Nation Act, requires public water systems to provide notice to the public if the water system exceeds the lead action level. 42 U.S.C. 300g–3(c). The SDWA section 1414(c)(2) provides that the Administrator ''shall, by regulation . . . prescribe the manner, frequency, form, and content for giving notice'' under section 1414(c). 42 U.S.C. 300g–3(c)(2). The SDWA section 1414(c)(2)(C) specifies additional requirements for those regulations related to public notification of a lead action level exceedance ''that has the potential to have serious adverse effects on human health as a result of short-term exposure,'' including requirements for providing notification to the EPA.

Section 1417(a)(2) of the SDWA provides that public water systems ''shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from the lead content of the construction materials of the public water distribution system and/or corrosivity of the water supply sufficient to cause leaching of lead. 42 U.S.C. 300g–6(a)(2).

Section 1445(a) of the SDWA authorizes the Administrator to establish monitoring, recordkeeping, and reporting regulations, to assist the Administrator in establishing regulations under the SDWA, determining compliance with the SDWA, and in advising the public of the risks of unregulated contaminants. 42 U.S.C. 300j–4(a). In requiring a public water system to monitor under section 1445(a) of the SDWA, the Administrator may take into consideration the water system size and the contaminants likely to be found in the system's drinking water. 42 U.S.C. 300j–4(a). The SDWA section 1445(a)(1)(C) of the SDWA provides that ''every person who is subject to a national primary drinking water regulation'' under the SDWA, section 1412 must provide such

information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 1412. 42 U.S.C. 300j–4(a)(1)(C).

Under section 1413(a)(1) of the SDWA a State may exercise primary enforcement responsibility (''primacy'') for NPDWRs when the EPA has determined that the State has adopted regulations that are no less stringent than the EPA's. 42 U.S.C. 300g–2(a)(1). To obtain primacy for this rule, States must adopt comparable regulations within two years of the EPA's promulgation of the final rule, unless the EPA grants the State a two-year extension. State primacy requires, among other things, adequate enforcement (including monitoring and inspections) and reporting. The EPA must approve or deny State primacy applications within 90 days of submission to the EPA. 42 U.S.C. 300g–2(b)(2). In some cases, a State submitting revisions to adopt an NPDWR has primary enforcement authority for the new regulation while the EPA's decision on the revision is pending. 42 U.S.C. 300g–2(c).

Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out his or her functions under the Act. 42 U.S.C. 300j–9.

C. Regulatory History

The EPA published the LCR on June 7, 1991, to control lead and copper in drinking water at the consumer's tap. The rule established a NPDWR for lead and copper consisting of treatment technique requirements that include CCT, source water treatment, LSLR, and PE. The rule established an action level of 0.015 mg/L or 15 µg/L for lead and 1.3 mg/L or 1,300 µg/L for copper. The action level is a concentration of lead or copper in the water that determines, in some cases, whether a water system must install CCT, monitor source water, replace LSLs, and undertake a PE program. The action level is exceeded if the concentration in more than 10 percent of tap water samples collected during any monitoring period is greater than the action level (*i.e.,* if the 90th percentile level is greater than the action level). If the 90th percentile value for tap water samples is above the action level, it is not a violation, but rather compels actions, such as WQP monitoring, CCT, source water monitoring/treatment, PE, and LSLR. Failure to take these actions results in the water system being in violation of the treatment technique or monitoring and reporting requirements.

In 2000, the EPA promulgated the Lead and Copper Rule Minor Revisions or LCRMR, which streamlined requirements, promoted consistent national implementation, and in many cases, reduced burden for water systems. One of the provisions of the LCRMR required States to report the lead 90th percentile to the EPA's Safe Drinking Water Information System (SDWIS) database for all water systems serving greater than 3,300 persons. States must report the lead 90th percentile value for water systems serving 3,300 or fewer persons only if the water system exceeds the action level. The new reporting requirements became effective in 2002. In 2004, the EPA published minor corrections to the LCR to reinstate text that was inadvertently dropped from the rule during the previous revision.

In 2004, the EPA undertook a national review of the LCR and performed a number of activities to help identify needed actions to improve implementation of the LCR. The EPA collected and analyzed lead concentration data and other information required by the LCR, carried out review of implementation by States, held four expert workshops to further discuss elements of the LCR, and worked to better understand local and State efforts to test for lead in school drinking water, including a national meeting to discuss challenges and needs. The EPA used the information collected during the national review to identify needed short-term and long-term regulatory revisions to the LCR.

In 2007, the EPA promulgated a set of short-term regulatory revisions and clarifications to strengthen implementation of the LCR in the areas of monitoring, treatment, customer awareness, LSLR, and improve compliance with the PE requirements to ensure drinking water consumers receive meaningful, timely, and useful information needed to help them limit their exposure to lead in drinking water. Long-term issues, requiring additional research and input, were identified for a subsequent set of rule revisions. In this proposed rule, the EPA is addressing those longer-term revisions to further improve public health protection.

III. Proposed Revisions to 40 CFR Subpart I Control of Lead and Copper

A. Lead Trigger Level

The EPA is proposing to establish a new lead ''trigger level'' of 10 µg/L and retain the 15 µg/L lead action level in the current LCR. The EPA established the lead action level in the 1991 based on feasibility and not based on impact on public health. The proposed trigger level is also not a health based standard. The EPA is not revising the 1991 determination that achieving the action level of 15 µg/L is feasible. The EPA is proposing the lead trigger level because the Agency has determined that meaningful reductions in drinking water lead exposure could be achieved by requiring water systems to take a progressive set of certain actions to reduce lead levels at the tap. The EPA proposes that 10 µg/L is a reasonable threshold to require water system to undertake actions. The concept of including additional thresholds to compel actions before an action level exceedance was suggested by the ASDWA during the federalism consultation process (USEPA, 2018). This regulatory framework is similar to other national primary drinking water regulations (NPDWRs), such as the Long-Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), which requires increasing levels of remedial action based on the concentration of the contaminant. The proposed LCRR sets the fewest requirements for systems at or below the TL and the most stringent requirements for systems above the lead AL. The Agency is requesting comment on the appropriate level and other aspects relating to the trigger level in Section VII.

In the event of a trigger level exceedance, the actions water systems would be required to take vary based on characteristics of the system. For example, small CWSs serving populations of 10,000 or fewer persons and all sizes of NTNCWS that exceed the lead trigger level, but not the lead action level, would evaluate the small system flexibilities described in Section III.E. of this notice. Under this proposal, medium and large CWSs that exceed the trigger level, but do not exceed the action level, would be required to implement requirements based on their CCT and LSL status as described below.

Water systems with CCT in place and with no LSLs or service lines of unknown materials would be required to: Re-optimize CCT (see Section III.B.2); and conduct annual tap sampling (no reduced monitoring (see Section III.G.2)).

Water systems without CCT in place and with no LSLs or service lines of unknown materials would be required to: Conduct a CCT study and obtain State approval for designated CCT (see Section III.B.2); and conduct annual tap sampling (no reduced monitoring (see Section III.G.2)).

Water systems with CCT in place and with LSLs or service lines of unknown

materials would be required to: Re-optimize CCT (see Section III.B.2); notify customers with LSLs or unknowns (see Section III.F.1); implement goal based LSLR program (see Section III.D.3); and conduct annual tap sampling (no reduced monitoring (see Section III.G.2)).

Water systems without CCT in place and with LSLs or service lines of unknown materials would be required to: Conduct a CCT study and obtain State approval for designated CCT (see Section III.B.2. of this notice) notify customers with an LSL or unknowns (see Section III.F.1); implement goal based LSLR program (see Section III.D.3. of this notice); and conduct annual tap sampling (no reduced monitoring (see Section III.G.2 of this notice)).

B. Corrosion Control Treatment

Corrosion in water systems is defined as the electrochemical interaction between a metal surface such as pipe wall or solder and water. During this interaction, metal is oxidized and transferred to the water. Metal release is a function of the reactions that occur between the metal ions released due to corrosion, and the physical, chemical, and biological characteristics of the water and the metal surface (USEPA, 2016c). Corrosion control treatment involves changing water quality characteristics including alkalinity, pH, and dissolved inorganic carbon or addition of a corrosion inhibitor such as orthophosphate to reduce the rate of metal release into the water.

Under the current LCR, all water systems serving more than 50,000 people were required to install corrosion control treatment (CCT) soon after the LCR went into effect, unless they were deemed to have optimized corrosion control. Water systems serving fewer than 50,000 people are not required to install CCT under the current rule unless the water system exceeds the lead or copper action level. Water systems serving 50,000 or fewer people that exceed the action level and have not yet installed CCT must begin working with their State to monitor water quality parameters (WQPs) and install and maintain CCT. Those systems may stop the process of identifying and installing CCT if they meet both the lead and copper action levels during each of two consecutive 6-month monitoring periods. Given the critical role of CCT in reducing lead in drinking water and protecting the health of all water system consumers, the EPA is proposing several revisions to the LCR to reflect current understanding of the efficacy of various corrosion control treatments and to assure robust evaluation of corrosion control treatment effectiveness at each system.

1. Corrosion Control Evaluation During Sanitary Surveys

The EPA is proposing changes to the current sanitary survey to include requirements for states to include an evaluation of CCT as part of the survey. States are required to regularly perform sanitary surveys of public water systems in accordance with the Interim Enhanced Surface Water Treatment Rule (§ 141.723) and the Ground Water Rule (§ 141.401). The requirements for the sanitary survey may include an evaluation of the drinking water source, operation and maintenance of water system equipment, and compliance with local and national drinking water standards. There are eight elements addressed during a sanitary survey. These elements include: Source; treatment; distribution system; finished water storage; pumps, pump facilities and controls; monitoring, reporting, data verification; system management and operation; and operator compliance with State requirements. These sanitary surveys do not currently contain requirements specific to the LCR.

EPA believes that the sanitary survey is a fitting opportunity for states to review the system's implementation of OCCT and to assure there are not deficiencies that could interfere with the capability of the drinking water system to consistently and reliably deliver an adequate quality and quantity of safe drinking water to the consumer. The NDWAC (NDWAC, 2015) and ASDWA (USEPA, 2018) recommended a periodic evaluation of CCT as a part of the sanitary survey.

States would be required to review CCT and to assess WQPs during sanitary surveys for water systems that have installed CCT. The review must consider any updated EPA guidance on CCT during the sanitary survey. Reviewing updated EPA CCT guidance is consistent with the National Drinking Water Advisory Council's (NDWAC, 2015) recommendations to reevaluate CCT and WQP based upon updated EPA guidance and as best practices continue to evolve as new information and science emerges. This proposed revision will promote regular review of CCT and WQPs by states and will enhance consistency and efficacy by allowing states to consider new information and CCT guidance, as appropriate, during sanitary surveys. By combining the review of the CCT with the existing sanitary survey requirement of the Public Water System Supervision program, states and water systems can cost effectively assure regular review of the treatment technique.

2. Corrosion Control Treatment Requirements Based on Lead 90th Percentile

The EPA is proposing revisions to the LCR provisions by requiring the installation of CCT or optimization of CCT based on the lead 90th percentile level. The current rule provisions for CCT are based primarily on the water system size, and only require small and medium-sized water systems (serving 50,000 or fewer people) to meet CCT requirements if they exceed the lead or copper action level. Before installing CCT, water systems must make an optimized CCT recommendation to the state or conduct a CCT study, if required to do so. However, these water systems can discontinue CCT steps if their 90th percentile levels are at or below the lead and copper action levels for two consecutive 6-month monitoring periods. The CCT steps are only commenced after a subsequent lead action level exceedance. Under the current rule, once a water system has optimized CCT, there are no requirements for water systems to adjust or re-evaluate CCT, even after an action level exceedance or a failure to meet optimal water quality parameters (OWQPs), unless directed to do so by the State. Under the current LCR, States may, but are not required to, modify the designated CCT on its own initiative or in response to a request by a water system or other interested party, when it concludes that a change is necessary to ensure the system continues to optimize corrosion control treatment.

The EPA is proposing to mandate additional CCT requirements based on the water system's lead 90th percentile level and CCT status. All water systems with CCT that have a lead trigger level exceedance (>10 μg/L but ≤15 μg/L) or a lead action level exceedance (≥15 μg/L) will be required to re-optimize their CCT. Water systems would be required to make a re-optimization recommendation and receive state approval following the procedures described in proposed § 141.82(a). The state may require the water system to conduct a CCT study.

This proposal would require water systems without CCT that exceed the lead trigger level (10 μg/L) to conduct a CCT study and make a CCT recommendation in accordance with proposed revisions in § 141.82(a). The CCT recommendation would be implemented if the water system exceeds the lead action level in subsequent tap sampling. Water systems without CCT that have previously

conducted a CCT study and made CCT recommendations would not be required to prepare a new CCT study if they exceed the trigger level again unless the state determines that a new study is required due to changed circumstances, such as addition of a new water source or changes in treatment or if revised CCT guidance has been issued by the EPA since the study was conducted. The state may also determine that a new CCT study is needed due to other significant information becoming available.

The EPA is proposing changes to the CCT options that water systems must consider and the methods by which water systems would evaluate those options. As described later in this section, the EPA is proposing to remove calcium carbonate stabilization as a CCT option. The EPA is also proposing to require water systems to evaluate two additional options for orthophosphate-based corrosion control. The current requirement for evaluating orthophosphate-based corrosion inhibitor specifies that systems must evaluate maintaining an ''effective residual concentration in all test tap samples.'' The EPA has determined, based upon experience in implementing these requirements, that systems may not be evaluating a full range of orthophosphate residual concentrations to achieve optimal corrosion control. Therefore, the EPA is proposing to add two new treatment options for evaluation as a part of corrosion control studies: Maintaining a 1 mg/L orthophosphate residual concentration and maintaining a 3 mg/L orthophosphate residual concentration.

The EPA is also proposing changes to the methodologies by which systems evaluate CCT options. The EPA is proposing to clarify that metal coupon tests can only be used as a screen to reduce the number of options that are evaluated using pipe rig/loops. Metal coupon tests would no longer be able to be used as the basis for determining the optimal corrosion control treatment (OCCT). The EPA is proposing this change based upon experience with implementing the rule and the concern that metal coupons are not representative of the existing condition of the lead service lines (LSLs) or leaded plumbing materials that are present in the distribution system and which have scales that have formed as a result of being exposed to the drinking water over a number of years (Ministry of Ontario, 2009).

The EPA is also clarifying cases when systems choose to conduct coupon studies to screen potential options and/or pipe rig/loop studies; these systems cannot exclude a treatment option from the study based upon potential effects on other water quality treatment processes. Systems that are conducting coupon screening studies and/or pipe loop/rig studies should identify potential constraints, such as the impact of CCT options or treatment chemicals may have on other water quality treatment processes. Those impacts should be noted and considered as part of the CCT study design. For example, water systems conducting a corrosion control study would be required to consider pH and alkalinity adjustment but must also consider how adjustment of pH could affect compliance with other NPDWRs. Increased pH may result in increased formation of total trihalomethanes and result in an exceedance of the maximum contaminant level for those contaminants. Conversely, decreases in pH may result in increased formation of haloacetic acids and result in an exceedance of the maximum contaminant level for those contaminants. Rather than rule out pH and alkalinity adjustment as a CCT strategy because of simultaneous compliance concerns, systems should determine an upper bound pH, where the increase in pH would create increased trihalomethanes and incorporate that into the corrosion control study design.

Similarly, the use of orthophosphate for corrosion control can increase the phosphorus loading to wastewater treatment facilities. Increased phosphorus loading may be a concern for wastewater systems with phosphorus discharge limits or for systems that discharge into water bodies where phosphorus is a limiting nutrient. However, the EPA is proposing that water systems conducting corrosion control studies would not be able to rule out orthophosphate simply based on the increase in loading to wastewater treatment facilities. In designing the CCT studies, water systems would evaluate the orthophosphate treatment options in the coupon screening and/or pipe loop/rig studies. When selecting the optimal CCT, States and water systems would consider phosphorus removal treatment that may be needed by the receiving wastewater treatment system to meet any phosphorus discharge limits or otherwise prevent impacts to water quality. The EPA has examined the potential costs of additional phosphorus usage on wastewater treatment systems as described in section VI.C.9 of this notice. The EPA is proposing that a water system that exceeds the lead action level (15 μg/L), that has previously not exceeded the lead trigger level and does not have CCT installed, would be required to conduct a CCT study, make a treatment recommendation, and obtain State approval for the treatment recommendation. The EPA proposes that systems be required to complete these steps even if the system meets the lead action level in two subsequent, consecutive 6-month monitoring periods over the course of this process. Water systems that meet the action level for two consecutive 6-month monitoring periods before installing the State-approved treatment would be required to install that CCT upon any subsequent action level exceedance. The EPA proposes to retain the current LCR provision that allows a State to waive the requirement for a CCT study. This proposal includes flexibilities for small systems related to CCT (see section III.E. of this notice).

3. Calcium Carbonate Stabilization

The EPA is proposing to remove calcium carbonate stabilization as a potential CCT technique and thus calcium as a regulated WQP. The EPA is proposing to eliminate the option of calcium carbonate stabilization as a CCT because literature indicates that calcium carbonate does not form a film on lead and copper pipes to a level that makes it effective as a CCT option (AwwaRF and DVGW—Technologiezentrum Wasser, 1996; Schock and Lytle, 2011; Hill and Cantor, 2011). The EPA proposes the removal of WQP monitoring related to calcium hardness in the current rule, which includes monitoring for calcium, conductivity, and water temperature. Under this proposal, water systems would also not be required to analyze effects of calcium hardness adjustments during their CCT evaluations. All other CCT options, including alkalinity and pH adjustment and the addition of a phosphate- or silicate-based corrosion inhibitor, will be maintained from the current rule. The best available science has identified these as the most effective treatment options at this time (USEPA, 2003; Wilczak et al., 2010; Schock and Lytle, 2011). These changes are being proposed to assure the efficacy of CCT, to the extent feasible, based upon best available peer-reviewed science.

C. Lead Service Line Inventory

The EPA is proposing revisions to the current lead service line inventory requirements of the LCR because the Agency believes that better information regarding the number and locations of lead service lines is critical to a water

system's ability to inform the public about the potential risks of lead in drinking water and to assure reductions in drinking water lead exposure. Numerous studies have evaluated the contribution of lead in drinking water from different sources (*e.g.,* service lines, faucets, meters). A study published by American Water Works Association (AWWA) Water Research Foundation (2008) ''Contributions of Service Line and Plumbing Fixtures to Lead and Copper Rule Compliance Issues'' (Sandvig et al., 2008) estimates that 50 percent–75 percent of lead in drinking water comes from LSLs, while the remainder comes from leaded solder, brass/bronze fittings, galvanized piping, faucets, and water meters. Given that LSLs are the greatest contributor of lead in drinking water, identifying the locations and, where necessary, removing this source of lead from drinking water, is a critical component of this proposed rule.

Under the current regulations, water systems are required to identify construction materials of their drinking water distribution system including lead and galvanized piping and to conduct a materials evaluation to locate the requisite number of sampling sites, and to seek to collect information on service line materials, where possible, during normal operation such as reading water meters or performing maintenance activities. In practice, many water systems have only identified service line materials to fulfill the tap sampling tiering requirement and have not done a full accounting of service line materials throughout their entire distribution system. This has led to uncertainty regarding local and national estimates of locations and numbers of LSL. This uncertainty creates compliance challenges for water systems that exceed the lead action level after installing CCT because water systems are forced to concurrently determine the total number of LSLs in the distribution system while replacing seven percent of their LSLs, all within one year. Without an LSL inventory, water systems also face challenges communicating the risk of lead in drinking water to the public at large as well as to individual customers, who may seek information about their own service line so they can take measures to protect themselves and their family. Lack of an LSL inventory also results in a lost opportunity to improve the cost efficiency of LSLR by conducting replacements in tandem with main replacement activities or in neighborhoods where LSLs are most prevalent, or in accordance to policy goals, such as prioritizing LSLR at schools, childcare facilities, and homes with children. For example, the city of Galesburg, IL prioritizes LSLR at homes of low- to moderate-income with children under the age of six (Galesburg, 2016).

In addition, even those systems that have made efforts to identify their LSLs do not always make the information publicly available. Informed customers are better able to take actions to limit exposure to lead in drinking water and make decisions regarding replacement of their portion of an LSL. For water systems publicly available information is ''. . . important for successful, proactive outreach to customers who are most likely to have a LSL'' (NDWAC, 2015). Making the LSL inventories publicly available, including the total number of LSLs in the distribution system and their general locations, would increase water system transparency so customers can better understand the prevalence of lead sources in drinking water.

Incomplete or non-existent LSL inventories also lead to uncertainty in developing a national estimate, which could range from 6.3 million (Cornwell et. al., 2016) to 9.3 million (USEPA, 1991) LSLs in place. Information about the numbers of LSLs in public water systems is critical to supporting various actions focused on reducing exposure to lead in drinking water. For example, the EPA is targeting funding and financing programs such as the Water Infrastructure Improvements for the Nation Act (United States, 2016) grant programs, the Drinking Water State Revolving Fund (DWSRF), and the Water Infrastructure Finance and Innovation Act (WIFIA) program to reduce lead exposure through infrastructure projects that include full LSLR. Water systems that have prepared an LSL inventory will be better able to demonstrate their priority for infrastructure financing assistance. In America's Water Infrastructure Act (United States, 2018), Congress recognized the importance of increasing the understanding about the extent of LSLs in the nation by mandating the EPA include an assessment of costs to replace all LSLs, including the customer-owned portion of the LSL to the extent practicable, in the Drinking Water Infrastructure Needs Survey and Assessment (DWINSA). Moreover, an LSL inventory will lead to increased awareness of consumers regarding whether they are served by an LSL, which could improve public health protection if affected consumers take action to reduce their exposure to lead in drinking water.

Other organizations have recognized the benefits of LSL inventories and expressed support for a requirement that water systems create a LSL inventory. The Association of Drinking Water Administrators (ASDWA) published a white paper titled ''Developing Lead Service Line Inventories Presented by the Association of State Drinking Water Administrators'' with recommendations for developing LSL inventories and examples of States that already have implemented mandatory and voluntary LSL inventory programs (Association of State Drinking Water Administrators, 2019). The Government Accountability Office (GAO) recommended that EPA ''require states to report available information about lead pipes to EPA's SDWIS/Fed (or a future redesign such as SDWIS Prime)'', in its revision of the LCR (GAO–18–620, 2018). The National Drinking Water Advisory Council (NDWAC) recommended that water systems create and update LSL inventories and ''establish a clear mechanism for customers to access information on LSL locations (at a minimum)'' (NDWAC, 2015).

The EPA is proposing that all water systems create an inventory of all water system-owned and customer-owned LSLs in its distribution system. The inventory could be submitted in one of a variety of formats, for example a list, table, or map with a corresponding LSL status (*i.e.,* LSL, non-LSL, unknown) with a location identifier of the LSL (*e.g.,* street, intersection, landmark). The EPA is not proposing that addresses be used in making the LSL inventory publicly available however, the Agency is requesting comment on this issue in Section VII. A water system would not be precluded by the proposed regulation, from choosing to include specific addresses served by LSLs in their inventory. An example of this is DC Water's LSL map (DC Water, 2016). Large systems, serving greater than 100,000 persons, would be required to post the inventory to a publicly-accessible site on the internet to facilitate easier access for their customers. This is consistent with requirements for community water systems related to their annual Consumer Confidence Report (40 CFR 141.155(f)). All other systems (*i.e.* those serving 100,000 persons or fewer), would simply be required to make the inventory available to the public (*e.g.,* available for review at the water system's headquarters).

Under this proposal, a water system would submit an initial inventory to their Primacy Agency by three years after the final rule publication date. To create the initial LSL inventory water

systems would review plumbing codes, permits, and records in the files of the building department(s) that indicate the plumbing materials that are installed within publicly and privately-owned structures. In addition, inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system would be utilized. Because water systems may not have complete records to enable them to identify the material for every service line, the EPA is proposing that systems identify the service lines of unknown material and update the inventory on an annual basis to reflect LSLRs that have occurred, or verifications of service lines of unknown material through the course of normal operations or targeted inventorying efforts. In addition to updating the inventory on an annual basis, EPA recommends, but does not require, that water systems update the inventory as new information becomes available. Improving the inventory over time in tandem with other infrastructure work will minimize the cost of inventory completion, since projects like main replacement require excavation of the street and exposure of service lines underneath. The water system could choose to speed inventory development by devoting resources to determine service line materials independent of other water system work. The EPA recommends, but does not require, that the material of non-LSLs be identified, such as plastic or copper. While not required, water systems could benefit from recording the material of all service lines to improve its accounting of water system assets and help plan for capital improvement activities.

These proposed requirements are consistent with the ASDWA white paper on LSL inventories. ASDWA recommends that a ''one-time, preliminary inventory report [be] followed by a comprehensive inventory report a few years later''. ''The preliminary report would be completed in three years, and the water system would update its inventory each year to work towards a comprehensive inventory by verifying service lines of unknown material.'' ASDWA also recommends that reports should be made publicly available through a user-friendly, online portal, with the option to download all inventory reports in a single file. The EPA is proposing this requirement while allowing additional flexibilities to smaller systems who wish to submit the inventory in paper format. Water systems using a paper format would still be required to make the inventory available to the public. The EPA is proposing the initial inventory be completed by the rule compliance date, three years after promulgation, so that other proposed rule requirements, such as tap sample site selection, PE delivery, and LSLR requirements, can be implemented on the final rule compliance date.

The EPA has determined it is feasible for water systems to prepare LSL inventories because the current regulations required water systems to identify these construction materials in their distribution system to identify tap sampling sites, and to collect information on service line materials where possible in the course of normal operation, such as reading water meters or performing maintenance activities. In addition, any water system that was required to begin LSLR under the current rule would also have been required to identify the initial number of LSLs in its distribution system at the time the replacement program begins pursuant to § 141.84(b)(1). However, the Agency requests comment in Section VII of this notice on the proposed inventory.

ASDWA's white paper lists several examples of states that have mandatory or voluntary LSL inventory programs, and notes that even voluntary LSL inventory programs have had response rates that cover over 90% of service lines (Association of State Drinking Water Administrators, 2019). Many states have already begun requiring water systems to create and maintain LSL inventories. In particular, Illinois, Ohio, and Michigan have such requirements and are estimated to rank first, second, and third, respectively, of States with the highest number of LSLs in the nation (Cornwell et. al., 2016).

Illinois CWSs were required to create their LSL inventory in one year and report a count of all known water system-owned and customer-owned LSLs. Water systems in Illinois are required by the State of Illinois to update their inventory annually until it is complete (State of Illinois, 2017). Ohio CWSs and NTNCWSs with LSLs had six months to map their LSLs and are required to update it every five years. If a water system in Ohio certifies it has no LSLs, it is not required to create a map (State of Ohio, 2016). Michigan's updated LCR promulgated in June 2018 requires water systems to create an inventory of all materials in their distribution system by January 1, 2020, based on existing information. The inventory includes both the water system-owned and customer-owned portions of the LSL and requires service lines of unknown material to be designated as such. The inventory must also identify lead materials present in ''piping, storage structure, pumps, and controls used to deliver water to the public, including service lines'' (State of Michigan, 2017), the scope of which could cover goosenecks and several other sources of lead. By January 1, 2025, water systems must submit a complete inventory, along with material verification methodology, including any instances of customer denial to access private property to inspect the customer-owned service line. The inventory must be updated every five years (State of Michigan, 2017). Other States with LSL inventory requirements include Wisconsin and California. Since 2004, Wisconsin has required annual reporting of the number of service lines of each material (grouped by pipe diameter) owned by the water system. In 2018, the requirement was changed to include the customer-owned portion of the service line (Association of State Drinking Water Administrators, 2019). California water systems were required to inventory known LSLs and areas that may contain LSLs in their distribution systems (State of California, 2016).

As recommended by the Government Accountability Office (GAO–18–620, 2018), the EPA has identified several techniques that can be used to identify lead and galvanized service lines. The current rule lists several sources of information that may indicate or confirm the presence of an LSL, including plumbing codes; permits and records; inspections and records of distribution system materials; existing water quality information to indicate locations that are most likely to have higher lead levels; and relevant legal authorities (*i.e.,* contracts and local ordinances). Under this proposal, the EPA expects water systems to create their initial inventory using these available information sources and to update LSL inventories with information on service line materials discovered in the course of normal operation, such as maintaining water meters.

Under this proposal, a State could establish additional inventory development methods, such as allowing consumers to self-identify and report their service line material, using sequential tap sampling to identify LSLs, or using other techniques such as physical inspection or scratch tests, hydrovacing, or trenching (ANSI C810–17 Replacement and Flushing of Lead Service Lines, 2017).

The EPA is proposing that water systems designate any service line whose material cannot be confirmed by

the rule compliance date as unknown. The EPA believes that water systems need accurate information about the number and locations of lead service lines in order to effectively implement actions to reduce drinking water lead exposure. The Agency also recognizes that many systems do not have complete records and that excavating test pits can be expensive and may disturb lines, resulting in lead release. The Agency believes that treating unknown lines as lead will provide an incentive for water systems to collect information on the composition of service lines through their normal maintenance activities such as meter calibration, because doing so would reduce the burden associated with other aspects of the rule, such as LSLR and notification to LSL customers. If a service line of unknown material is determined to be non-lead, it would reduce the number of LSLs required to be replaced each year should the water system exceed the action level. Fewer service lines of unknown material would also result in reduced burden associated with delivery of customer LSL notification and fewer goal-based or mandatory LSLR should the water system exceed the lead trigger level or action level, if the unknowns are identified as non-lead. If any service lines originally inventoried as non-lead are later discovered to be LSLs, these service lines would be included for establishing replacement rates and for conducting outreach to customers with LSLs. This requirement follows the recommendation provided to the EPA by the NDWAC, to grant water systems the flexibility to create an inventory that allows for the uncertainty of service line materials that cannot be verified by records or other means within three years, while at the same time ensuring that consumers potentially served by an LSL are provided adequate protections. For example, water systems would provide targeted public education to consumers served by a service line of unknown material, informing them that their service line may be an LSL and advising them about actions they can take to reduce their exposure to lead in drinking water. Without this public education, consumers drinking water delivered by a service line of unknown material may not have any awareness of the potential risk of lead exposure from their drinking water or how to reduce their risk.

Under this proposal, while water systems would assume unknown service lines are LSLs for purposes of establishing replacement rates and for conducting outreach to customers with LSLs, they would not include these sites in their Tier 1 tap sampling pool. The proposed tap sample tiering requirements designate sites served by an LSL as Tier 1 to assure prioritization of sites that are the most likely to yield elevated lead levels in drinking water, therefore the EPA is proposing to exclude service lines of unknown material from Tier 1 classification to prevent the dilution of the Tier 1 sample pool with potential non-LSL sites. ASDWA's white paper on LSL inventories summarizes how service lines of unknown material are treated in inventories around the country. Illinois, California, and Michigan allow water systems to designate service lines as ''unknown'' in their inventories. In California, water systems must include service lines of unknown material in their LSLR plan ''to encourage water systems to investigate their unknown lines.'' (Association of State Drinking Water Administrators, 2019). Michigan water systems can include service lines of unknown material in their initial inventory due January 1, 2020, however by January 1, 2025, they must have verified all service line materials, with the option to document any instances of customer denial to access private property to inspect the customer-owned service line (State of Michigan, 2017). The EPA requests comment in Section VII of this notice on the appropriate treatment of unknown lines in an inventory.

Galvanized service lines can contribute to lead in drinking water due to lead in the zinc coating, or absorption of lead particles in corrosion scales if they are or have ever been downstream of an LSL (McFadden et. al., 2011; HDR, 2009). The proposed rule would define galvanized service lines that are currently or were formerly downstream of an LSL, as an LSL. Therefore, these lines would be listed in the LSL inventory, counted in the replacement rate calculation, and included in the notifications delivered to consumers of LSLs. Michigan's updated LCR takes a similar approach, requiring replacement of galvanized service lines ''if the service line is or was downstream of lead piping'' (State of Michigan, 2017). The proposed tap sample tiering requirements would not allow these galvanized service lines to be considered LSLs for purposes of collecting tap samples to assure prioritization of sites that are the most likely to yield elevated lead levels in drinking water, such as those made of one hundred percent lead.

D. Lead Service Line Replacement

The current rule requires water systems with optimized corrosion control treatment (OCCT) to replace LSLs after exceeding the lead action level. Although the water system must meet an annual LSLR rate of seven percent, the current rule allows for water systems to meet the requirement without conducting any full LSLRs because a water system can count an LSL as replaced if the service line is ''tested out'' or partially replaced. LSLs are ''tested out'' when sampling shows lead concentrations at or below 15 μg/L throughout the entire profile of the service line. Additionally, many communities around the country split ownership of the service line between the water system and the customer, which can often result in a partial LSLR being conducted when the customer does not agree to have his or her portion removed. ''Test outs'' and partial LSLR both count as replacements under the current rule, but neither are as effective at reducing lead in drinking water as full LSLR.

Additionally, the current rule does not require the water system to plan for its LSLR program before it is required to conduct mandatory LSLR. Water systems must work out the technical, financial, customer coordination, and other logistics of starting a LSLR program in the same period they must begin replacement of LSLs. This approach can create challenges for the water system because planning for LSLR takes time, which jeopardizes the system's ability to meet the seven percent replacement rate. It could also render LSLR more expensive if the water system has not evaluated and optimized the operational and financial aspects of LSLR.

1. Lead Service Line Replacement Plan

The EPA is proposing that all water systems with LSLs or service lines of unknown material, and regardless of their 90th percentile lead level, must prepare an LSLR plan. Under this proposal, a water system would submit the plan by three years after the final rule publication date. Developing an LSLR plan while creating an LSL inventory provides efficiencies in the planning process and will prepare water systems to quickly commence a goal-based, or mandatory full LSLR program should they exceed the lead trigger or action level, or to coordinate a replacement with an emergency repair or a customer initiating a replacement of their line.

Under this proposal, the plan would include procedures to conduct full LSLR and to alert and inform consumers before a full or partial lead service line replacement. It must also include a lead service line replacement goal rate,

developed in coordination with the State, should the water system exceed the lead trigger level. To address short term increases in lead levels following LSLR, the plan must include a pitcher filter tracking and maintenance system and flushing procedures for the service line and premise plumbing inside the home. Water system organizations, such as AWWA, have developed guidance and procedures for LSLR and flushing that a water system could use or reference in its LSLR plan. The plan must also include a funding strategy for conducting lead service line replacements.

In the plan's funding strategy, the water system would identify how it will pay for the replacement of the water system-owned portion of the LSL, such as through its capital improvement fund or the use of a low-interest rate loan from the DWSRF. Although water systems are not required to pay for replacement of customer owned lead service lines, the EPA encourages water systems to develop programs to financially assist these customers in replacing their lead service lines. The EPA has identified several types of assistance, such as loans and grants from the federal government or funded by rate revenue, as well as private funding partnerships (Strategies for Achieving Full LSLR, docket EPA–HQ–OW–2017–0300).

The LSLR plan would include a procedure for customers to flush service lines and premise plumbing of particulate lead. Flushing reduces particulate lead that may have been released into drinking water after LSL disturbance or replacement. For purposes of the flushing requirements in the proposed rule, the EPA considers a service line disturbance as planned work or an emergency repair that requires water service to the consumer be shut off. Water shutoffs can disturb lead pipes due to hydraulic scouring as the water is turned back on, and if shut off for an extended period of time, can cause the lead scales on the pipe interior to dry and flake off. Under this proposed rule, these disturbances would require consumer flushing instructions to be delivered to the consumer before their water is turned back on. Although other types of pipe disturbances may occur, such as vibration from the work of other utilities (for example, gas and electric utilities), the water system may not always be aware of the other utilities' activities. Defining pipe disturbance based on when water service is temporarily shut off ensures the water system is aware of the disturbance and can execute the proposed flushing requirement. For disturbances caused by other utilities, the EPA encourages water systems to inform other utilities of the potential for LSL disturbance to cause elevated lead levels in drinking water and attempt to coordinate with them on development and implementation of measures to reduce disturbances and mitigate impacts.

The replacement of a meter, gooseneck, pigtail, or connector entails disconnecting and reconnecting the LSL, it is expected to be a more significant disturbance of the LSL than when the water service is temporarily shut off. Therefore, the EPA is proposing additional risk mitigation measures for these disturbances. Under this proposal the water system would be required to provide flushing instructions, as well as deliver the consumer a pitcher filter certified to remove lead along with three months of replacement cartridges for risk mitigation.

The EPA is proposing that regardless of their 90th percentile lead level, water systems must replace lead goosenecks, pigtails, and connectors owned by the water system as they are encountered in the course of planned or emergency infrastructure work, such as main replacement. This proposed requirement was recommended by the National Drinking Water Advisory Council (NDWAC, 2015). Water systems that replace lead goosenecks, pigtails and connectors would be required within 24 hours to notify consumers of the replacement and provide flushing instructions and a pitcher filter and replacement cartridges to last for three months. Water systems would be required to collect a follow up tap sample after three months but no later than six months after the gooseneck, pigtails, or connector is replaced. In many cases, routine infrastructure work involves the excavation of the water main under the street and exposure of the goosenecks, which then undergo reconnection to the new main. The EPA expects that mandatory replacement of these connectors as they are encountered would provide a beneficial and lower burden opportunity for the water system to remove a lead source from its distribution system. The water system is encouraged but not required to engage with the customer to coordinate replacement of a customer-owned lead gooseneck, pigtail, or connector; however, the water system would not be required to bear the cost of replacement of the customer-owned materials under this proposal. Replacement of a lead gooseneck, pigtail, or connector regardless of ownership would not count towards goal-based or mandatory LSLR rates.

2. Partial Lead Service Line Replacement

The EPA sought an evaluation by the Science Advisory Board (SAB) of current scientific data to assess the effectiveness of partial LSLRs in reducing water lead levels. The SAB determined that the quality and quantity of data was inadequate to fully evaluate the effectiveness of partial LSLR in reducing drinking water lead concentrations. However, the SAB concluded that partial LSLRs have not been shown to reliably reduce drinking water lead levels and may even increase lead exposure in the short-term of days to months, and potentially even longer. The NDWAC recommended requiring full LSLR except during emergency repairs or infrastructure improvement projects when a customer is unable or unwilling to replace their portion of the LSL (NDWAC, 2015).

Based upon the SAB's and the NDWAC's recommendations, the EPA is proposing to eliminate current requirements for water systems to only replace the portion of the LSL that is owned by the water system, if any, in situations where customers do not choose to replace the portion of the line that is owned by the customer. Typically, if a water system owns a portion of the service line, it is the portion that connects the water main under the street to the customer-owned portion of the service line, which often begins at the curb-box or water meter. The proposed changes to the LSLR requirements would remove the compliance incentive to conduct partial LSLR that is inherent in the current rule. The EPA recognizes that certain activities, such as emergency repairs (*i.e.,* a water main break that must quickly be repaired) or planned infrastructure improvements (*i.e.,* a water main replacement program) may still need to proceed regardless of customer participation and may result in unavoidable pipe disturbances and at times, partial LSLR. For example, a water system replacing a water main as part of its capital improvement program may encounter LSLs on both the water system- and customer-owned portions of the service line. If a single customer served by an LSL does not accept the water system's offer to replace the customer-owned portion (the water system is not required to bear the cost of replacement), the water system may proceed to conduct a partial LSLR at that location in order to complete the main replacement project. In another scenario, a water system-owned portion

of an LSL could fail, requiring emergency replacement. In this case, the water system would be allowed to replace just the water system-owned portion should the customer refuse or is unable to have his or her portion replaced.

Whenever a water system conducts partial LSLR, it would be required to notify the affected consumers and follow the risk mitigation procedures in their LSLR plan to ensure that customers are promptly alerted and informed of the actions they can take to reduce their exposure to lead following the partial LSLR, when concentrations of lead in drinking water are expected to be the highest. These proposed risk mitigation steps required after partial LSLR include customer notification, delivering flushing guidance to remove particulate lead, providing a pitcher filter certified to remove lead in accordance with applicable standards established by the American National Standards Institute, as well as replacement cartridges to last no less than three months, and taking a tap sample after three months, but no more than six months after the partial LSLR. Tap sample results would be provided to the consumer within 30 days, unless the tap sample exceeds the lead action level, in which case the EPA proposes notifying the customer within 24 hours. The same mitigation steps would also be required if a water system undertook a full lead service line replacement (see section III.D.3 of this notice).

The EPA is proposing that all water systems with LSLs, regardless of their 90th percentile level, must replace the water system-owned portion of the LSL when a customer replaces their portion of the LSL. Water systems would have to include information about this requirement in their annual notification to LSL customers. In those cases where a customer notifies the system in advance of replacing the customer portion of an LSL, the EPA is proposing that the water system make a good faith effort to coordinate replacement with the customer to minimize disturbances that may result in particulate lead release and to prevent a partially replaced LSL from being left in place. The water system would also have 45 days from learning of the customer's replacement or intention to replace his or her-owned portion of the LSL to replace the portion owned by the water system. Given that water systems routinely perform construction involving installation and replacement of water mains and service lines, and that the logistics of LSLR have been established in its LSLR plan, the EPA believes that it is feasible for water systems to replace their portion of a lead service line within 45 days of notification of the customer-initiated replacement, however the Agency requests comment in Section VII of this notices on whether a longer or shorter time frame is appropriate. In cases where the water system learns that a customer has replaced the customer-owned portion of LSL and the replacement has occurred more than three months in the past, the water system is not required to complete the lead service line replacement.

After a LSLR, the EPA proposes that water systems deliver flushing instructions to the customer, provide a pitcher filter certified to remove lead with replacement cartridges to last three months (the expected timeframe for lead levels to decrease following a lead service line replacement), and collect a follow-up tap sample after three months, but no later than six months after the LSLR.

The EPA is proposing that any water system that becomes aware that a customer has already replaced his or her portion of the LSL in the last three months be required to provide a filter to the home within 24 hours to mitigate the elevated lead levels associated with customer-initiated partial LSLR. Additionally, the water system would have 45 days after learning of the customer-owned LSLR to replace its portion of the LSL. If a water system is conducting goal-based or mandatory LSLR in the period which these replacements occur, the water system would count these replacements towards its goal or mandatory replacement rate. If the water system is notified of the customer-initiated replacement more than three months after the replacement occurred, it would not be required to replace its portion or provide a pitcher filter and replacement cartridges because the elevated lead levels associated with partial LSLR would be expected to have subdued.

3. Lead Service Line Replacement After a Lead Trigger Level Exceedance

The EPA is proposing that, in addition to any requirements relating to CCT under 141.82(d) or 141.81(e) discussed above, CWSs serving more than 10,000 persons that exceed the trigger level for lead (10 μg/L) but do not exceed the action level for lead (15 μg/L) would be required to implement a full LSLR program with an annual replacement goal rate approved by the State, as stated in its LSLR plan. The goal rate would be established to require actions that will promote the elimination of a significant source of lead in those water systems with 90th percentile concentrations that are approaching the action level. This provision is designed to require water systems with higher lead levels to take steps to reduce lead exposure and upgrade their infrastructure.

There is widespread support at all levels for upgrading American's water infrastructure, including lead service line replacement. President Trump's 2020 budget proposes significant investment in infrastructure, directing $200 billion for priorities such as water infrastructure (The White House, 2019a). Lead service line replacement represents an opportunity to replace water infrastructure which can be over one hundred years old, constructed with material specifications not lawful for use in new plumbing products today, which can create risk of lead exposure to Americans. EPA Administrator Andrew Wheeler signaled the Agency support of water infrastructure projects and their ability to create jobs, noting that since 2017 the EPA water infrastructure loans have totaled over $2 billion and will create 6,000 jobs (The White House, 2019b). In a policy statement, the American Water Works Association encouraged communities to ''develop a lead reduction strategy that includes identifying and removing all lead service lines over time'' and supported the NDWAC's recommendations for the ''complete removal of lead service lines while ensuring optimal corrosion control measures'' (AWWA, 2017). The EPA is also aware of many communities and water systems across the country that are choosing to conduct LSLR proactively. The proposed LCR incorporates actions that water systems can take to encourage full LSLR irrespective of the lead action level, helping to spur removal of lead sources rather than waiting to act only after consumers have already been exposed to greater levels of lead.

The flexibility of the goal based LSLR provision allows water systems with higher lead levels make manageable progress in reducing lead exposure and upgrading their infrastructure. The State could take multiple factors into account when setting the goal rate, such as the number of LSLs in the distribution system, planned infrastructure improvement programs, as well as the financial circumstances of the water system and its customers. The EPA believes that as communities conduct projects to replace aging infrastructure, they can replace lead service lines as part of these projects. This will reduce costs and minimize the disruption to their customers. Madison, WI stated in its Federalism letter to the EPA that it

''achieved cost-saving efficiencies through effective planning that concentrated capital improvement projects in the lead service area. Lead service replacement costs never exceeded 20% of our annual capital budget. In addition, the compressed schedule and coordination with local plumbing contractors led to reduced mobilization costs.'' The EPA expects that systems that exceed the trigger level will consider integrating lead service line replacements into their planned infrastructure replacement activities.

The EPA is proposing that a water system may discontinue its goal-based LSLR program after two consecutive annual monitoring periods at or below the lead trigger level, which equates to two years where the lead 90th percentile is consistently at or below the trigger level. The EPA is also proposing that a water system that does not meet its annual LSLR goal must conduct proposed outreach activities as described in 141.85(g). (See Section III.F.2. of this notice). The proposed rule also provides the EPA authority to determine a different goal-based replacement rate, if appropriate.

4. Lead Service Line Replacement After a Lead Action Level Exceedance

The EPA is proposing that CWSs serving more than 10,000 persons that exceed the lead action level would be required to conduct mandatory full LSLR at a minimum rate of three percent annually. Small CWSs serving 10,000 persons or fewer people as well as Non-Transient, Non-Community Water Systems (NTNCWSs) of all sizes have compliance alternatives, outlined in Section C below. The mandatory replacement rate would be applied to the number of inventoried LSLs at the time the action level is first exceeded plus the number of service lines of unknown material.

The EPA is proposing to reduce the mandatory minimum LSLR rate from seven percent to three percent, but to allow only full LSLRs to count towards the replacement rate. This differs from the current rule, which allows for ''test-outs'' and partial LSLR to count as ''replaced.'' Partial LSLR removes only a portion of the LSL, usually the water system-owned portion and may, in the short-term, increase lead concentrations at the tap (USEPA, 2011). Test-outs allow an individual LSL to remain in place but be counted as ''replaced'' if the lead concentration in all service line samples from that line are less than or equal to 15 µg/L. Studies have shown that LSLs which have been ''tested-out'' may contribute to lead release in drinking water at a later date (Del Toral et. al., 2013). Due to concerns that the practices of both ''test-outs'' and partial LSLR contribute to lead exposure, the EPA is proposing to eliminate these practices. While the current rule requires seven percent LSLR after a lead ALE, the EPA is aware that compliance is not necessarily achieved by conducting full LSLR. A Black and Veach survey of water systems found that LSLR was comprised of 72 percent partial replacements (USEPA, 2004b). The EPA best professional judgement used in the proposed rule's economic analysis assumes that due to the cost-savings of test-outs over LSLR, that 25 percent of CWSs serving more than 10,000 people would take an LSL sample before replacing the LSL, and that 80 percent of LSLs would meet the test-out criteria. Given these assumptions, the proposed rule requirement of three percent full replacement would likely result in a greater number of full LSLR in comparison to the current rule's seven percent replacement. Similar to the current rule, the State would be required to set a shorter LSLR schedule, taking into account the number of LSLs in the system, where such a shorter replacement schedule is feasible. For example, if the water system has a very low number of LSLs compared to its total number of service lines, the State would determine it is feasible for the water system to replace greater than three percent of full LSLs per year and require the water system to do so.

The mandatory LSLR rate would be applied to the number of inventoried LSLs when the water system first exceeds the action level, plus the number of service lines of unknown material. Should the water system subsequently exceed the lead action level again, the water system would continue to use the original number of LSLs and unknowns, used following the first exceedance of the lead action level, for the LSLR rate calculation. In other words, the water system would not revise the LSLR rate using the number of LSLs at the time of the subsequent lead action level exceedance. The minimum mandatory three percent LSLR rate is intended to eliminate LSLs within approximately 33 years of exceeding the action level. If the water system updated the LSLR rate based on its current number of LSLs whenever it exceeded the lead action level, the replacement timeframe would reset to an additional 33 years each time, significantly delaying LSLR. Service lines of unknown material discovered to be non-lead would not be considered replaced nor contribute to the LSLR rate. Verifying that a service line of unknown material is non-lead would, however, reduce the total number of replacements required per year by adjusting the initial number of LSLs in the distribution system. If verifying a service line of unknown material as non-lead was counted as a LSLR, the water system could effectively remove less than three percent of its actual number of LSLs per year. It could also incentivize water systems against creating a thorough LSL inventory upfront, because should they exceed the lead action level, they could achieve compliance with the less costly service line verification as opposed to full LSLR. For these reasons, the proposed rule would not count verifying service lines of unknown material as non-lead as a LSLR. The proposed rule allows flexibility for water systems to include service lines of unknown materials in their inventory and verify them at their own pace, while avoiding disincentivizing or discouraging full LSLR.

The EPA is aware of several full LSLR programs throughout the nation that have been largely successful (EDF, 2019), sometimes achieving a significant number of full LSLR at replacement rates well above three percent. Even when LSLR is coupled with the pace of a water system's capital improvement work, communities are conducting LSLR rates between 1 and 17 percent annually (USEPA, 2019a).The State of Michigan's revised LCR requires all water systems to fully remove LSLs proactively at the rate of five percent, and at the rate of seven percent when the lead action level is exceeded (State of Michigan, 2017).

Under this proposal, a water system that has exceeded the action level may cease its mandatory LSLR program after four consecutive six-month monitoring periods below the lead action level. This equates to two years of six-month monitoring with 90th percentile values consistently at or below the lead action level, which provides the water system assurance that distribution system chemistry has stabilized, especially if CCT was installed or re-optimized after the exceedance. The water system would be in violation of the LCR treatment technique if it fails to meet the annual three percent full replacement rate unless the water system obtains documented refusals from all customers served by an LSL to participate in the replacement program. This mechanism is intended to be used towards the end of a LSLR program, where a small number of customers remain who do not consent to have the customer-owned portion of the LSL

replaced. The EPA is proposing this provision to allow for situations where customers' decisions are outside of the system's control but is not meant as a substitute for the water system making a meaningful effort to engage with customers to meet the three percent full replacement rate.

Although this proposal lowers the required LSLR rate from seven percent to three percent, the elimination of ''test-outs'' and partial LSLRs and the requirement for full LSLR will result in greater reductions in exposure to lead in drinking water. The EPA estimates that the proposed mandatory three percent and the goal-based LSLR requirements of the rule would result in an incremental increase of 205,452 to 261,701 full LSLRs over a 35-year period compared to the current rule (see Appendix C, Exhibit C.1 of the Economic Analysis for the Lead and Copper Rule Revisions (USEPA, 2019)). The EPA is also requesting comment in Section VII of this notice on an alternative sampling technique for sampling locations with lead service lines. As indicated in section VI.F.2 of this notice, this alternative would increase the numbers of systems that would be required to take actions including LSLR. The EPA has estimated that other proposed rule provisions may also influence LSLR. For example, consumers will learn from their water system if they are served by an LSL, about the risks of lead in drinking water, and about the actions they can take to reduce lead in drinking water and remove their LSL. Some of these customers are expected to voluntarily initiate LSLR, regardless of the water system's 90th percentile lead level. These provisions are expected to result in approximately 214,000 to 350,000 LSLRs over the next 35 years. The EPA has not evaluated to what extent these anticipated voluntary LSLRs may be additional to the LSLRs undertaken in systems with 3% or goal-based LSLR requirements. The EPA also estimates that the availability of DWSRF program loans and subsidies to fund customer-side LSLRs is expected to result in an estimated 149,200 full LSLRs over 35 years with approximately 91% of the funds used for proactive LSLR as opposed to mandatory LSLR that is required after exceeding the lead action level (USEPA, 2019d). As the proposed requirements in this section require the water system to complete any consumer-initiated LSLR, these replacements are expected to result in full replacements.

E. Compliance Alternatives for a Lead Action Level Exceedance for Small Community Water Systems and Non-Transient, Non-Community Water Systems

Under the current LCR, small and medium water systems (*i.e.,* systems serving 50,000 or fewer people) are not required to implement CCT unless the water system exceeds the lead action level. The EPA has determined that greater flexibility is needed for small Community Water Systems (CWSs) and all Non-Transient, Non-Community Water Systems (NTNCWSs) because they tend to have more limited technical, financial, and managerial capacity to implement complex treatment techniques. Many small public water systems face challenges in reliably providing safe drinking water to their customers and consistently meeting the requirements of the SDWA and the National Primary Drinking Water Regulations (NPDWRs). These challenges include, but are not limited to: (1) Lack of adequate revenue or access to financing; (2) aging infrastructure; (3) retirement of experienced system operators and the inability to recruit new operators to replace them; (4) managers and operators who lack the requisite financial, technical or managerial skills; (5) lack of planning for infrastructure upgrades or the ability to respond to and recover from natural disasters (*e.g.,* floods or tornadoes); and (6) lack of understanding of existing or new regulatory requirements and treatment technologies. As a result, some small systems may experience frequent or long-term compliance challenges in reliably providing safe water to their customers while others may be in compliance now but lack the technical capacity to maintain compliance (OIG, 2006).

The EPA is proposing three compliance alternatives for a lead action level exceedance to allow increased flexibility for small CWS that serve 10,000 or fewer people and four compliance alternatives for NTNCWS of any size. The proposed rule would allow these water systems to choose among options, which would allow them to select the most financially and technologically viable strategy that is effective in reducing lead in drinking water. The EPA is proposing the following compliance alternatives for small CWSs: (1) Full LSLR, (2) installation and maintenance of OCCT, or (3) installation and maintenance of point-of-use (POU) devices. The EPA is proposing the above three flexibilities for NTNCWS and an additional option of replacement of all lead bearing plumbing fixtures at every tap where water could be used for human consumption. The NTNCWS must have control of all plumbing materials to select this option.

Under this proposal, small CWSs and any NTNCWS that exceeds the lead trigger level but do not exceed the lead and copper action levels would need to evaluate the compliance alternatives and make a recommendation to the State within six months on which compliance alternative the water system would implement if the water system exceeds the lead action level. The State would need to approve the recommendation within six months of submittal. In the event these water systems exceed the lead action level, they must implement the State-approved compliance option.

Small CWSs and NTNCWSs that select and are approved for implementation of optimized CCT and subsequently exceed the lead action level would be required to implement the State-approved option for CCT in accordance with proposed requirements in § 141.81(e). Small CWSs and NTNCWSs that select and are approved for the POU option and subsequently exceed the lead action level, would be required to implement a POU program on a schedule specified by the State, but not-to-exceed three months. Small water systems that select and are approved for LSLR and subsequently exceed the lead action level would be required to replace all LSLs on a schedule specified by the State, not-to-exceed 15 years.

Any small CWSs and any NTNCWS that exceeds the lead action level but not the copper action level, had not previously exceeded the trigger level, would need to evaluate the compliance alternatives and make a recommendation to the State within six months. The State must approve the system's recommendations within six months; these water systems would then implement the State-approved compliance option on a schedule specified by the State.

1. Lead Service Line Replacement

The EPA is proposing that NTNCWSs and small CWSs with LSLs that exceed the lead action level of 15 μg/L may choose to fully replace all of their LSLs until none remain. Those that choose this compliance alternative would need to ensure they have the authority or consent to remove the customer-owned portion of every LSL in its distribution system. If the water system's 90th percentile drops below the lead action level, the water system must continue to replace LSLs until none remain. This

option is projected to be a practical choice for small systems that have few LSLs that could be removed within a few years, thus potentially avoiding the need to add a CCT process that would need to be continually operated and maintained. Rather than split resources between installing CCT and conducting LSLR, this proposal allows resources to be focused on LSLR to accelerate completion of the program and permanently remove a significant potential source of lead in drinking water. Water systems would have to replace LSLs on a schedule approved by the State not to exceed 15 years. The EPA has determined in its analysis that water systems with a small number of LSLs may find that removing relatively few LSLs is more cost effective than installing and maintaining optimized CCT indefinitely, and logistically less burdensome than installing and maintaining POU devices (see section VI.C.4 of this notice).

2. Corrosion Control Treatment

The EPA is proposing to allow NTNCWSs and small CWSs to install and maintain optimized CCT as a compliance alternative after exceeding the lead action level. The EPA has determined in its analysis that some water systems may choose this alternative as the most effective and viable strategy for reducing lead in drinking water (*e.g.,* small water systems with many LSLs to replace or a large number of households that would make installation and maintenance of POU devices logistically challenging) (see section VI.C.4 of this notice). The EPA is proposing to require water systems, including small water systems, that have already installed CCT and subsequently exceed the lead action level to re-optimize CCT.

3. Point-of-Use Devices

The EPA is proposing to allow NTNCWSs and small CWSs to install and maintain POU devices certified to remove lead as a compliance alternative to a lead action level exceedance in lieu of CCT and LSLR. The EPA proposes to require small CWSs to provide a minimum of one POU device per household, regardless of whether that household is served by an LSL, to ensure the residents can access filtered water from at least one tap. Since system-wide CCT is not being provided under this option, even homes without LSLs would need to be provided with a POU device to address lead leaching from old lead solder or brass plumbing fittings and fixtures. The EPA proposes to require NTNCWSs to provide a POU device for every tap intended for drinking or cooking to ensure all building users can easily access filtered water. The water system would be responsible for maintenance of the device, including changing filter cartridges and resolving operational issues experienced by the customer. Small CWSs that serve relatively few households, or NTNCWSs that are responsible for the facility's plumbing, may find this to be the most effective and viable compliance alternative (see section VI.C.4 of this notice). Small CWSs would need to ensure water system personnel have access to the homes of the residents to install and maintain the POU devices, including changing the filters.

4. Replacement of Lead Bearing Plumbing Materials

The EPA is proposing to provide an additional compliance alternative for NTNCWS. Under this proposal, a NTNCWS that has control over all plumbing in its buildings may choose to replace all lead bearing plumbing in response to a lead action level exceedance. Research has shown that corrosion of lead bearing premise plumbing has the potential to leach higher levels of lead in drinking water (Elfland et. al., 2010). Lead from premise plumbing contributes on average 20–35 percent of lead in drinking water where an LSL is present (AwwaRF, 2008), and could potentially represent an even greater percentage where no LSL is present. The EPA proposes that the replacement of all lead bearing plumbing occur on a schedule set by the State which must not exceed one year. The EPA is proposing this compliance alternative only apply to NTNCWS, because it is highly unlikely that a small CWS has access to every residence and building it serves or that the CWS has the authority to inspect and require replacement of all lead-bearing plumbing materials in these locations.

F. Public Education

Under the current LCR, water systems that exceed the lead action level must initiate a public education program within 60 days of the end of the monitoring period in which the action level exceedance occurred. The purpose of public education is to inform consumers that the water system has exceeded the action level, provide information about the health effects of lead, the sources of lead in drinking water, actions consumers can take to reduce exposure, and explain why there are elevated levels of lead and actions the water system is taking. Targeted public education for customers with an LSL or a service line of unknown material is intended to raise awareness of people in a household that may have higher lead exposures so that consumers may take actions to reduce exposure to lead and participate in LSLR programs.

The EPA is proposing to revise the mandatory health effects language required for public education materials as follows.

Exposure to lead can cause serious health effects in all age groups. Infants and children who drink water containing lead could have decreases in IQ and attention span and increases in learning and behavior problems. Lead exposure among women who are pregnant increases prenatal risks. Lead exposure among women who later become pregnant has similar risks if lead stored in the mother's bones is released during pregnancy. Recent science suggests that adults who drink water containing lead have increased risks of heart disease, high blood pressure, kidney or nervous system problems.

The EPA is also proposing enhancements to improve consumer awareness and collaboration efforts with community organizations to communicate lead risks. Proposed enhancements include a requirement for systems to update public education materials with revised mandatory health effects language and for systems with lead service lines to include information about lead service line replacement programs and opportunities available to customers for replacement. In addition, the EPA is proposing to modify requirements to provide customers with their tap sample results within 24 hours if the sample is greater than the action level of 15 μg/L, while maintaining the current rule requirement to provide tap sample results within 30 days for samples less than or equal to the action level. The EPA is proposing these additional actions while retaining the current rule requirements for public education following a lead action level exceedance.

1. Notification for Customers With a Lead Service Line

The EPA is proposing to require water systems to conduct an LSL inventory and provide public access to the inventory information (see section III.C.1 of this notice). The EPA is proposing a new requirement for water systems with LSLs to provide notification to households served by an LSL and with unknown service line material, to include information on: The health effects and sources of lead in drinking water (including LSLs), how to have water tested for lead, actions

customers can take to reduce exposure to lead, and information about the opportunities for LSLR, including the water system's requirement to replace its portion of an LSL when notified by a customer that they intend to replace the customer-owned portion of the LSL. The EPA is proposing that a water system provide this notification to existing customers served by an LSL and service lines of unknown material within 30 days of completing its LSL inventory and for new customers that initiate new water service from a home or building with an LSL or a service line of unknown material at the time service (*i.e.,* billing) is initiated. This proposal would require CWSs to send a notification on an annual basis to customers until the LSL is replaced or the unknown service line is determined not be an LSL. This notification must include a section describing programs that provide innovative financing solutions for customers seeking to replace their portion of a lead service line. Small systems may wish to refer to a national information source, such as one provided by EPA; large systems may wish to tailor such information to their circumstances. This section must also include a clear explanation of how the water system defines ownerships of lead service lines, who has financial responsibility for the replacement, and the legal basis for that determination. Additionally, the EPA proposes that CWSs provide notification to LSL and unknowns service line customers informing them of actions consumers can take to reduce their exposure including replacing their lead service line when they exceed the lead trigger level of 10 µg/L but do not exceed the lead action level of 15 µg/L. The EPA believes that these proposed notification requirements have value for both occupants of rental properties as well as homeowners. Information regarding the existence of an LSL will provide important information for renters on potential lead exposure in their home and could prompt a communication with their landlord regarding lead service line replacement. Occupants of rental properties will also benefit from the information on other actions they can take to reduce lead exposure in drinking water. The CWS must provide the same information noted above and include an invitation to participate in the LSLR program and repeat the notice annually until it is at or below the lead trigger level.

2. Outreach Activities After Failing To Meet a Lead Service Line Replacement Goal

The EPA is proposing to require CWSs serving more than 10,000 persons that fail to meet their annual LSLR goal to conduct public outreach activities. Failure to meet the LSLR goal would not be a violation, however, failure to conduct public outreach activities would result in a treatment technique violation. To increase customer awareness of the potential higher exposure to lead from a LSLR and advance customer interest in participating in the goal based LSLR program, the EPA proposes that water systems conduct annual public outreach activities until the water system meets its replacement goal. Water systems can stop their goal LSLR program when tap sampling shows that the 90th percentile of lead is at or below the trigger level for two consecutive monitoring periods. To enhance community engagement and allow water system flexibility as suggested by the NDWAC, the EPA is proposing to provide options to meet this requirement, so water systems can conduct effective community engagement. A water system that does not meet its LSLR goal rate would select one of the proposed outreach activities that would be most appropriate for that community. Outreach activities include one or more of the following activities: (1) A social media campaign (*e.g.,* face book, twitter), (2) outreach to organizations representing plumbers and contractors to discuss identification of LSLs during home repair, (3) certified mail to LSL customers inviting them to participate in the LSLR program, (4) conduct a town hall meeting or participate in a community event to provide information on the LSLR program, (5) direct contact (by phone or in person) to customers to discuss LSLR program and opportunities for LSLR, or (6) obtain written refusal from all LSL customers to participate in the LSLR program. Water systems would be required to complete at least one activity in the year following failure to meet the replacement goal. If the water system continues to fail to meet the annual replacement goal in the following year, the EPA is proposing that the number of efforts be increased to two per year to promote participation in the LSLR program. The NDWAC recommended this approach to enhance engagement with homeowners and promote their participation in LSLR programs. Water systems would provide written certification to the State that they have conducted the required outreach activities under this proposal.

3. Notification of Tap Sample Results and Other Outreach

The EPA proposes for any individual tap sample that exceeds the lead action level of 15 µg/L, the water system would notify consumers at the site within 24 hours of learning of the lead tap sampling result. This is in addition to the current LCR requirement to provide a notice of the individual tap sample results from lead testing to persons served at the sampling site, which must be sent within 30 days of receiving results. For tap samples that do not exceed the lead action level, the 30-day notice will remain in effect. Under this proposal, water systems that have individual tap samples greater than 15 µg/L would also be required to implement the ''find-and-fix'' provisions as described in section III.K. of this notice.

In addition, the EPA is proposing that community water systems conduct annual outreach to State and local health agencies to explain the sources of lead in drinking water, discuss health effects of lead, and explore collaborative efforts. This annual outreach would help to ensure that caregivers and health providers hear and respond appropriately to information about lead in drinking water and for water utilities to participate in joint communication efforts, led by state health departments, state lead poisoning prevention agencies, and/or state drinking water primacy agencies (NDWAC, 2015).

G. Monitoring Requirements for Lead and Copper in Tap Water Sampling

Unlike most contaminants that are found in sources of drinking water, lead and copper enter drinking water as it moves through the distribution system and comes into contact with leaded materials, such as lead service lines, leaded solder, brass/bronze fittings, galvanized piping, faucets, and water meters. Therefore, measurements of lead and copper are taken at the consumers tap. Tap sampling is a fundamental part of the LCR designed to target sites expected to have the highest lead levels and is used to assess the effectiveness of corrosion control treatment and/or source water treatment in the water system. This is done through targeted site selection (*i.e.,* sampling locations with lead service lines) and the use of a tap sample collection protocol.

All CWSs and NTNCWSs must collect lead and copper tap samples. The water system may choose to have staff collect the samples if feasible, or have residents collect the samples. Due to the required six hour stagnation period prior to sample collection, it is often less

disruptive for the customer to collect the tap sample themselves. The frequency of monitoring and number of samples to be collected and analyzed is based primarily on how many people the water system serves and previous tap water monitoring results. If residents are collecting tap samples, the water system must recruit volunteers at the sites that are most likely to have elevated lead based on the tiering criteria described in the section below.

To the extent feasible, water systems should use the same tap sample sites each monitoring period. If a resident decides to discontinue participation in tap sampling, the water system must select a similarly ''tiered'' site. Due to potential non response from resident volunteers, the EPA recommends including more sampling sites in the pool of targeted sampling sites than the minimum number of tap samples required be identified. Under the proposed rule, water systems would be required to provide resident volunteers must be provided with a wide-mouth collection bottle each time and a tap sample collection protocol, including instructions on how the water system will pick up samples for laboratory analysis, which must be done within two weeks after the tap sample is drawn. The water system would then be required to calculate a 90th percentile separately for lead and copper at the end of each monitoring period. This 90th percentile value would be reported to the State and is used to determine whether the system must comply with other requirements of the rule, such as corrosion control treatment, public education and LSLR.

This proposal describes several revisions to the current LCR to improve tap sampling requirements in the areas of site selection tiering criteria, sample collection, and frequency provisions based on the lead 90th percentile level. The current LCR requires water systems to obtain samples from consumer's taps and use these samples to calculate their 90th percentile value. The EPA is proposing revisions to tap sampling procedures to increase the likelihood of capturing elevated lead levels by revising tap sample site selection criteria, *i.e.,* tiering, and ensuring tap sample protocols contain accurate instructions that will capture elevated lead levels at the tap. In addition, to improve transparency and raise consumer awareness, the EPA proposes to require water systems to make the results of all tap samples collected in accordance with 141.86(b) publicly available within 60 days of the end of the monitoring period.

1. Tiering of Tap Sample Collection Sites

The LCR requires water systems to select sites for tap sampling based on certain characteristics (*i.e.,* single family home, multi-family residence) and material of the service line (*i.e.,* lead, copper pipes with lead solder). Tiers establish the priority of sites selected for tap sampling, with tier 1 being the highest priority, or highest potential for elevated lead and tier 3 being the lowest priority. The EPA is proposing to revise the tiering criteria for selection of tap sampling sites to better target locations most likely to have higher levels of lead in drinking water.

The EPA is proposing that Tier 1 sampling sites for CWSs consist of single-family structures (SFS) that are served by an LSL. When multiple-family residences (MFRs) comprise at least 20 percent of the structures served by a water system, the water system may include these types of structures in its sampling pool as Tier 1 sampling sites, as provided in the current LCR. The EPA is proposing that Tier 2 sampling sites for CWSs are buildings, including MFRs that are served by an LSL. The EPA also proposes that Tier 3 sampling sites for CWSs consist of single SFSs that contain copper pipes with lead solder installed before the effective date of the applicable State's lead ban. The EPA is proposing that NTNCWS Tier 1 sampling sites consist of buildings that are served by an LSL and the remaining tap samples be taken at buildings with copper pipe and lead solder installed before the effective date of the applicable State's lead ban (Tier 3 sites). The EPA is not modifying the definition of a ''representative site'' but is referring to it as a ''Tier 4'' site. The revised tiering structure is outlined below.

EXHIBIT 1—REVISED LEAD AND COPPER SITE SELECTION CRITERIA

Tier	CWSs	NTNCWSs
Tier 1	Collect samples from SFSs served by LSLs. Tier 1 samples can be collected from MFRs if they represent at least 20 percent of structures served by the water system.	Collect samples from building.
Tier 2	Collect samples from buildings and MFRs served by LSLs	N/A.
Tier 3	Collect samples from SFSs with copper pipes with lead solder installed before *the effective date of the State's lead ban.*	Collect samples from buildings with copper pipe and lead solder installed before *the effective date of the State's lead ban.*
Tier 4	Representative sample where the plumbing is similar to that used at other sites served.	Representative sample where the plumbing is similar to that used at other sites served.

Acronyms: CWS = community water system; LSL = lead service line; MFR = multi-family residence; N/A = not applicable; NTNCWS = non-transient non-community water system; SFS = single family structure.

The 1991 LCR made a clear distinction between the copper pipes with lead solder installed after 1982, but before the effective date of applicable state lead ban and designated these sites as Tier 1. However, copper pipe with lead solder installed before 1983 are designated as Tier 3 sites. In the 1991 LCR, the EPA based this distinction on studies in which lead leaching from solder was found to decrease with age (USEPA, 1990; Oliphant, 1982) and, as a result, samples from copper pipes with lead solder installed before 1983 were expected to have lower lead levels.

The EPA is basing its current proposal to revise the tiering criteria for lead solder on the increased understanding of corrosion mechanisms and sources of lead, in particular, lead from solder, as a result of the studies conducted since the 1991 rulemaking (for example, De Rosa and Williams, 1992; Edwards and Triantafyllidou, 2007; Nguyen et al., 2010). Additionally, given that it has been over 30 years since lead solder was banned in all jurisdictions, and considering lead solder's ability to leach lead is reduced by age (USEPA, 1990), lead levels in samples collected from sites containing copper pipe with lead solder installed between 1983 and 1988 no longer present as significant a source of lead as assumed in 1991. Based on the most recent science, the EPA is proposing the above revisions to the tap sample site selection tiering criteria to assure prioritization of sites that are

currently the most likely to yield elevated lead levels in drinking water.

2. Number of Tap Samples and Frequency of Sampling

The EPA is proposing additional requirements for LSL water systems to enable prioritization of LSL sites in tap sampling. All water systems with LSLs or potential LSLs must re-evaluate their lead sampling sites based on their LSL inventory, prepared in accordance with this proposal. These water systems would also be required to update their inventory annually and ensure tap sampling sites are served by an LSL. Under the current LCR, water systems with LSLs must collect at least half of their tap samples from sites with known LSLs. However, in this proposal, water systems with LSLs must collect all tap samples from sites with known LSLs if possible, increasing the likelihood of detecting elevated lead levels in the water system. The EPA is proposing that water systems use the most up-to-date information to select their tap sampling sites and prioritize sites with a higher likelihood of elevated lead. Under this proposal, water systems with an adequate number of LSL sites to meet the required minimum number of tap sampling sites outlined in exhibit 2 below, must calculate their lead 90th percentile using only tap samples from LSL sites (100 percent LSLs), as opposed to the current rule which allows water systems to use samples from at least half LSL sites.

EXHIBIT 2—MINIMUM NUMBER OF LEAD AND COPPER TAP SAMPLES BY WATER SYSTEM SIZE, 40 CFR 141.86(c)

System size (number of people served)	Number of sites (standard monitoring)	Number of sites (reduced monitoring)
>100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
<=100	5	5

The EPA is proposing that if a water system does not have an adequate number of LSL sites to meet the minimum number of tap samples to calculate the 90th percentile level, outlined in § 141.86(c), it may collect the remainder of the samples from non-LSL sites after all the LSL tap sampling sites are utilized. If the water system conducts tap sampling at non-LSL sites beyond what is required under § 141.86(c), the water system must include only the tap samples with the highest lead concentrations to meet the number of sites required for the 90th percentile calculation. This provision would ensure that additional tap samples collected above the minimum required, at sites that are less likely to detect lead at similar levels as LSL sites, cannot be used to ''dilute'' the lead 90th percentile level. Studies demonstrate that when present, LSLs represents the largest source of lead in tap water (Sandvig et al., 2008). Requiring use of only the highest lead levels from non-LSL sites for the 90th percentile calculation would increase the likelihood that sites with other major sources of lead, such as lead-bearing brass or bronze fixtures and galvanized service lines formerly downstream of an LSL, are captured in the calculation. Using non-LSL sites as part of the 90th percentile calculation is proposed to be utilized solely by water systems with fewer LSL tap sample sites than the number required under § 141.86(c). The EPA proposes that tap samples collected that are not used in the lead 90th percentile calculation must still be reported to the State.

The EPA is proposing to permit the use of grandfathered data to meet initial lead monitoring requirements if the data are from sites that meet the proposed tiering requirements. Water systems that collect lead tap samples after the publication date of the final rule, but before the rule compliance date (three years after final rule publication), in accordance with the proposed revised tap sample site selection criteria, may use these data to satisfy the initial monitoring requirement. Initial tap sampling establishes the water system's sampling schedule and the number of tap samples it is required to collect. The EPA is proposing to permit grandfathered data for an LSL water system only if the data are from sites that meet the proposed tiering requirements (*i.e.,* all samples collected from LSL sites, if available). Any water system that is conducting tap monitoring every six months and intends to use these data for purposes of grandfathering, must use the higher lead 90th percentile level to establish the monitoring frequency and number of tap samples. The EPA is proposing that water systems that do not have qualifying grandfathered data must use the lead 90th percentile results from the first tap sampling period after the compliance date of the final rule. Following the establishment of the initial sampling schedule and number of tap samples (based on either grandfathered data or data collected during the first tap sampling period after the rule compliance date), the system would be required to commence the appropriate tap sampling schedule. The proposed criteria for using grandfathered data would ensure that historical data are used only if they are from samples with the highest potential lead concentrations.

No changes are being proposed to the copper sampling requirements in the current LCR. However, due to proposed increased tap sampling requirements for lead, each tap sample collected may not be required to be analyzed for both lead and copper. This is a result of the lead and copper tap sampling schedules diverging for some water systems. Under the current rule, any water system that exceeds either the lead or copper action level (15 µg/L or 1.3 mg/L, respectively), would conduct tap monitoring every six months for both lead and copper. Once a water system measures 90th percentile tap concentrations at or below the lead and copper action levels for two consecutive rounds of monitoring, the water system may reduce to annual monitoring for lead and copper. Water systems that meet the lead and copper action levels for three consecutive rounds of annual monitoring may reduce to triennial sampling at a reduced number of sites.

As discussed above, the EPA is proposing to establish a lead trigger level of 10 µg/L that would affect the tap sampling frequency. Under this proposal, water systems that exceed the lead trigger level of 10 µg/L but do not exceed the copper and lead action levels and that are conducting tap sampling on a triennial basis, would be required to begin annual tap sampling at the standard number of sites for lead but may remain on triennial sampling for copper at the reduced number of sites. Water systems that meet the lead trigger level for three consecutive years of annual monitoring and have also met the copper action level, may reduce their lead and copper tap sampling to a triennial basis at the reduced number of sites. Water systems that exceed the lead trigger level and are on annual monitoring would not be eligible for triennial monitoring for lead at a reduced number of sites until the lead 90th percentile result is at or below the lead trigger level for three consecutive years.

In this proposal, changes to reduced monitoring are contingent upon several factors, including but not limited to: Results of lead and copper tap sampling, the size of the water system (*i.e.,* small water system flexibilities), and maintaining water quality parameters (WQPs) if CCT is installed. The schedule for tap sampling may be affected when these factors change.

Opportunities for reduction in tap sampling frequency and number of sites are more stringent under this proposal compared to the current rule. A water system must not exceed the trigger level of 10 μg/L to move into a triennial monitoring schedule at the reduced number of tap sample sites for lead. The proposed revisions to tap sampling frequency and locations are meant to ensure more frequent tap sampling is occurring at the most representative sites to identify elevated lead levels.

3. Sample Collection Methods

The EPA is proposing several changes to the tap sampling protocol, consistent with the Agency's February 2016 memorandum (USEPA, 2016d). Under the current LCR, a one-liter sample is collected from the tap after the water has stood motionless in the plumbing system for at least six hours (*i.e.,* stagnation). This is a called a first-draw sample. Water systems provide residents with a protocol for carrying out tap sampling in accordance with the LCR, if the water system itself is not collecting the tap samples. The EPA is aware that some water systems have provided sampling procedures to residents that included recommendations that may inadvertently reduce the lead levels detected, including a recommendation to run water from the tap, called flushing, prior to initiating the required minimum 6-hour stagnation time. This practice is referred to as pre-stagnation flushing. With pre-stagnation flushing, the water from the tap is run until water from the LSL is flushed out, then the water is turned off for at least six hours prior to sample collection. Based on historical data and more recent studies (*e.g.,* Katner, et al. 2018; Del Toral et al., 2013), it is evident that pre-stagnation flushing may reduce measured lead levels at the tap compared to when it is not practiced. Flushing, or running taps, has long been understood to decrease water lead levels overall, and thus has been a recommendation by Federal, State and local authorities as a way to reduce lead exposure prior to water use, especially in residences of higher risk (*e.g.,* houses containing LSLs). In addition, flushing removes water that may be in contact with LSLs for extended periods of time, which is when lead typically leaches into drinking water (USEPA, 2016). As a general matter, the EPA recommends consumers flush taps as a regular public health protective practice to reduce household exposure to lead in drinking water. However, in the case of collecting samples to determine water system compliance with the LCR, this practice may mask potential higher lead exposure that may be representative of exposure in households that do not regularly flush taps before use. Therefore, EPA is proposing to prohibit pre-stagnation flushing in tap sampling protocols.

The EPA is also aware that some tap sampling protocols contain a recommendation to remove or clean the faucet aerator prior to sampling. The taps used for monitoring likely contain an aerator as part of the faucet assembly, and particulate matter, including lead, may accumulate within these aerators. Thus, removing and/or cleaning these aerators prior to or during sample collection could mask the contribution of particulate lead. It is advisable to regularly remove and clean faucet aerators to avoid particulate matter build-up. However, if customers only remove and clean the aerators prior to or during sample collection, the sample results will not be representative of household use, given residents are not cleaning or removing their aerators before every use. The EPA proposes to prohibit the recommendation to remove and/or clean the faucet aerator prior to or during the collection of lead and copper tap samples.

Based on current information, the EPA endorses best practices to optimize the tap sampling protocol, so that sample results represent the highest lead levels occurring at high risk locations. The EPA is proposing to require tap samples be collected in wide-mouth bottles. Wide-mouth bottles are advantageous for lead and copper tap samples because they allow for a higher water flow rate compared to a narrow-necked bottle. Collection of tap samples using a wide-mouth bottle is more characteristic of faucet water flow when filling a glass of water, therefore, water systems will be responsible for providing those conducting sampling with wide-mouth, one-liter sample bottles.

In summary, the EPA is proposing to prohibit the inclusion of pre-stagnation flushing in all tap sampling protocols, thereby preventing the systematic running of water from taps or faucets prior to beginning the minimum 6-hour stagnation time needed for sample collection. The EPA also proposes the prohibition of cleaning or removing of the faucet aerator in the tap sampling protocol, and a requirement that tap samples be collected in bottles with a wide-mouth configuration. The inclusion of a pre-stagnation flushing step, cleaning or removal of the faucet aerator, and/or using a narrow-necked bottle for collection, is inconsistent with the purpose of lead tap sampling, which is to target sites and collect tap samples in a manner the is likely to capture the highest lead levels. The EPA is also proposing that all water systems submit their sampling protocol to the State for approval prior to the compliance date. In addition, the EPA is also requesting comment on alternative changes to the sampling technique for sampling locations with lead service lines in section VII of this notice.

H. Water Quality Parameter Monitoring

Under the current LCR, water systems that have CCT must monitor water quality parameters (WQPs) to ensure effective CCT. WQP samples must be collected at taps every six months and at entry points to the distribution system every six months prior to CCT installation and every two weeks thereafter.

1. Calcium Carbonate Stabilization

The EPA is proposing several revisions to the WQP monitoring requirements of the current rule. Because the EPA is proposing to eliminate calcium carbonate stabilization as a potential option for CCT (see section III.B.3. of this notice), the WQPs associated directly with this CCT option will also be removed. These include all parameters related to calcium hardness (calcium, conductivity, and water temperature). The remaining WQP monitoring requirements from the current rule will be maintained. This change is due to recent evidence demonstrating that calcium carbonate stabilization is ineffective at preventing corrosion in lead and copper pipes (see section III.B.3.). The EPA is proposing to remove the three WQPs related to calcium hardness (calcium, conductivity, and water temperature) because the EPA is proposing to no longer allow calcium carbonate stabilization as a potential CCT option. In the current rule, after the water system selects their CCT choice, the State designates OWQPs and the water system must maintain these levels in the ranges determined by the State. In this proposal, the EPA is prioritizing the most effective CCT options and the associated WQPs. Thus, the less effective CCT option currently available, calcium carbonate stabilization, is proposed to be eliminated, together with the associated WQPs.

2. Find-and-Fix Water Quality Parameter Monitoring

The EPA is proposing that additional WQP monitoring samples be collected by water systems that have CCT and that have any individual tap sample(s) with

lead results exceeding 15 µg/L. The additional WQP monitoring is a part of proposed revisions described under ''find-and-fix'' (see section III.K. of this notice) and would require water systems to collect follow-up lead tap samples at every sampling site that has an individual lead sample greater than 15 µg/L. This is proposed to be completed within 30 days of obtaining results of the individual sample greater than 15 µg/L. The EPA is also proposing a WQP sample be collected at a location on the same size water main located within a half mile of the residence with the lead result greater than 15 µg/L. This WQP monitoring is proposed to be completed within five days of receiving results of the individual lead sample greater than 15 µg/L. Water systems with existing distribution system WQP monitoring sites that meet the main size/proximity requirements can conduct the sampling at that location.

The EPA is proposing that any water system which adds sites for the purposes of WQP monitoring specified in this paragraph includes those additional sites in future WQP monitoring. The follow-up WQP samples will aid in determining whether OWQPs set by the State are being met by the water system. If any of the WQPs are off-target, such as pH or indicators of CCT, then the water system may be able to determine how large the problem is, and if it includes the whole water system, a specific area, or the sole residence with the lead action level exceedance. The additional WQP sample taken will aid in the determination of the potential cause of elevated levels of lead so that appropriate actions can be carried out.

3. Review of Water Quality Parameters During Sanitary Surveys

The EPA is proposing that both CCT and WQPs be assessed during sanitary surveys for water systems with CCT. The EPA proposes that States conduct a periodic review of WQP results and tap sampling results to ensure the water system is maintaining the optimal CCT and to assess if there should be modifications to the CCT to further reduce lead and copper levels in tap samples.

4. Additional Water Quality Parameter Requirements

In addition to the updates for WQP requirements previously specified, the EPA is proposing several supplementary changes to the current rule. First, water systems with CCT would continue collecting one sample for each applicable WQP at each entry point in the distribution system as required in the current rule with the added requirement to do so no less frequently than once every two weeks. Water systems with CCT need to continue bi-weekly monitoring to ensure their treatment techniques are optimal for reducing lead and copper corrosion.

The EPA is also proposing revisions to the prerequisites that are required for water systems to reduce the number of sites sampled and the frequency of WQP sampling. In order to reduce the number of sites used in water quality parameter monitoring, the current rule requires the water system to maintain the range of water quality parameters for two 6-month monitoring periods. The EPA is proposing that water systems would also need to meet the lead 90th percentile trigger level for those two 6-month monitoring periods to be eligible for a reduction in the number of sites for WQP sampling. In order for the water system to reduce the frequency of monitoring for water quality parameters, under the current rule, the water system must maintain the range of WQP values for three consecutive years to reduce to annual monitoring. Under the proposal, the water system would need to also meet the lead 90th percentile trigger level for those three consecutive years in order to be eligible for yearly monitoring. Under the current rule, if the water system meets the WQP requirements determined by the State and the lead 90th percentile trigger level for three additional annual monitoring periods, it may reduce its WQP monitoring frequency to once every three years. The EPA is proposing that for every phase of potential reduced WQP monitoring, the water system would also be required to meet the lead 90th percentile trigger level in addition to the current requirements. This would ensure that the required WQP monitoring sites and frequency continue when water systems have a high lead 90th percentile level. For a water system on reduced monitoring, the use of grandfathered data may be used if collected in accordance with the proposed revisions and its 90th percentile in either grandfathered data or initial tap sampling is at or below the trigger level.

I. Source Water Monitoring

The current rule requires water systems to conduct source water monitoring following an action level exceedance. Based on the results of the source water monitoring, the State must decide whether it is necessary for the water system to install source water treatment to reduce lead and/or copper tap levels. Regardless of whether a State decides that treatment is needed or not, the water system is still required to conduct source water monitoring following the State decision. The EPA is proposing to discontinue additional source water monitoring requirements if (a) a water system has conducted source water monitoring for prior lead and/or copper action level exceedance, (b) the State has determined that source water treatment is not required, and (c) a water system has not added any new water source(s).

The EPA is proposing these changes to eliminate monitoring requirements that are not necessary to protect public health. Lead and copper are rarely found in the source water in significant quantities (USEPA, 1988b), thus, where the State has decided that source water treatment is not needed, the EPA is proposing to allow the State to waive source water monitoring for any subsequent action level exceedance under the conditions listed above and to eliminate the regular monitoring currently required for source water lead and copper.

J. Public Education and Sampling at Schools and Child Care Facilities

The EPA is proposing to require all CWSs to conduct targeted sampling and public education at schools and child care facilities that they serve. Currently the EPA does not require public water systems to conduct sampling in schools and child care facilities because the Agency established the voluntary 3T's program—Training, Testing and Taking Action (3Ts) that was designed to assist states, schools, and child care facilities with conducting their own testing program, conducting outreach, and taking action to address elevated levels of lead. The EPA is proposing these requirements because the Agency sees an opportunity for water systems to assist schools and child care facilities with sampling and testing for lead. Large buildings such as schools can have a higher potential for elevated lead levels because, even when served by a water system with well operated OCCT, may have longer periods of stagnation due to complex premise plumbing systems and inconsistent water use patterns. In such situations, there may not be technical improvements that can be made to the OCCT, but risk can be mitigated through public education and voluntary actions such as replacement of premise plumbing. Water systems have developed the technical capacity to do this work in operating their system and complying with current drinking water standards.

In addition, the EPA is proposing to expand the LCR sampling and education requirements because students and

young children spend a large portion of their day in schools and child care facilities. Lead in drinking water can be a significant contributor to overall exposure to lead, particularly for infants whose diet consists of liquids made with water, such as baby food, juice, or formula. Young children and infants are particularly vulnerable to lead because the physical and behavioral effects of lead occur at lower exposure levels in children than in adults. In children, low levels of exposure have been linked to damage to the central and peripheral nervous system, learning disabilities, shorter stature, impaired hearing, and impaired formation and function of blood cells.

Children spend on average over six hours per day at school (USDA National Center for Education Statistics), with many spending more time at on-site before- or after-school care or activities. Across the country, about 100,000 schools participate in the national school lunch program, serving daily lunch to 30 million students. Ninety thousand schools serve breakfast to 14.6 million students every day (USDA). The Healthy, Hunger-Free Kids Act of 2010, which authorizes funding and sets policy for USDA's child nutrition programs, requires schools participating in federally funded meal programs to make water available during meal periods at no cost to students (section 202 of HHFKA (42 U.S.C. 1758(a)(2)(A)). The Act also mandates that child care facilities provide free drinking water throughout the day (section 221 of HHFKA (42 U.S.C. 1766(u)(2)). The EPA is proposing a new requirement for all CWSs to provide public education on lead in drinking water and sample for lead at schools and child care facilities within its distribution system every five years. The intent of the requirement is to inform and educate targeted CWS customers and users about risks from lead in premise plumbing at schools and childcare facilities.

The EPA is proposing new public education requirements for all CWSs that provide water to schools and child care facilities. The CWS would be required to provide information about the health risks and sources of lead in drinking water, collect samples for lead at schools and child care facilities within its distribution system, and share that data with the facilities and health departments to raise awareness and increase knowledge about the risks and likelihood of the presence of lead in drinking water. Prior to conducting sampling in schools (discussed in further detail in this section), the CWS would compile a list of schools and child care facilities served by the water system. The list would contain both customers and other users to ensure inclusion of non-billed users. The CWS would then use that list to communicate with the schools and child care facilities about the health risks of lead and the specifics of the sampling program.

Prior to conducting sampling, the CWS would send information to the school and child care facilities to notify them of their plans to perform sampling and to provide them with the 3Ts for Reducing Lead in Drinking Water Toolkit (EPA 815–B–18–007), or a subsequent guidance issued by the EPA. A CWS's distribution of the 3Ts document would initiate or contribute to active communication with child care facilities and schools, who are critical customers that serve a vulnerable population. The information in the 3Ts document provides tools for the facility to consider using, including expanded sampling, stakeholder communication, and remediation options.

Under the proposal, a CWS would then be required to collect samples from five drinking water outlets at each school and two drinking water outlets at each child care facility served by the CWS. The CWS would be expected to complete sampling at all schools and child care facilities in its distribution system every five years. The samples would be first draw after at least 8 hours but not more than 18 hours stagnation of the building and be 250 ml in volume. The EPA is proposing this sampling protocol to be consistent with recommended sampling protocols under the EPA's 3Ts for Reducing Lead in Drinking Water Toolkit (EPA815–B–18–007). These sampling protocols enable school and child care facility officials to identify the outlets that may be sources of lead (*e.g.,* the fixture, interior plumbing). The smaller sample size is more representative of the amount of water consumed per serving. The results of the samples would not be used as part of the CWS's calculation of the 90th percentile value in § 141.80(c)(4) because these samples are being collected in a manner to inform whether action is needed at a specific school or child care facility and whether corrosion control is effective system-wide. The CWS would be required to provide each school and child care facility with the results of the samples taken in that facility. The CWS would be required to provide the sampling results as soon as practicable but no less than 30 days after receipt of the results. The CWS would also be required to provide the results for all samples collected in schools and child care facilities to the drinking water primacy agency and local health department where the school or child care facility is located.

CWS sampling in schools and child care facilities would be part of a targeted public education effort to educate CWS customers about risks from lead in premise plumbing and the actions customers can take to address sources of lead in their plumbing. Individual outlets, such as water fountains, can leach lead even when a water system has optimized corrosion control and/or has lead levels at or below the action level in its tap sampling. School and child care facility sampling contributes to increased public awareness of the potential for elevated levels of lead in premise plumbing independent of a water system's 90th percentile value.

The CWS would not be required under this proposed rule for taking any remedial action at the school or child care facility following the sampling and notification requirements of this proposal. The managers of these facilities have the established lines of communication with the occupants of these buildings (and their parents or guardians) and have control over the plumbing materials that may need to be addressed. The school or child care facility would be able to use the 3T's guidance and make decisions about communication of the sampling results to the parents and occupants of the facility and as well as any follow-up remedial actions.

Some State and local agencies have drinking water testing requirements for lead in schools and child care facilities. In this proposal, the EPA is including an opportunity for a State or primacy agency to waive school and child care facility sampling for individual CWSs to avoid duplication of effort. If a State has in place a program that requires CWSs to sample at all schools and child care facilities, or a program requiring schools and child care facilities to collect samples themselves, that is at least as stringent as the proposed LCR requirements, the State may use that program in lieu of the proposed requirement. If a State or other program is limited to a subset of schools and child care facilities as defined in this proposal, then the State may consider the requirement for individual CWSs whose customers or users are already included in the State or other program as being met. For example, if a State has a required program for testing lead in drinking water in public schools but not in other types of schools or in child care facilities, then a CWS serving only public schools can receive a waiver. If that CWS serves public and non-public schools, then the CWS would be required to notify and conduct testing at

the non-public schools and child care facilities and could receive a partial waiver to acknowledge that the CWS is not responsible for notifying and testing public schools. With a partial waiver, the CWS would be required to test at schools or child care facilities that are not otherwise covered by a program that requires testing and is at least as stringent as this proposal.

In section VII of this notice, the EPA is requesting comment on an alternative to the proposed requirements for public education and sampling at schools and child care facilities described in this section.

K. Find-and-Fix

The EPA is proposing an additional requirement to the current LCR, known as ''find-and-fix'' when an individual tap sample exceeds 15 µg/L. Under the current rule, up to 10 percent of lead tap samples used to calculate the 90th percentile may exceed the lead action level. However, if the water system's 90th percentile does not exceed the lead action level, the only action required by a water system is to provide the tap sample results to the consumer within 30 days of receiving the result. A ''find-and-fix'' approach requires water systems to perform additional actions (as described in this section); when an individual tap sample exceeds 15 µg/L, water systems are required to identify and remediate the source of the elevated lead at the tap sample site. Also, as part of the proposed public education requirements (described in section III.F of this notice), water systems would be required to provide notification to affected consumers within 24 hours. This proposed change will improve consumer awareness and provide information necessary to take actions to limit exposure to lead in drinking water.

Under this proposal, the ''find-and-fix'' approach would require the water systems to collect a follow-up sample for each tap sample site that exceeded 15 µg/L. The follow-up tap sample must be collected within 30 days of receiving the tap sample result. These follow-up samples may use different sample volumes or different sample collection procedures to assess the source of elevated lead levels based on the characteristics of the site. The results of the ''find-and-fix'' follow-up samples would be submitted to the State but would not be included in the 90th percentile calculation. If the water system is unable to collect a follow-up sample at a site, the water system would have to provide documentation to the State for why it was unable to collect a follow-up sample. The water system must provide the follow-up tap sample results to consumers within 30 days of receiving the result (consistent with the current rule), unless that follow-up sample also exceeds 15 µg/L, in which case, the EPA proposes the water system must notify the consumer within 24 hours of learning of the result. Water systems should anticipate the requirement that customers must be notified within 24-hours of results for many of the ''find-and-fix'' follow-up samples. Any water system that is unable to regain access to the same site to collect a follow-up tap sample may decide to sample at another site within close proximity of the original site and with similar structural characteristics.

As described in section III.H of this notice, the EPA is proposing that water systems with CCT that have an individual tap sample that exceeds the lead action level, would be required to collect an additional WQP sample within five days of obtaining the lead tap sample result. For a CWS, this WQP sample must be collected from a site in the same water pressure zone, on the same size or smaller water main within 0.5 miles of the residence with the tap sample exceeding the lead action level. Water systems with an existing WQP site that meets these criteria would be able to sample at that location. Since WQP sites are more accessible sites and do not require coordination with customers, this sample can be collected in a shorter timeframe. It is also important to try to sample close to when the lead tap sample with the high results was collected so that the water quality will more closely match the conditions at the site that exceeded 15 µg/L. The follow-up tap sample collected for lead can help the water system determine the potential source of lead contamination (*e.g.,* premise plumbing, LSL) and the WQP sample required for water systems with CCT will help determine if CCT is optimized, if additional WQP sites are needed, and/or WQPs set by the State are being met. Such steps will help identify the source of the elevated lead to initiate appropriate mitigation. Where the water system is unable to identify and/or mitigate the risk, it must submit a justification to the State.

Under this proposal, the water system would be required to determine if problems with the CCT are leading to elevated levels of lead in the tap samples and then implement a mitigation strategy if necessary. In addition to the follow-up tap sample and the WQP sampling, the water system can review distribution system operations or other factors to determine the cause of elevated lead level. CCT adjustment may not be necessary to address every exceedance. Water systems shall note the cause of the elevated lead level if known in their recommendation to the State.

Mitigation strategies could include a water system-wide adjustment to CCT, flushing portions of the distribution system, or other strategies to improve water quality management to reduce lead levels. Under this proposal, water systems would be required to recommend a solution to the State for approval within six months of the end of the monitoring period in which the site(s) first exceeded 15 µg/L and the State would have six months to approve the recommendation. If the water system does not have CCT and recommends installation of it, the system would be required to follow the proposed schedule in § 141.81(e). A water system with CCT that recommends re-optimization of CCT would be required to follow the steps in accordance with § 141.81(d).

A water system may identify a fix that is out of its control. For example, if the source of lead in drinking water was an old faucet owned by the customer, and the customer did not wish to replace the faucet, the water system would provide documentation to the State under this proposal. All other fixes recommended by a water system would be implemented on a schedule specified by the State.

L. Reporting and Recordkeeping

The EPA is proposing changes to water system reporting requirements in conjunction with corresponding changes to the regulatory requirements being proposed by the EPA in this rulemaking. These changes in reporting requirements will help inform State decision-making and improve implementation and oversight.

1. Reporting Requirements for Tap Sampling for Lead and Copper and for Water Quality Parameter Monitoring

In addition to the proposed tap sample revisions, as described in section III.G.3 of this notice, a water system would also be required to submit for State approval its tap sampling protocol that is provided to residents or other individuals who are conducting the tap sampling, to ensure that the sampling protocol does not include pre-stagnation flushing, instructions to clean or remove the aerator, or use narrow-mouth sample collection bottles. Under this proposal, water systems would also need to provide annual certification to the State that the approved sampling protocol has not been modified.

Additionally, calcium results would no longer be subject to reporting requirements because under the proposed rule, calcium would no longer be a CCT option or regulated WQP.

2. Lead Service Line Inventory and Replacement Reporting Requirements

The EPA is proposing to incorporate new reporting requirements in conjunction with the proposed revisions to the LSLR requirements in § 141.84. Under this proposal, by the rule's compliance date, the water system would have to submit an inventory of LSLs and service lines of unknown material to the State and would have to annually thereafter submit an updated inventory that reflects LSLs replaced and service lines of unknown material that have been evaluated in the distribution system.

3. Lead Trigger Level Notification Requirements

The EPA proposes that any water system that has LSLs with 90th percentile tap sampling data that exceed the lead trigger level would annually certify to the State that it conducted notification in accordance with proposed LSL customer notification provisions. The notification would ensure that these consumers were properly alerted about the trigger level exceedance, potential risks of lead in drinking water, and informed about the water system's goal-based LSLR program.

4. Reporting Requirements for School and Child Care Public Education and Sampling

The EPA is proposing to incorporate the following reporting requirements:

- A CWS would have to certify that it has completed the notification and sampling requirements (proposed in section III.J. of this notice) at a minimum of 20 percent of schools and child care facilities served by the water system. The certification would include the number of schools and child care facilities served by the water system, the number of schools and child care facilities sampled in the calendar year, and the number of schools and child care facilities that have refused sampling.
- A CWS would have to certify that individual sampling results were shared with the respective school and child care facility, and that all results were shared with local or State health departments. The proposed certification would include information identifying the number of attempts to gain entry for sampling that were declined by a customer.
- If a CWS does not serve any school or licensed child care facilities, the water system would have to annually certify to the State that it made a good faith effort to identify schools and child care facilities in accordance with proposed requirements in § 141.92 and confirm that no schools or child care facilities are served by the water system. The good faith effort could include reviewing customer records and requesting lists of schools and child care facilities from the State or other licensing agency.
- Certification would be sent to the State by July 1 of each year for the previous calendar year's activity.

5. What are the State record keeping requirements?

The EPA is proposing to require the State to retain all record keeping requirements from the current LCR as well as to add new requirements related to corrosion control treatment (CCT) and lead service line inventory (LSL) and replacement. The EPA proposes to require the State to maintain a record of all public water systems LSL inventories, as well as annual updates to their inventories as LSLs are verified and replaced over time. This information is necessary for the State to calculate goal and mandatory LSLR rates, as well as verify correct tap sample site selection tiering. The proposal would also require the State to maintain records on changes to source water or treatment, as these changes could affect the optimized corrosion control treatment approved by the State. The State would also be required to maintain records regarding ''find-and-fix,'' specifically where a problem was identified, and the action taken to address it. States would review and maintain these records to ensure compliance with find-and-fix requirements, to evaluate if appropriate actions were taken by the water system, and if additional follow up is necessary by the water system. When no remedial action was taken, the State would need to keep a record of the decision for no action. For example, if the source of lead in drinking water was an old faucet owned by the customer, and the customer did not wish to replace the faucet, the State would maintain a record of that decision by the customer as justification for no remedial action taken to address a high lead sample result. Finally, under this proposal, the State would be required to maintain records of the compliance alternative the State has approved for the non-transient non-community water system (NTNCWS) and small community water systems (CWSs). This information would allow the State to track water systems' progress with corrosion control treatment, complete lead service line replacement, use of point-of-use (POU) devices, and replacement of leaded premise plumbing.

6. What are the State reporting requirements?

In addition to the reporting requirements in the current rule, the EPA is proposing that the State report several additional data elements to the EPA. The State would be required to report the OCCT status of all water systems, including the parameters that define the optimization (for example, orthophosphate residual or target pH and alkalinity values). While 90th percentile lead levels at or below the lead action level are not currently required to be reported by States for small water systems, the EPA is proposing that all water systems regardless of size and or lead levels report their lead 90th percentile value. The EPA has found that many States already voluntarily report 90th percentile lead values for all systems to the Safe Drinking Water Information System (SDWIS). The EPA also proposes that States report the current number of LSLs at every water system. National information about the numbers of LSLs in public water systems will support the EPA and other Federal agencies in targeting programs to reduce lead exposure, such as the Water Infrastructure Improvements for the Nation Act (United States, 2016) and America's Water Infrastructure Act (AWIA, 2018).

IV. Other Proposed Revisions to 40 CFR Part 141

A. Consumer Confidence Report

In 1996, Congress amended the Safe Drinking Water Act (SDWA). Among other things, this amendment added a provision requiring that all community water systems deliver to their customers a brief water quality report annually called a Consumer Confidence Report (CCR). CCRs summarize information water systems collect to comply with regulations. The CCR includes information on source water, the levels of any detected contaminants, compliance with drinking water rules (including monitoring requirements), and some educational language, including a mandatory health effects statement regarding lead.

As recommended by the NDWAC (see section VIII.L.2 of this notice), the EPA consulted with risk communication experts to revise the mandatory health effects language in the Consumer

Confidence Report (CCR). To improve clarity, the EPA is proposing to require Community Water Systems (CWSs) to include a revised mandatory health effects statement that would inform consumers that lead is harmful for all age groups and to include a mandatory statement about lead service lines (LSLs) (*e.g.,* their presence and how to replace them) for water systems with LSLs. The proposed mandatory statement is below.

Exposure to lead can cause serious health effects in all age groups. Infants and children who drink water containing lead could have decreases in IQ and attention span and increases in learning and behavior problems. Lead exposure among women who are pregnant increases prenatal risks. Lead exposure among women who later become pregnant has similar risks if lead stored in the mother's bones is released during pregnancy. Recent science suggests that adults who drink water containing lead have increased risks of heart disease, high blood pressure, kidney or nervous system problems.

To increase transparency and improve public access to information, the EPA is also proposing to require CWS to report the range of lead tap sample results in addition to the currently required 90th percentile and the number of samples that are greater than the lead action level for each monitoring period. Reporting the range of tap sample lead levels would allow consumers to understand how high tap sample levels were at individual sites.

B. Public Notification

The Public Notification Rule (PN) is part of the Safe Drinking Water Act. The rule ensures that consumers will know if there is a problem with their drinking water. These notices alert consumers if there is risk to public health. They also notify customers: If the water does not meet drinking water standards; if the water system fails to test its water; if the system has been granted a variance (use of less costly technology); or if the system has been granted an exemption (more time to comply with a new regulation). In 2000, the Environmental Protection Agency (EPA) revised the existing Public Notification Rule. The revisions matched the form, manner, and timing of the notices to the relative risk to human health. The revised rule makes notification easier and more effective for both water systems and their customers.

In 2016, section 2106 of the Water Infrastructure Improvements for the Nation Act (WIIN Act) amended section 1414 of the Safe Drinking Water Act (SDWA) to, among other things, require water systems to provide ''Notice that the public water system exceeded the lead action level under section 141.80(c) of title 40, Code of Federal Regulations (or a prescribed level of lead that the Administrator establishes for public education or notification in a successor regulation promulgated pursuant to section 1412 of the SDWA).'' The Act also provided that notice of violations or exceedances ''with potential to have serious adverse effects on human,'' which are types of violations and exceedances currently categorized as ''Tier 1'' under the current public notification rules (see Table 2 to § 141.201), must ''be distributed as soon as practicable, but not later than 24 hours, after the public water system learns of the violation or exceedance.'' The WIIN Act also requires that such notifications ''be provided to the Administrator and the head of the State agency that has primary enforcement responsibility under section 1413 of the SDWA, as applicable, as soon as practicable, but not later than 24 hours after the public water system learns of the violation or exceedance.'' The EPA is proposing to incorporate these requirements for CWSs and non-transient non-community water systems (NTNCWSs) with a lead action level exceedance as part of proposed revisions to the Lead and Copper Rule (LCR). Specifically, the proposed rule incorporates the amendments to section 1414 of the SDWA in the 40 CFR 141 subpart Q-Public Notification of Drinking Water Violations (and as necessary into any provisions cross-referenced therein) and adds exceedances of the lead action level under § 141.80(c) to the list of Tier 1 violations subject to the new 24-hour notice requirements discussed above. The EPA proposes to categorize lead action level exceedances as Tier 1 based on the conclusion that such exceedances ''have the potential to have serious adverse health effects on human health as a result of short-term exposure''. Since exposure to lead can result in serious health effects, the EPA is proposing a lead AL exceedance result in Tier 1 public notification because the Agency cannot define the subset of lead AL exceedances that could result in serious adverse health effects due to short-term exposure, therefore the EPA proposes that a lead AL exceedance would require Tier 1, 24 hour notification. In addition, the EPA proposes to update the mandatory health effects statement as follows to be consistent with the proposed CCR revisions:

Exposure to lead can cause serious health effects in all age groups. Infants and children who drink water containing lead could have decreases in IQ and attention span and increases in learning and behavior problems. Lead exposure among women who are pregnant increases prenatal risks. Lead exposure among women who later become pregnant has similar risks if lead stored in the mother's bones is released during pregnancy. Recent science suggests that adults who drink water containing lead have increased risk of heart disease, high blood pressure, kidney or nervous system problems.

C. Definitions

The EPA is proposing new and revised definitions to clarify new and updated terminology in this proposed rule in § 141.2. Definitions for ''aerator,'' ''pre-stagnation flushing,'' ''wide-mouth bottle,'' ''tap sampling protocol,'' ''monitoring period,'' and ''sampling period'' are added to correspond with proposed rule changes regarding tap sampling methodology and the monitoring period. In addition, the population size criterion have changed for the definitions of small and medium-size water systems to reflect the 1996 changes to SDWA for small-system flexibility.

Definitions have been added to ensure readers understand the criteria that identify a ''child care facility,'' and a ''school,'' related to additional sampling requirements for CWSs. In addition, new definitions for ''trigger level,'' ''find-and-fix,'' and ''consumer'' have also been added because ''trigger level'' and ''find-and-fix'' are new requirements for this proposal, while ''consumer'' refers to a defined group impacted by the rule proposal. Further, in this proposal, terms related to lead service lines, such as ''galvanized service line,'' ''gooseneck, pigtail, or connector,'' ''potholing,'' ''hydrovacing,'' and ''trenching'' have been defined as these are processes or objects associated with the lead service line replacement requirements of the rule proposal. Also, to ensure appropriate implementation of this rule definitions for ''pitcher filter'' and ''point of use (POU) device'' are proposed because they relate to compliance alternatives for small community water systems and non-transient non-community water systems in this proposal. Finally, analytical definitions for a ''method detection limit'' (MDL) and a ''practical quantitation level'' (PQL)'' have been provided to better explain analytical methods in the current and proposed rule.

V. Rule Implementation and Enforcement

The NDWAC recommended that the EPA create an on-line portal for

guidance, templates and other tools to support implementation of the final LCRR by water systems and States. The EPA provides all applicable guidance and tools on CCT, PE, and other aspects of the rule on the Agency website at *https://www.epa.gov/dwreginfo/water-system-implementation-resources* to support implementation of the current LCR and will continue to rely on the website to implement any revisions finalized as a result of this proposed rule. The Lead Action Plan has an objective to ''[c]reate an online portal to enhance, consolidate and streamline federal-wide communication to the public. Links will direct the public to the EPA and other Federal Agencies specific information. The EPA would utilize this mechanism to promote broader access to the EPA website for new and revised guidance and tools to support the LCRR.

The EPA is proposing requirements that would improve oversight and enforcement of the LCRR. For example, the GAO in its report ''Drinking Water: Additional Data and Statistical Analysis May Enhance EPA's Oversight of the Lead and Copper Rule'', recommended the EPA should require states to report available information about lead pipes to the EPA's SDWIS (or a future redesign) database and should require states to report all 90th percentile sample results for small water systems (GAO–17–424, 2017).

A. What are the requirements for primacy?

This section describes the regulations and other procedures and policies that States must adopt, or have in place, to implement the proposed Lead and Copper Rule (LCR), while continuing to meet all other conditions of primacy in 40 CFR part 142. Section 1413 of the Safe Drinking Water Act (SDWA) establishes requirements that primacy entities (States or Indian Tribes) must meet to maintain primary enforcement responsibility (primacy) for its public water systems. These include: (1) Adopting drinking water regulations that are no less stringent than Federal national primary drinking water regulations (NPDWRs) in effect under sections 1412(a) and 1412(b) of the Act, (2) adopting and implementing adequate procedures for enforcement, (3) keeping records and making reports available on activities that the EPA requires by regulation, (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by SDWA sections 1415 and 1416, and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the Public Water Supply Supervision Program, as authorized under section 1413 of the SDWA. To continue to implement the LCR, States would be required to adopt revisions at least as stringent as the proposed provisions in 40 CFR Subpart I—Control of Lead and Copper; §§ 141.153 and 141.154; §§ 141.201 and 202; Appendix A to Subpart O ([Consumer Confidence Report] Regulated contaminants); Appendix A to Subpart Q (NPDWR Violations and Other Situations Requiring Public Notice; and Appendix B to Subpart Q (Standard Health Effects Language for Public Notification). Under § 142.12(b), all primacy agencies would be required to submit a revised program to the EPA for approval within two years of promulgation of any final LCR revisions, or States may be able to request an extension of up to two years in certain circumstances.

B. What are the special primacy requirements?

The EPA is proposing to retain the existing special primacy requirements as well as to establish additional requirements. Regarding LSL inventories, States would be required to provide a description of acceptable methods for verifying service line material under this proposal. Verification methods could include consultation of existing records or the physical examination of the service line. The State would also be required to submit the criteria it would use for determining a water system's goal-based rate for the system's LSLR, which a water system must implement after a lead trigger level exceedance. The State would be required to describe how it would determine a feasible goal-based rate, which would reduce lead exposure. States could consider several relevant factors, including but not limited to the percentage of LSLs as well as the financial circumstances of the water system and its customers.

The EPA also proposes special primacy requirements regarding testing at schools for lead in drinking water. The EPA is aware of several States that have instituted their own lead in drinking water testing programs in schools. If the State has an existing testing program at schools and child care facilities, the State would be required to demonstrate that their program is at least as stringent as the testing program proposed by the EPA.

Under this proposal, the State would also need to demonstrate how it will verify compliance with ''find-and-fix'' requirements. For example, the State would need to determine the acceptability of the water system's corrective actions and timeliness of the corrective action implementation. Finally, the State would need to describe the approach it would take in reviewing any change in source water or treatment at a water system. Such a change could impact the optimized corrosion control treatment as well as have an impact on other national primary drinking water regulations.

VI. Economic Analysis

This section summarizes the Economic Analysis (EA) supporting document (USEPA, 2019a) for the proposed Lead and Copper Rule (LCR) revisions, which is written in compliance with section 1412(b)(3)(C)(ii) of the 1996 Amendments to the Safe Drinking Water Act (SDWA). This section of the Act states that when proposing a national primary drinking water regulation (NPDWR) that includes a treatment technique, the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors required under section 1412(b)(3)(C)(i). Clause (i) lists the analytical elements required in a Health Risk Reduction and Cost Analysis (HRRCA) which is applicable to a NPDWR that includes a maximum contaminant level. The prescribed HRRCA elements include: (1) Quantifiable and non-quantifiable health risk reduction benefits; (2) quantifiable and non-quantifiable health risk reduction benefits from reductions in co-occurring contaminants; (3) quantifiable and non-quantifiable costs that are likely to occur solely as a result of compliance; (4) incremental costs and benefits of rule options; (5) effects of the contaminant on the general population and sensitive subpopulations including infants, children, pregnant women, the elderly, and individuals with a history of serious illness; (6) any increased health risks that may occur as a result of compliance, including risks associated with co-occurring contaminants; and (7) other relevant factors such as uncertainties in the analysis and factors with respect to the degree and nature of the risk.

Costs discussed in this section are presented as annualized present values

in 2016 dollars, which is consistent with the timeframe for the EPA's water system characteristic data used in the analysis. The EPA estimated the year or years in which all costs occur over a 35-year time period. Thirty-five years was selected to capture costs associated with rule implementation as well as water systems installing and operating corrosion control treatment and implementing lead service line replacement (LSLR) programs. The EPA then determined the present value of these costs using discount rates of 3 and 7 percent.

Benefits, in terms of health risk reduction for the proposed LCR revisions are characterized by the activities performed by water systems, which are expected to reduce risk to the public from exposure to lead and copper in drinking water at the tap. The EPA quantifies and monetizes some of this health risk reduction from lead exposure by estimating the decrease in lead exposure resulting to children from 0 to 7 years of age from the installation and re-optimization of corrosion control treatment (CCT), LSLRs, and the implementation of point-of-use (POU) filter devices.

A. Affected Entities and Major Data Sources Used To Characterize the Sample Universe

The entities potentially affected by the proposed LCR revisions are public water systems (PWSs) that are classified as either community water systems (CWSs) or non-transient non-community water systems (NTNCWSs). These water systems can be publicly or privately owned. In the economic analysis modeling performed in support of this proposal, the EPA began with the 50,067 CWSs and 17,589 NTNCWS in the Safe Drinking Water Information System Fed Data Warehouse (SDWIS/Fed) as its foundational data set.

The EPA used a variety of data sources to develop the drinking water industry characterization for the regulatory analysis. Exhibit 6–1 lists the major data sources, describes the data used from each source, and explains how it was used in the EA. Additional detailed descriptions of these data sources and how they were used in the characterization of baseline industry conditions can be found in Chapter 4 of the EA.

EXHIBIT 6–1—DATA SOURCES USED TO DEVELOP THE BASELINE INDUSTRY CHARACTERIZATION

Data source	Baseline data derived from the source
SDWIS/Fed third quarter 2016 "frozen" dataset [1].	• Public water system inventory, including population served, number of service connections, source water type, and water system type. Also used to identify water systems that are schools and child care facilities. • Status of CCT, including identification of water systems with CCT and the proportion of water systems serving ≤50,000 people that installed CCT in response to the current LCR. • Analysis of lead 90th percentile concentrations to identify water systems at or below the TL of 10 μg/L, above the TL, and above the AL of 15 μg/L at the start of the proposed rule implementation by water system size, water system type, source water type, and CCT status.[2] • The proportion of water systems that are on various reduced monitoring schedules for lead and copper tap and WQP monitoring. • The frequency of source and treatment changes and those source changes that can result in additional source water monitoring. • Length of time that water systems replace LSLs if required under the current LCR.
2006 CWSS	• Number of distribution system entry points per system. • PWS labor rates.
Geometries and Characteristics of Public Water Systems (USEPA, 2000).	• Design and average daily flow per water system.
1988 AWWA Lead Information Survey	• LSL inventory, including the number of water systems with LSLs, and the average number of LSLs per water system, as reported in the 1991 LCR RIA (Weston and EES, 1990).
2011 and 2013 AWWA Surveys of Lead Service Line Occurrence (as summarized in Cornwell et al., 2016).	• LSL inventory, including the number of water systems with LSLs and the average number of LSLs per water system.
Six-Year Review 3 of Drinking Water Standards	• Individual lead tap sampling results used to estimate percent of samples above 15 μg/L. • Baseline distribution of pH for various CCT conditions. • Baseline orthophosphate dose for CCT.

Acronyms: AL = action level; AWWA = American Water Works Association; CCT = corrosion control treatment; CWSS = Community Water System Survey; LCR = Lead and Copper Rule; LSL = lead service line; RIA = regulatory impact assessment; SDWIS/Fed: Safe Drinking Water Information System/Federal Version; TL = trigger level; WQP = water quality parameter; USEPA = United States Environmental Protection Agency.

Note:

[1] Contains information reported through June 30, 2016.

[2] As detailed in Chapter 3 of the Economic Analysis for the Proposed Lead and Copper Rule Revisions (USEPA, 2019a), a system's lead 90th percentile level is a key factor in determining a system's requirements under the current rule and proposed LCR.

B. Overview of the Cost-Benefit Model

Under the regulatory provisions of the proposed rule, PWSs will face different compliance scenarios depending on the size, the type of water system, the presence of LSLs, and existing corrosion controls. In addition, PWSs will also face different unit costs based on water system size, type, and number of entry points (*e.g.,* labor rates and CCT capital, and operations and maintenance (O&M) unit costs). PWSs have a great deal of inherent variability across the water system characteristics that dictate both compliance activities and cost.

Because of this variability, to accurately estimate the national level compliance costs (and benefits) of the proposed LCR revisions, as well as describe how compliance costs are expected to vary across types of PWSs, the cost-benefits model creates a sample of representative ''model PWSs'' by combining the PWS-specific data available in SDWIS/Fed with data on baseline and compliance characteristics available at the PWS category level. In some cases, the categorical data are simple point estimates. In this case, every model PWS in a category is assigned the same value. In other cases, where more robust data representing system variability are available the

category-level data includes a distribution of potential values. In the case of distributional information, the model assigns each model PWS a value sampled from the distribution, in order to characterize the variability in this input across PWSs. The model follows each model PWS in the sample through each year of analysis—determining how the PWS will comply with each requirement of the proposed rule, estimating the yearly compliance cost, and tracking the impact of the compliance actions on drinking water lead concentrations. It also tracks how other events, such as changing a water source or treatment affect the water system's compliance requirements for the next year.

The model's detailed output provides results for 36 PWS categories, or strata. Each PWS reporting category is defined by the water system type (CWS and NTNCWS), primary source water (ground and surface), and size category (there are nine). This proposal presents summarized national cost and benefit totals by regulatory categories. The detailed output across the 36 PWS categories can be found in Appendix C of the EA.

In constructing the initial model PWS sample for the cost-benefit analysis, the EPA began with the 50,067 CWSs and 17,589 NTNCWS in SDWIS/Fed. Also, from SDWIS/Fed, the EPA knows each water system's type (CWS or NTNCWS); primary water source (surface water or groundwater); population served; CCT status (yes/no); ownership (public or private); and number of connections.

The available LCR data limited the EPA's ability to quantify uncertainty in the cost-benefit model. During the development of the model, it became clear that not only were many of the inputs uncertain, but for many LCR specific inputs, the EPA only has limited midpoint, high, and low estimates available and does not have information on the relative likelihood of the available estimates. This includes major drivers of the cost of compliance including: The baseline number of systems with LSLs and the percent of connections in those system that are LSLs; the number of PWSs that will exceed the AL and/or TL under the proposed revised tap sampling requirements; the cost of LSL replacement; the cost of CCT; and the effectiveness of CCT in PWSs with LSLs. Therefore, the EPA estimated proposed LCRR compliance costs under low and high bracketing scenarios. These low and high cost scenarios are defined by the assignment of low and high values for the set of uncertain cost drivers listed above. Detailed descriptions of these five uncertain variables and the derivation of their values under the low and high cost scenarios can be found in Chapter 5, Section 5.2.3.2 of the EA (USEPA, 2019a). With the exception of the five uncertain variables which define the difference between the low and high cost scenarios the remaining baseline water system and compliance characteristics are assigned to model PWSs, as described above, and remain constant across the scenarios. This allows the EPA to define the uncertainty characterized in the cost range provided by the low and high scenarios and maintains consistency between the estimation of costs for the current and proposed rules (*e.g.,* percentage of lead tap water samples that will be invalidated). Chapters 4 and 5 of the EA describe in greater detail the baseline and major cost driving data elements, their derivation, and the inherent sources of uncertainty in the developed data elements. Section 5.2 and 5.3 of the EA discuss how each data element is used in the estimation of costs and provides examples and references to how these data were developed.

Because PWS baseline characteristics are being assigned from distributional source data to capture the variability across PWS characteristics, the EPA needed to ensure that its sample size was large enough that the results of the cost-benefit model were stable for each of the 36 PWS categories. To insure stability in modeled results, the EPA oversampled the SDWIS/Fed inventory to increase the number of water systems in each PWS category. For every PWS category, the EPA set the target minimum number of model PWSs to 5,000. To calculate the total estimated costs for each PWS category, the model weights the estimated per water system costs so that when summed the total cost is appropriate for the actual number of water systems known to be in the category.

The exception to the assignment of water system characteristics discussed above are the 21 very large water systems serving more than one million people. Because of the small number of water systems in this size category, the uniqueness of their system characteristics, and the potential large cost for these systems to comply with the proposed regulatory requirements, using the methods described above to assign system attributes could result in substantial error in the estimation of the national costs. Therefore, the EPA attempted to collect information on very large water systems' CCT practices and chemical doses, pH measurements and pH adjustment practices, number of LSLs, service populations, and average annual flow rates for each entry point to the distribution system. The EPA gathered this information from publicly available data such as SDWIS/Fed facility-level data, Consumer Confidence Reports, and water system websites. In addition, the American Water Works Association (AWWA) provided additional data from member water systems to fill in gaps. When facility-specific data was available, the EPA used it to estimate compliance costs for the very large water systems. If data was not available, the EPA assigned baseline characteristics using the same process as previously described. See Chapter 5, Section 5.2.3.2.6 of the EA for a summary of the data the EPA collected on these very large systems (USEPA, 2019a).

The cost model estimates the incremental cost of the proposed LCR revisions over a 35-year period. In accordance with the EPA's policy, and based on guidance from the Office of Management and Budget (OMB), when calculating social costs and benefits, the EPA discounted future costs (and benefits) under two alternative social discount rates, 3 percent and 7 percent.

When evaluating the economic impacts on PWSs and households, the EPA uses the estimated PWS cost of capital to discount future costs, as this best represents the actual costs of compliance that water systems would incur over time. The EPA used data from the 2006 Community Water System Survey (CWSS) to estimate the PWS cost of capital. The EPA calculated the overall weighted average cost of capital (across all funding sources and loan periods) for each size/ownership category, weighted by the percentage of funding from each source. The cost of capital for each CWS size category and ownership type is shown in Exhibit 5–14 of the EA. Since similar cost of capital information is not available for NTNCWS, the EPA used the CWS cost of capital when calculating the annualized cost per NTNCWS. Total estimated cost of capital may be greater than actual costs water systems bear when complying with future regulatory revisions because financing support for lead reduction efforts may be available from State and local governments, EPA programs (*e.g.,* the Drinking Water State Revolving Fund (DWSRF), the WIFIA Program, and the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act) grant programs), and other federal agencies (*e.g.,* HUD's Community Development Block Grants).

The availability of funds from government sources, while potentially reducing the cost to individual PWSs,

does not reduce the social cost of capital to society. See Chapters 4 and 5 of the EA for a discussion of uncertainties in the cost estimates.

The EPA projects that rule implementation activities will begin immediately after rule promulgation. These activities will include one-time PWS and State costs for staff to read the rule, become familiar with its provisions, and develop training materials and train employees on the new rule. States will also incur burden hours associated with adopting the rule into State requirements, updating their LCR program policies and practices, and modifying data record keeping systems. PWSs will incur costs to comply with the lead service line materials inventory requirements and develop an initial lead service line replacement plan in years one through three of the analysis. The EPA expects that water systems will begin complying with all other proposed rule requirements three years after promulgation, or in year four of the analysis.

Some requirements of the proposed rule must be implemented by water systems regardless of their water quality and tap sampling results (*e.g.,* CWS school and child care facilities sampling programs), however, most of the major cost drivers are a function of a water systems 90th percentile lead tap sample value. The 90th percentile value, and if it exceeds the lead trigger level or action level, dictates: The tap water sampling and water quality parameter (WQP) monitoring schedules, the installation/re-optimization of CCT, ''find-and-fix'' adjustments (triggered by single lead tap sample exceedances of the 15 µg/L action level, which has an increasing likelihood in the model as 90th percentile tap sample results increase) to corrosion control treatment, the installation of point-of-use filters at water systems selecting this treatment option as part of the small water system flexibilities of the proposed rule, the goal-based or mandatory removal of lead service lines and water system and State administrative costs. Because of uncertainty in the estimation of the 90th percentile values the Agency developed low and high estimates for this cost driving variable. The EPA used both the minimum and maximum 90th percentile tap sample values from SDWIS/Fed over the period from 2007 to 2015, to assign a percentage of PWSs by size, and CCT and LSL status to each of three groups, those at the trigger level (TL) or below, those above the lead trigger but at or below the action level (AL), and those above the lead action level. These assignments represent the status of systems under the current rule. See Chapters 4 and 5 of the EA for additional information.

Because the tap sampling requirements under the proposed LCR revisions call for 100% of lead tap samples to be taken from sites with LSLs, for water systems with LSLs, the likelihood that a PWS would have a lead 90th percentile greater than the TL or AL is higher under the proposed rule compared to under the current LCR. The EPA used information from Slabaugh et al. (2015) to develop two adjustment factors, the lower being applied to the low cost scenario LSL system 90th percentile values and the greater factor being used to adjust the high cost scenario 90th percentile values for LSL systems. The EPA then reassigned the LSL system to the three 90th percentile value groups, those without a TL or AL exceedance, those with a TL but not an AL exceedance, and those with an AL exceedance. A detailed discussion of the development of the 90th percentile value group placement, the adjustment made for the LSL water systems given the proposed tap sampling requirements, and the percentages of systems assigned to the 90th percentile value groups under both the current and proposed LCRR for the low and high cost scenarios are found in Chapter 5, section 5.2.4.2.2 of the EA.

Once water systems are assigned to the groupings based on their CCT and LSL status, individual 90th percentile lead tap sample values are assigned from the distribution of 90th percentile values within each grouping.

Several proposed regulatory compliance activities are assumed to not affect a water system's 90th percentile value. These include, for example, developing an inventory of LSLs, CWS sampling at schools and child care facilities, and public education. In the model, the only compliance activities that will change a water system's 90th percentile lead tap sample are: Installation of CCT; re-optimization of existing CCT; removal of LSLs; and a water system-wide ''find-and-fix'' activity (assumed to be a system-wide increase in pH). In addition to these proposed rule compliance activities, changing a water source or treatment technology can also result in a change in a water system's 90th percentile tap sample value.

Because a water system's 90th percentile value is so important to determining regulatory requirements and cost under the proposed rule, the cost model, under both the low and high cost scenarios, tracks each water system's 90th percentile value over each annual time step in the model. Based on the initial 90th percentile values, a number of proposed rule compliance actions are triggered. With the implementation of CCT, LSLR, and ''find-and-fix'' corrections, 90th percentile tap sample values are expected to decrease. The model allows for future increases in 90th percentile values as a result of changes in source water and treatment. The likelihood of these events occuring have been derived from SDWIS/Fed data (see Chapter 4 of the EA). When a change in source or treatment occurs in a modeled year, a new 90th percentile value is assigned to the water system. This value may be higher or lower than the current value thus potentially triggering new corrective actions. In the model, if a water system already has ''optimized'' CCT in place, it is assumed that no additional action is needed and that the current treatment is adequate, therefore the 90th percentile will not change.

C. Cost Analysis

This section summarizes the cost elements and estimates total cost of compliance for the existing LCR, the proposed LCR revisions and the incremental cost of the proposed rule, under both the low and high cost scenarios, by the major regulatory components and discounted at 3 and 7 percent. These components include sampling costs, CCT costs, LSL inventory and replacement costs, POU costs, public education and outreach costs, and implementation and administrative costs for water systems and States. This section also quantifies the potential increase in phosphates that would result from the increased use of corrosion inhibitors under the proposed rule, the resulting cost for treating to remove the additional phosphates at downstream waste water treatment plants that may be constrained by nutrient discharge limits, and discusses the ecological impacts that may result from increased phosphorus loads to surface waters.

1. Sampling Costs

The proposed LCR revisions affect most of the LCR's sampling requirements, including: Lead tap sample monitoring, lead WQP monitoring, copper WQP monitoring, and source water monitoring. The proposed rule also includes new requirements for CWS to sample at schools and child care facilities within their distribution systems. Only the copper tap sampling requirements of the current rule are not impacted by the proposed regulatory changes and therefore do not appear in the summarized sampling costs. Additional lead WQP monitoring and lead tap

sampling that is specifically required by the current rule and proposed revisions after the installation or re-optimization of corrosion control treatment is accounted for in the CCT costs and not in the WQP monitoring or tap sampling costs.

Lead tap sampling site selection tiering requirements have been strengthened under the proposed rule, increasing the cost to water systems with lead service lines for the development of a tap sampling pool that consists of all LSL sites. The other cost components of lead tap sampling remain unchanged and generally include sample collection, analysis, and reporting cost. The frequency of required lead tap sampling will also increase based on lead tap sample 90th percentile values.

Both the lead and copper WQP monitoring cost totals represent collection and lab analysis cost of samples both at entry points and taps within the distribution system, as well as PWS reporting costs. The schedules for conducting these activities at modeled water systems are dependent on a water system's projected lead 90th percentile value, the presence of CCT, and past sampling results.

The proposed rule will require source water monitoring the first time a PWS has an action level exceedance. This monitoring will not be required again unless the water system has a change in source water.

Sampling at schools and child care facilities represents totally new requirements for CWSs under the proposed LCR revisions. Unlike the other sampling requirements of the proposed rule, school and child care facility sampling is not affected by a water system's 90th percentile lead tap sample value. The proposed rule requires that all schools and child care facilities must be sampled every five years (schools and child care facilities may refuse the sampling, but the water system must document this refusal to the State). This program's costs are reported with sampling cost, but they also represent public education costs and requirements of the proposed LCRR. The costs of complying with the proposed rule include water systems: (1) Identifying schools and child care facilities in their service area and preparing and distributing an initial letter explaining the sampling program and the 3Ts Toolkit, (2) coordinating with the school or child care facility to determine the sampling schedule and the logistics of collecting the samples, (3) conducting a walkthrough at the school or child care facility before the start of sampling, (4) sample collection from the school or child care facility, (5) sample analysis, and (6) providing sampling results to the school or child care facility, the State, and the local or State health department.

Exhibit 6–2 and 6–3 show the national annualized sampling costs for both the low and high estimate scenarios, under the current LCR, the proposed LCRR, and the incremental cost, discounted at 3 and 7 percent, respectively. Additional information on the estimation of sampling cost can be found in the Chapter 5, section 5.3.1 of the EA. An alternative option to the school and child care facility sampling program can be found in section VI.F of this notice and in Chapter 9 of the EA (USEPA, 2019a).

EXHIBIT 6.2—NATIONAL ANNUALIZED SAMPLING COSTS AT 3% DISCOUNT RATE

[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
Lead Tap Sampling Monitoring	$33,803,000	$37,672,000	$3,869,000	$33,780,000	$42,944,000	$9,164,000
Lead Water Quality Parameters Monitoring	7,396,000	7,536,000	140,000	8,823,000	9,274,000	451,000
Copper Water Quality Parameters Monitoring	163,000	179,000	16,000	158,000	178,000	20,000
Source Water Monitoring	15,000	4,321	−10,679	47,000	17,000	−30,000
School Sampling	0	28,540,000	28,540,000	0	28,540,000	28,540,000
Total Annual Sampling Costs	41,376,000	73,931,000	32,555,000	42,809,000	80,955,000	38,146,000
Lead Tap Sampling Monitoring	32,736,000	36,959,000	4,223,000	32,718,000	43,977,000	11,259,000
Lead Water Quality Parameters Monitoring	7,156,000	7,242,000	86,000	9,106,000	9,583,000	477,000
Copper Water Quality Parameters Monitoring	156,000	170,000	14,000	151,000	170,000	19,000
Lead Water Quality Parameters Monitoring	7,156,000	7,242,000	86,000	9,106,000	9,583,000	477,000
Lead Tap Sampling Monitoring	32,736,000	36,959,000	4,223,000	32,718,000	43,977,000	11,259,000
Source Water Monitoring	17,000	5,496	−11,504	64,000	25,000	−39,000
School Sampling	0	27,520,000	27,520,000	0	27,520,000	27,520,000
Total Annual Sampling Costs	40,064,000	71,897,000	31,833,000	42,039,000	81,276,000	39,237,000

2. Corrosion Control Treatment Costs

Under the proposed LCRR, drinking water systems may be required to install CCT, re-optimize their existing CCT, or perform a ''find-and-fix'' adjustment to their CCT based on their current level of CCT in place, if their lead tap sample 90th percentile exceeds the trigger level or action level, and/or individual lead tap samples exceed 15 µg/L. In the cost model, a 90th percentile lead tap sample exceedance can be triggered by a change in water system source water or treatment technology. Small CWSs serving 10,000 or fewer people and all NTNCWSs may also elect to conduct LSLR or implement POU filters as part of the regulatory flexibilities proposed in the LCRR. See section III.E of this notice for additional information on the compliance alternatives available to small CWSs and NTNCWSs, and section VI.C.4 for a discussion of the modeling and a summary of the number of systems selecting each alternative compliance option.

The capital and operations and maintenance (O&M) costs for water systems installing or optimizing CCT are based on the assumption that water systems will obtain the finished water characteristics of 3.2 mg/L of orthophosphate and pH at or above 7.2 (for water systems with starting pH values less than 8.2). For those water systems assigned higher initial pH values in the model, between 8.2 and 9.2, the EPA assumed the CCT optimization would require adjusting pH to meet or exceed 9.2 (no orthophosphate addition would be needed). The distributions of water system starting values for orthophosphate and pH, used in the cost model, are both drawn from SDWIS and

Six-Year Review ICR data (see Chapter 4, section 4.3.6 of the EA).

All capital cost equations are a function of design flow, and all O&M costs are a function of average daily flow. Since CCT is conducted at the water system's entry points (EPs), the cost model calculates the design flow and average daily flow of each EP. The cost model uses two different sets of unit cost functions representing the low and high capital cost scenarios developed in the engineering Work Breakdown Structure models for CCT (Chapter 5, Section 5.2.3.2.5 and Appendix A, Section 1 of the EA). Using these bracketing capital cost values is designed to characterize uncertainty in the cost model estimates and when combined with O&M costs and EP flow values, are used to calculate the low and high CCT cost estimates per model PWS. Note that optimization O&M costs are obtained through an incremental cost assessment. The cost model calculated the O&M existing cost and subtracts them from the optimized O&M cost to obtain the incremental re-optimization costs.

In the cost model, water systems are assumed to always install and optimize their CCT, to the standards described above, before making any adjustment to CCT as a result of being triggered into the ''find-and-fix'' requirements of the proposed rule. If a water system is required to implement ''find-and-fix,'' one of two things are assumed to occur at a single-entry point: A water system that has orthophosphate dosing and the pH target of 7.2 or greater will increase pH to 7.5, or a water system that previously optimized to a pH value of 9.2 will increase pH to 9.4. If ''find-and-fix'' is triggered again after an adjustment at a single EP, a water system is assumed to adjust all EPs to the new target pHs of 7.5 or 9.4, depending on the current treatment in place.

Using O&M cost functions estimated for the ''find-and-fix'', see Appendix A of the EA, the cost model first calculates the total annual O&M cost for treating to the ''find-and-fix'' standards previously listed as if no CCT was installed, then subtracts the PWS's current CCT annual O&M cost from the new ''find-and-fix'' annual O&M cost, to derive the share of the PWS's annual CCT O&M costs attributable to ''find-and-fix'' actions. The model also calculates the capital cost to retrofit the CCT water system for additional pH adjustment under both the low and high cost model scenarios. If a water system is triggered into a second round of ''find-and-fix'' CCT adjustment, the 7.5 or 9.4 pH requirements will be applied to all entry points. Individual entry point costs are summed to obtain total water system costs under the low and high model runs.

In addition to the capital and O&M cost of CCT installation, re-optimization, or ''find-and-fix,'' water systems will also face several ancillary costs associated with changes in CCT status. Before the installation or re-optimization of CCT at a water system, a CCT study would need to be conducted or revised and the water system would consult with the State on the proposed changes to CCT (these costs also apply to water systems undergoing source water or treatment changes). After the change in CCT, a water system would conduct follow-up tap sampling, WQP monitoring at entry points and at taps in the distribution system, report the results of the initial post CCT change findings to the State, and review WQP data with the State on an ongoing basis as part of the water system's sanitary surveys.

Water systems with individual lead tap samples over 15 µg/L must: Collect and analyze a follow-up tap sample from the location that exceeded the 15 µg/L value, coordinate with the State on the location for a follow-up WQP sample in proximity to the location that exceeded 15 µg/L, collect and analyze the WQP sample, and review with the State the collected data to determine ''find-and-fix'' CCT required changes.

Exhibits 6–4 and 6–5 show the range of estimated national costs for CCT under the current LCR, the proposed LCR revisions, and the incremental cost, discounted at 3 and 7 percent, respectively. Note that a range of CCT capital costs are used in this assessment but the total range in Exhibits 6–4 and 6–5 is impacted by all five of the uncertain variables which enter the model as low and high estimates. See Section VI.B of this notice and Chapter 5, Section 5.2.3.2 of the EA, for additional information on the variables that define the low and high cost scenarios. The CCT Operation and Maintenance (Existing) category in these exhibits are the EPA's estimate of the ongoing cost of operating corrosion control at PWS where CCT was in place at the beginning of the period of analysis. Additional information on the estimation of CCT costs can be found in Chapter 5, section 5.3.2 of the EA.

EXHIBIT 6–4—NATIONAL ANNUALIZED CORROSION CONTROL TECHNOLOGY COSTS AT 3% DISCOUNT RATE

[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
CCT Installation	$13,364,000	$6,847,000	$−6,517,000	$38,857,000	$16,566,000	$−22,291,000
CCT Installation Ancillary Activities	1,360,000	1,440,000	80,000	1,506,000	1,986,000	480,000
CCT Optimization	5,106	11,287,000	11,281,894	163,000	44,199,000	44,036,000
CCT Operations and Maintenance (Existing)	313,830,000	313,830,000	0	314,091,000	314,091,000	0
CCT Optimization Ancillary Activities	10,000	327,000	317,000	132,000	722,000	590,000
Find and Fix Installation	0	12,912,000	12,912,000	0	47,837,000	47,837,000
Find and Fix Ancillary Activities	0	5,234,000	5,234,000	0	6,465,000	6,465,000
Total Annual Corrosion Control Technology Costs	328,569,000	351,877,000	23,308,000	354,750,000	431,866,000	77,116,000

EXHIBIT 6–5—NATIONAL ANNUALIZED CORROSION CONTROL TECHNOLOGY COSTS AT 7% DISCOUNT RATE

[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
CCT Installation	$11,687,000	$5,938,000	$−5,749,000	$37,547,000	$15,739,000	$−21,808,000
CCT Installation Ancillary Activities	1,312,000	1,405,000	93,000	1,496,000	2,155,000	659,000
CCT Optimization	8,474	9,515,000	9,506,526	268,000	44,128,000	43,860,000

EXHIBIT 6–5—NATIONAL ANNUALIZED CORROSION CONTROL TECHNOLOGY COSTS AT 7% DISCOUNT RATE—Continued
[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
CCT Operations and Maintenance (Existing)	299,344,000	299,344,000	0	299,593,000	299,593,000	0
CCT Optimization Ancillary Activities	13,000	328,000	315,000	172,000	846,000	674,000
Find and Fix Installation	0	10,655,000	10,655,000	0	45,834,000	45,834,000
Find and Fix Ancillary Activities	0	5,123,000	5,123,000	0	6,672,000	6,672,000
Total Annual Corrosion Control Technology Costs	312,364,000	332,309,000	19,945,000	339,077,000	414,967,000	75,890,000

3. Lead Service Line Inventory and Replacement Costs

The proposed LCR revisions require all water systems to create an LSL materials inventory during the first three years after rule promulgation or demonstrate to the State that the water system does not have LSLs. Because many water systems have already complied with State inventory requirements (*e.g.,* Ohio, see *http://codes.ohio.gov/orc/6109.121*) that are at least as stringent as those required under the proposed LCRR, the EPA adjusted the probability of conducting an inventory downward to reflect the State requirements. Water system inventory costs also reflect the development, by all water systems with LSLs, of an initial LSLR plan. The plan would include procedures to conduct full lead service line replacement, a strategy for informing customers before a full or partial lead service line replacement, a lead service line replacement goal rate in the event of a lead trigger level exceedance, a pitcher filter tracking and maintenance system, a procedure for customers to flush service lines and premise plumbing of particulate lead, and a funding strategy for conducting lead service line replacements.

Depending on a water system's 90th percentile lead tap sample value, it may be required to initiate a LSLR program. Small CWSs, serving 10,000 or fewer people, and NTNCWSs have flexibility in the selection of a compliance option if the trigger or action levels are exceeded. These water systems may select to implement CCT or POU devices and not receive LSLR costs in the model. See section III.E of this notice for additional information on the compliance alternatives available to small CWSs and NTNCWSs. The cost model under both the low and high scenarios applies the estimated LSLR costs to those CWS serving 10,000 or fewer people and any NTNCWSs for which the LSLR option is determined to be the least cost compliance alternative. Under both the low and high cost scenarios, the model estimates the cost for implementing LSLR, CCT, and POU for each water system that meets the small water system flexibility criteria and maintains only the cost associated with the least costly option for each system. See section VI.C.4 of this notice for a discussion of the modeling and a summary of the number of systems selecting each alternative compliance option.

The EPA collected LSLR unit cost information primarily from four surveys. Given the small number of observations collected and lack of systematic sampling techniques utilized in the surveys the resultant estimates of replacement costs based on these data were highly uncertain. Therefore, the EPA develop low- and high-end LSLR cost values that are used in the cost model to provide a low/high cost range to inform the understanding of uncertainty (Note four other factors used to produce the low and high cost estimates also influence the LSLR total cost estimates). See Chapter 5, section 5.2.3.2.4 and Appendix A, Section 3 for more information on the development of the LSLR unit cost range.

LSLR cost includes not only the physical replacement of the service line but also prior notification of LSLRs as part of water system maintenance operations; contacting customers and site visits to confirm service line material and site conditions before replacement; providing customers with flushing procedures following a replacement; delivering pitcher filters and cartridges concurrent with the LSLR, and maintenance for three months; collecting and analyzing a tap sample three to six months after the replacement of a LSL; and informing the customer of the results.

Under the proposed rule, water systems with a 90th percentile lead tap sample value greater than 10 µg/L and less than or equal to 15 µg/L are considered to have a trigger level exceedance. These water systems are required to develop and implement a ''goal-based'' LSLR program where the annual replacement goal is set locally through a water system and State determination process. Ancillary costs incurred by these water systems include: The development and delivery of outreach materials to known and potential LSL households and submitting annual reports to the State on program activities. For water systems that do not meet the annual ''goal-based'' replacement rate, the proposed rule requires that additional outreach to lead service line customers be conducted. The additional outreach conducted is determined in conjunction with the State and is progressive, increasing with additional missed annual goals.

Under this proposal, water systems with 90th percentile tap sample data that exceed 15 µg/L (action level) are required to fully replace 3 percent of their LSLs per year for as long as the water system remains above the action level for any portion of a monitoring year. These water systems must also submit to the State an annual report on program activities.

In order to estimate the share of the LSLR cost that is paid by customers, the EPA made the conservative assumption that customers under the ''goal-based'' plan always pay for the part of the LSL belonging to them both when a full LSL is replaced and when the customer side is being replaced after a water system had completed a partial LSLR in the past. Customers do not pay for pig tail/gooseneck replacements in the model. Under mandatory replacement the EPA assumes that the system pays for all replacements both full and partial.

Exhibits 6–6 and 6–7 show the estimated annualized national cost for both the low and high cost scenarios, discounted at 3 and 7 percent, respectively, of water systems developing the LSL inventory, water systems conducting the goal-based and mandatory LSLR programs, and household removal costs for the customer-owned portion of the LSL under the current LCR, the proposed LCRR, and the incremental cost. The EPA did not estimate costs to CWSs for replacing the water system-owned

portion of an LSL in response to receiving notification that a customer-owned portion of an LSL was replaced outside of a water system replacement program. The EPA expects that a small number of these types of replacements would happen annually. Detailed information on the estimation of LSLR costs can be found in Chapter 5, section 5.3.3 of the EA.

EXHIBIT 6–6—NATIONAL ANNUALIZED LEAD SERVICE LINE REPLACEMENT COSTS AT 3% DISCOUNT RATE

[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
Lead Service Line Inventory	$0	$5,068,000	$5,068,000	$0	$8,075,000	$8,075,000
System Lead Service Line Replacement	579,000	8,235,000	7,656,000	22,399,000	68,264,000	45,865,000
Lead Service Line Replacement Ancillary Activities	59,000	3,206,000	3,147,000	715,000	4,879,000	4,164,000
Activities Triggered by Not Meeting Voluntary Target	0	4,149,000	4,149,000	0	16,138,000	16,138,000
Total Annual PWS Lead Service Replacement Costs	638,000	20,658,000	20,020,000	23,113,000	97,357,000	74,244,000
Household Lead Service Line Replacement	234,000	5,478,000	5,244,000	9,063,000	20,003,000	10,940,000
Total Annual Lead Service Replacement Costs	872,000	26,137,000	25,265,000	32,176,000	117,359,000	85,183,000

EXHIBIT 6–7—NATIONAL ANNUALIZED LEAD SERVICE LINE REPLACEMENT COSTS AT 7% DISCOUNT RATE

[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
Lead Service Line Inventory	$0	$5,633,000	$5,633,000	$0	$8,617,000	$8,617,000
System Lead Service Line Replacement	520,000	8,197,000	7,677,000	30,793,000	86,480,000	55,687,000
Lead Service Line Replacement Ancillary Activities	53,000	4,314,000	4,261,000	983,000	6,726,000	5,743,000
Activities Triggered by Not Meeting Voluntary Target	0	4,191,000	4,191,000	0	20,447,000	20,447,000
Total Annual PWS Lead Service Replacement Costs	573,000	22,335,000	21,762,000	31,776,000	122,270,000	90,494,000
Household Lead Service Line Replacement	210,000	5,290,000	5,080,000	12,459,000	22,501,000	10,042,000
Total Annual Lead Service Replacement Costs	783,000	27,625,000	26,842,000	44,234,000	144,771,000	100,537,000

4. Point-of-Use Costs

Under the proposed rule requirements, small CWSs, serving 10,000 or fewer people, and NTNCWS with a 90th percentile lead value above the action level of 15 μg/L may choose between LSLR, CCT installation, or POU device installation and maintenance. See section III.E of this notice for additional information on the compliance alternatives available to small CWSs and NTNCWSs. In addition to the cost to provide and maintain POU devices, water systems selecting the POU compliance option face additional ancillary costs in the form of: (1) POU implementation planning for installation, maintenance, and monitoring of the devices, (2) educating customers on the proper use of the POU device, (3) sampling POU devises to insure the device is working correctly, and (4) coordination and obtaining approvals from the State.

The cost model applies these POU costs to those CWS serving 10,000 or fewer people and any NTNCWSs for which the POU option is estimated to be the least cost compliance alternative. The determination of the least cost compliance alternative is computed across each representative model PWS in the cost model based on its assigned characteristics including: the number of lead service lines, cost of LSLR, the presence of corrosion control, the cost and effectiveness of CCT, the starting WQPs, the number of entry points, the unit cost of POU, and the number of households. For a larger discussion on the assignment of system characteristics, see section VI.B of this notice and Chapter 5 of the EA. These characteristics are the primary drivers in determining the costs once a water system has been triggered into CCT installation or re-optimization, lead service line replacement, or POU provision and maintenance. The model estimates the net present value for implementing each compliance alternative and selects the least cost alternative to retain in the summarized proposed rule costs.

The EPA is estimating low and high cost scenarios, to characterize uncertainty in the cost model results. These scenarios are functions of assigning different low and high input values to a number of the variables that affect the relative cost of the small system compliance choices (see Chapter 5 section 5.2 of the EA for additional information on uncertain variable value assignment). Therefore, as the model output shows, the choice of compliance technology is different across the low and high cost scenarios.

Exhibits 6–8 and 6–9 show the total number of CWS serving 10,000 or fewer people and NTNCWSs, the total number of systems by type and population size that would select one of the small system compliance options, the number of NTNCWSs selecting each compliance alternative in the model, and the number of CWSs by population size selecting each compliance alternative in the model, under both the low and high cost scenarios. In general, the exhibits show across both the low and high scenarios that the majority of water systems would select re-optimizing under the small system compliance options. If a system has CCT in place, the incremental costs of re-optimization are low compared to all other alternatives. The POU device implementation seems to be the least cost alternative when the number of households in the system is low as demonstrated by the decrease in the

selection of the POU option as CWS population size increases in the model. The pattern seen in the selection of LSLR between the low and high cost scenarios demonstrates that the choice of compliance by small systems is driven by relative costs. Under the low cost scenario far greater numbers of systems select LSLR given the assumed lower numbers of LSLs per system and lower cost of replacement under this scenarios. While CCT installation cost is also lower under the low cost scenario the difference in cost between the high and low scenarios is relatively small compared to the reduction in cost for LSLR between the scenarios. POU cost remains unchanged between the low cost and high cost scenarios. The installation of CCT becomes more cost effective as system population size increases, but in the larger system size categories you can also see the effect of the relative cost of LSLR in the low cost scenario.

EXHIBIT 6–8—NTNCWS AND SMALL SYSTEM COUNTS IMPACTED UNDER FLEXIBILITY OPTION—LOW COST SCENARIO

[Over 35 year period of analysis]

	NTNCWS	CWS				
	All Systems	≤100	101–500	501–1,000	1,001–3,300	3,301–10,000
Total PWS Count in System Size Category	17,589	12,046	15,307	5,396	8,035	4,974
Total PWS Count of Systems with LSLR, POU, or CCT activity	1,453	1,521	2,498	1,148	1,544	2,037
Number of PWSs with Lead Service Line Removals	34	474	975	541	608	1,535
Number of PWSs that Install CCT	15	25	438	189	288	80
Number of PWSs that Re-optimize CCT	287	398	851	410	649	423
Number of PWSs that Install POU	1,117	625	234	8	0	0

EXHIBIT 6–9—NTNCWS AND SMALL SYSTEM COUNTS IMPACTED UNDER FLEXIBILITY OPTION—HIGH COST SCENARIO

[Over 35 year period of analysis]

	NTNCWS	CWS				
	All Systems	≤100	101–500	501–1,000	1,001–3,300	3,301–10,000
Total PWS Count in System Size Category	17,589	12,046	15,307	5,396	8,035	4,974
Total PWS Count of Systems with LSLR, POU, or CCT activity	2,354	1,938	2,782	1,677	3,274	1,314
Number of PWSs with Lead Service Line Removals	94	139	118	476	1,246	86
Number of PWSs that Install CCT	14	10	491	327	477	195
Number of PWSs that Re-optimize CCT	347	368	1,319	813	1,540	1,032
Number of PWSs that Install POU	1,900	1,422	855	61	10	1

The estimated national annualized point-of-use device installation and maintenance costs for the proposed rule, under the low cost scenario, are $3,995,000 at a 3 percent discount rate and $3,492,000 at a 7 percent discount rate. The POU impacts of the proposed rule for the high cost scenario are $16,400,000 discounted at 3 percent and $15,485,000 discounted at 7 percent. Since POU costs are zero under the current LCR, the incremental costs range from $3,995,000 to $16,400,000 at a 3 percent discount rate and from $3,492,000 to $15,485,000 at a 7 percent discount rate, under the low and high cost scenarios respectively. Additional information on the estimation of POU costs can be found in Chapter 5, section 5.3.4 of the EA.

5. Public Education and Outreach Costs

In addition to the current LCR public education requirements for water systems with a lead action level exceedance, the cost model includes proposed rule requirements for ongoing lead education that applies to all water systems with LSLs, regardless of the 90th percentile level, and requirements in response to a single tap sample exceeding the 15 µg/L lead action level.

The proposed rule requires a number of updates to existing public education and additional outreach activities associated with LSLs. The public education requirements costed for all water systems, regardless of their lead 90th percentile tap sample levels, include: (1) Updating Consumer Confidence Report language, (2) developing a lead outreach plan and materials for new customers, (3) developing an approach for improved public access to lead information, (4) participating in joint communication efforts with the State to provide increased information on lead education to health care providers, and (5) providing annual documentation and certification to the State that public outreach on lead has been completed. The costed proposed LCR public education requirements applying to all water systems with lead service lines are: (1) The planning, initially implementing and maintaining customer and public access to LSL location information, and (2) the development of lead educational materials for water-related utility work and delivery of those materials to affected households during water-related work that could result in service line disturbance.

The proposed rule public education costs that are applied to water systems that exceed the 15 µg/L action level include: (1) The development of lead language for public education in response to a lead action level exceedance, (2) delivery of education materials to customers for CWSs and posting of lead information for NTNCWs, (3) water systems contacting public health agencies to obtain a list of additional community organizations that should receive PE materials, (4) water systems notifying public health agencies and other community organizations, (5) large water systems posting a lead notice on their website, (6) water system issuing a press release, (7) water systems consulting with the State on the materials development and appropriate activities while the action level is exceeded, and (8) annually

certifying public education activities have been completed.

The proposed rule also includes a requirement for water systems to notify affected customers within 24 hours of becoming aware of an individual tap sample exceeding the 15 µg/L lead action level. The model includes the development cost of the notification and education materials to be delivered to affected households and the incremental cost of expedited delivery of the notification. Note that materials costs related to follow-up testing when a sample exceeds 15 µg/L are included in the tap sampling costs in section VI.C.1 of this notice. The estimated annualized national water system public education and outreach costs for the current LCR range from $48,000 to $1,093,000 at a 3 percent discount rate under the low and high cost scenarios respectively. At a 7 percent discount rate the annualized estimated current rule PE cost range is from $65,000 to $1,513,000. Under the proposed rule low cost scenario, the estimated impacts are $29,364,000 at a 3 percent discount rate and $28,765,000 at a 7 percent discount rate. Under the high scenario the estimated annualized costs are $35,491,000 at a 3 percent discount rate and $35,525,000 at a 7 percent discount rate. Therefore, the incremental estimated public education and outreach costs for water systems range from $29,316,000 to $34,398,000 at a 3 percent discount rate and $28,700,000 to 34,012,000 at a 7 percent discount rate. See Chapter 5, section 5.3.5 of the EA for additional detailed information on the estimation of public education and outreach costs.

6. Drinking Water System Implementation and Administrative Costs

All water systems will have one-time start-up activities associated with the implementation of the proposed rule. These compliance costs include: Water system burden to read and understand the revised rule; water systems assigning personnel and resources for rule implementation; water system personnel time for attending trainings provided by the State; and clarifying regulatory requirements with the State during rule implementation. This category of cost is not impacted by the variable that define the low and high cost scenarios, therefore only one set of estimated costs exist in the category. The estimated annualized national PWS implementation and administrative costs for the proposed LCR revisions are $1,863,000 at a 3 percent discount rate and $3,092,000 at a 7 percent discount rate. Since there are no costs under the current LCR, the PWS implementation and administrative incremental costs are also $1,863,000 at a 3 percent discount rate and $3,092,000 at a 7 percent discount rate. Additional information on the estimation of water system implementation and administrative costs can be found in Chapter 5, section 5.3.6 of the EA.

7. Annualized per Household Costs

The cost model calculates the annualized cost per household, by first calculating the cost per gallon of water produced by the CWS. This cost per gallon represents the cost incurred by the system to comply with the requirements of the proposed LCRR. This includes CCT cost, inventory creation, system payed customer-side LSLR, tap sampling, public education, and administrative costs. Because of uncertainty in five important LCRR cost driver input variables, discussed in section VI.A. of this notice, the Agency developed low and high cost scenarios. These scenarios produce a range in the estimated cost per gallon and two estimates for annualized per household costs.

The model multiplies this low and high scenario costs per gallon by the average annual household consumption (in gallons) to determine the cost per household per year associated with increased costs borne by the CWS. The EPA then adds to both these values the total consumer-side lead service line replacement cost borne by households in the system, divided by the number of households served by the system, to derive the CWS's average annual household low and high scenario cost estimates. Exhibits 6–10 and 6–11 show the distributions of incremental annualized costs for CWS households by primary water source and size category. Note, the percentiles represent the distribution of average household costs across CWSs in a category, not the distribution of costs across all households in a CWS category. Some households that pay for a customer-side LSLR will bear a much greater annual household burden. The EPA estimates the cost of removing the customer-owned side of a service line range from $1,480 to $4,440, with a central tendency of $2,960. The percentage of customers in each water system paying the higher customer-side LSL costs depends on the number of LSL in the water system, the rate of replacement, and the details of the water systems LSLR program.

EXHIBIT 10—ANNUALIZED INCREMENTAL COST PER HOUSEHOLD BY CWS CATEGORY—LOW COST SCENARIO

[2016$]

Source water	Size	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
Ground	100 or Fewer	$ − 5.36	$5.33	$8.61	$13.79	$23.01
Ground	101 to 500	0.85	1.43	2.62	4.20	6.85
Ground	501 to 1,000	0.28	0.35	0.47	0.67	1.57
Ground	1,001 to 3,300	0.11	0.16	0.24	0.34	0.76
Ground	3,301 to 10,000	0.19	0.26	0.39	0.52	1.00
Ground	10,001 to 50,000	0.04	0.07	0.13	0.21	0.38
Ground	50,001 to 100,000	0.08	0.10	0.20	0.25	0.30
Ground	100,001 to 1,000,000	0.07	0.14	0.23	0.34	0.48
Ground	Greater than 1,000,000	0.17	0.17	0.24	0.26	0.26
Surface	100 or Fewer	2.87	4.96	8.86	15.52	23.87
Surface	101 to 500	0.73	1.31	2.17	3.66	7.56
Surface	501 to 1,000	0.26	0.34	0.52	0.81	2.11
Surface	1,001 to 3,300	0.11	0.15	0.25	0.39	0.82
Surface	3,301 to 10,000	0.20	0.26	0.43	0.78	1.56
Surface	10,001 to 50,000	0.05	0.09	0.19	0.38	1.55
Surface	50,001 to 100,000	0.08	0.11	0.25	0.32	1.07
Surface	100,001 to 1,000,000	0.06	0.14	0.26	0.42	0.84
Surface	Greater than 1,000,000	0.09	0.18	0.21	0.29	0.32

EXHIBIT 11—ANNUALIZED INCREMENTAL COST PER HOUSEHOLD BY CWS CATEGORY—HIGH COST SCENARIO

[2016$]

Source water	Size	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
Ground	100 or Fewer	$−10.22	$4.78	$8.60	$15.22	$28.73
Ground	101 to 500	−1.06	1.36	2.87	4.85	11.54
Ground	501 to 1,000	−0.19	0.36	0.55	1.30	4.72
Ground	1,001 to 3,300	0.10	0.16	0.28	0.56	2.61
Ground	3,301 to 10,000	0.19	0.28	0.45	0.91	3.53
Ground	10,001 to 50,000	0.05	0.08	0.14	0.29	2.61
Ground	50,001 to 100,000	0.07	0.09	0.13	0.27	2.44
Ground	100,001 to 1,000,000	0.12	0.17	0.29	0.59	3.17
Ground	Greater than 1,000,000	0.17	0.17	0.24	0.26	0.26
Surface	100 or Fewer	−9.24	4.09	10.29	18.82	40.74
Surface	101 to 500	−2.99	1.13	2.73	5.82	15.96
Surface	501 to 1,000	−3.18	0.33	0.89	1.62	4.98
Surface	1,001 to 3,300	−1.80	0.16	0.31	0.65	2.30
Surface	3,301 to 10,000	−0.24	0.29	0.72	1.28	4.49
Surface	10,001 to 50,000	0.05	0.11	0.24	1.25	4.61
Surface	50,001 to 100,000	0.08	0.10	0.23	0.53	2.61
Surface	100,001 to 1,000,000	0.10	0.20	0.34	1.31	3.46
Surface	Greater than 1,000,000	0.09	0.18	0.21	0.29	0.32

8. Primacy Agency Costs

For each of the drinking water cost sections previously described, primacy agencies (*i.e.,* States) have associated costs. These include start-up and implementation costs; reviewing water quality parameter, source water, and school monitoring reports; reviewing and approving lead tap sampling plans, sampling frequencies, results, and reports; consultation and reviews during CCT, LSLR, and POU device installation; and reviewing and approving the lead public education materials and consulting on specific outreach requirements. In the EPA cost model, the majority of the costs associated with States are determined on a per water system basis. State actions and costs are largely driven by the proposed rule required actions that are triggered for the individual water systems. These per water system primacy agency costs are then summed to obtain aggregate costs for this category.

The State implementation and administration costs of complying with the proposed LCR revisions include: Reading and understanding the rule; adopting the rule and developing an implementation program; modifying data recording systems; training staff; providing water system staff with initial and on-going technical assistance and training; coordinating annual administration tasks with the EPA; and reporting data to SDWIS/Fed.

State activities regarding sampling include reviewing:

- PWS reports on lead and copper WQP monitoring from entry points and distribution system taps;
- Lead tap sampling plans, changes in sampling locations, sample invalidations, sampling results and 90th percentile calculations, and certification of customer notification of sampling results;
- 9-year waiver requests;
- Source water sampling results; and
- School sampling results.

The State activities associated with CCT installation, re-optimization, and ''find-and-fix'' rule requirements include:

- Consulting with water systems on source water and treatment changes;
- Reviewing CCT studies for installation and re-optimization;
- Reviewing post CCT installation WQP monitoring and tap sample results (including sample invalidation);
- Setting optimal water quality parameters;
- Reviewing ''find-and-fix'' follow-up tap and water quality parameter sampling for each individual lead tap sample greater than 15 μg/L;
- Reviewing water system's ''find-and-fix'' summary reports;
- Reviewing new the EPA's CCT guidance; and
- Conducting CCT water quality reviews in conjunction with sanitary surveys.

LSLR creates a number of water system/State interactions. States would be required to:

- Review water system inventory data;
- Confer with water systems with LSLs on initial planning for LSLR program activities, including standard operating procedures for conducting replacements, and outreach programs;
- Work with LSL water systems to determine a goal-based LSLR rate;
- Provide templates and targeted public education language for LSLR programs;
- Determine the additional outreach activities required if a water system fails to meet its goal-based LSLR rate; and
- Review annual LSLR program compliance reports from water systems.

State activities associated with CWSs serving 3,300 or fewer people and NTNCWSs that select POU as a treatment alternative include:

- Conferring with water systems on initial planning for POU programs;
- Reviewing public education material for POU devices; and
- Reviewing annual reports on POU programs, including POU device sampling results.

Proposed public education provisions will require a great deal of primacy agency oversight. Activities which produce primacy agency burden include:

- Providing water systems with templates to update CCR language;
- Reviewing water system information developed for new customer outreach;
- Participating in joint communication efforts for sharing lead public education with health care providers;
- Reviewing educational material developed for delivery during water-related work;
- Reviewing water system certifications of lead public education and outreach;
- Reviewing public education language submitted by water systems in response to an individual tap sample above the action level;
- Consulting with water systems on public education response to a lead

action level exceedance, including reviewing language; and

- Reviewing the water systems public education self-certification letter following a lead action level exceedance.

The cost model estimates that the Primacy Agencies will incur incremental estimated annualized costs, under the low cost scenario, totaling $14,915,000 at a 3 percent discount rate and $15,054,000 at a 7 percent discount rate. For the high cost scenario total estimated costs is $15,598,000 at a 3 percent discount rate and $15,965,000 at a 7 percent discount rate. Additional information on the estimation of primacy agency costs can be found in Chapter 5, section 5.4 of the EA.

9. Costs and Ecological Impacts Associated With Additional Phosphate Usage

Adding phosphate creates a protective inner coating on pipes that can inhibit lead leaching. However, once phosphate is added to the public water system (PWS), some of this incremental loading remains in the water stream as it flows into wastewater treatment plants (WWTPs) downstream. This generates treatment costs for certain WWTPs. In addition, at those locations where treatment does not occur, water with elevated phosphorus concentrations may discharge to water bodies and induce certain ecological impacts.

When water systems add orthophosphate to their finished water for corrosion control purposes, some portion of the orthophosphate added will reach downstream WWTPs. To estimate the potential fate of the orthophosphate added at PWSs, the EPA developed a conceptual mass balance model. The EPA applied this conceptual model to estimate the increase in loading at WWTPs, given an initial loading from corrosion control at water treatment plants. WWTPs could incur costs because of upstream orthophosphate addition if they have permit discharge limits for phosphorus parameters. The percentage of WWTPs with phosphorus limits has increased over time. From 2007 to 2016, in annual percentage rate terms, the growth rate in the percentage of WWTPs with phosphorus limits is 3.3 percent.

The EPA assumed this increase would continue as States transition from narrative to numerical nutrient criteria and set numeric permits limits, especially for impaired waters. The EPA applied the growth rate observed from 2007 to 2016 to estimate the anticipated percentage of WWTPs with phosphorus limits in future years. This growth rate results in an estimated 41 percent of WWTPs with phosphorus discharge limits after 35 years. Applied as the percentage of WWTPs that need to take treatment actions, this estimate is likely conservative, particularly given the potential availability of alternative compliance mechanisms, such as, individual facility variance and nutrient trading programs.

The specific actions a WWTP might need to take to maintain compliance with a National Pollution Discharge Elimination System (NPDES) phosphorus limit will depend on the type of treatment present at the WWTP and the corresponding phosphorus removal provided (if any). Based on a review of NPDES data, it is likely that most of the WWTPs that already have phosphorus limits have some type of treatment to achieve the limit.

Some treatment processes can accommodate incremental increases in influent loading and still maintain their removal efficiency. Such processes might not need significant adjustment to maintain their existing phosphorus removal efficiency, given an incremental increase. Other treatment processes may need modifications to their design or operation to maintain their removal efficiency in the face of an influent loading increase.

The EPA derived a unit cost of $4.59 per pound of phosphorus for removing incremental phosphorus (see Chapter 5, section 5.5.1 of the EA for additional information). This unit cost includes the cost of additional chemical consumption and the operating cost of additional sludge processing and disposal. The costs a WWTP could incur depend on the magnitude of the loading increase relative to the specific WWTP's effluent permit limit. WWTPs, whose current discharge concentrations are closer to their limit, are more likely to have to act. WWTPs whose current concentrations are well below their limit may not incur costs but might, under certain conditions, incur costs (for example, when phosphorus removal achieved by technology is sensitive to incremental phosphorus loading increases). Furthermore, future phosphorus limits could be more stringent than existing limits in certain watersheds.

Therefore, the EPA conservatively assumed that any WWTP with a discharge limit for phosphorus parameters could incur costs. Accordingly, in calculating costs, the EPA used the anticipated percentage of WWTPs with phosphorus discharge limits as the likelihood that incremental orthophosphate loading from a drinking water system would reach a WWTP with a limit. The EPA combined this likelihood and the unit cost (previously estimated) with incremental phosphorus loading to calculate incremental costs to WWTPs for each year of the analysis period. The incremental annualized cost that WWTPs would incur to remove additional phosphorous associated with the proposed LCRR, under the low cost scenario, ranges from $668,000 to $1,066,000 at a 3 and 7 percent discount rate, respectively. The high cost scenario produced an incremental estimated impact of $1,203,000 using a 3 percent discount rate, and $1,920,000 at a 7 percent discount rate.

The EPA estimates that WWTP treatment reduces phosphorus loads reaching water bodies by 59 percent but they are not eliminated. The proposed rule's national-level total incremental phosphorus loads reaching water bodies are projected to grow over the period of analysis from the low/high scenario range of 202,000 to 460,000 pounds fifteen years after promulgation to the low/high scenario range of 461,000 to 685,000 pounds at year 35. See Chapter 5, section 5.5 of the EA for information on how loading estimates are calculated. The ecological impacts of these increased phosphorous loadings are highly localized: Total incremental phosphorus loadings will depend on the amount and timing of the releases, characteristics of the receiving water body, effluent discharge rate, existing total phosphorus levels, and weather and climate conditions. Unfortunately, detailed spatially explicit information on effluents and on receiving water bodies does not exist in a form suitable for this analysis. Rather, to evaluate the potential ecological impacts of the rule, the EPA evaluated the significance of the national-level phosphorus loadings compared to other phosphorous sources in the terrestrial ecosystem.

To put these phosphorus loadings in context, estimates from the USGS SPARROW model suggest that anthropogenic sources deposit roughly 750 million pounds of total phosphorus per year (USEPA, 2019b). The total phosphorus loadings from the proposed LCRR high cost scenario would contribute about 1 percent (7 million/750 million) of total phosphorus entering receiving waterbodies in a given year, and the incremental amount of total phosphorus associated with the proposed LCRR relative to the current LCR grows only 0.09 percent (685,000/750 million). At the national level, the EPA expects total phosphorus entering waterbodies as a result of the proposed LCR revisions to be small, relative to the total phosphorus load deposited annually from all other sources. National average load impacts may

obscure localized ecological impacts in some circumstances, but the existing data do not allow an assessment as to whether this incremental load will induce ecological impacts in particular areas. It is possible, however, that localized impacts may occur in certain water bodies without restrictions on phosphate deposits, or in locations with existing elevated phosphate levels.

An increase in phosphorus loadings can lead to economic impacts and undesirable aesthetic impacts. Excess nutrient pollution can cause eutrophication—excessive plant and algae growth—in lakes, reservoirs, streams, and estuaries throughout the United States. Eutrophication, by inducing primary production, leads to seasonal decomposition of additional biomass, consuming oxygen and creating a State of hypoxia, or low oxygen, within the water body. In extreme cases, the low to no oxygen States can create dead zones, or areas in the water where aquatic life cannot survive. Studies indicate that eutrophication can decrease aquatic diversity for this reason (*e.g.,* Dodds et al. 2009). Eutrophication may also stimulate the growth of harmful algal blooms (HABs), or over-abundant algae populations. Algal blooms can harm the aquatic ecosystem by blocking sunlight and creating diurnal swings in oxygen levels because of overnight respiration. Such conditions can starve and deplete aquatic species.

10. Summary of Rule Costs

The estimated annualized low and high scenario costs, discounted at 3 percent and 7 percent, that PWSs, households, and Primacy Agencies will incur in complying with the current LCR, the proposed LCRR, and incrementally are summarized in Exhibits 6–12 and 6–13. The total estimated incremental annualized cost of the proposed LCRR range from $132 to $270 million at a 3 percent discount rate, and $130 to $286 million at a 7 percent discount rate in 2016 dollars. The exhibits also detail the proportion of the annualized costs attributable to each rule component.

EXHIBIT 6–12—NATIONAL ANNUALIZED RULE COSTS AT 3% DISCOUNT RATE

[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
PWS Annual Costs:						
Sampling	$41,376,000	$73,931,000	$32,555,000	$42,809,000	$80,955,000	$38,146,000
PWS Lead Service Line Replacement	638,000	20,658,000	20,020,000	23,113,000	97,357,000	74,244,000
Corrosion Control Technology	328,569,000	351,877,000	23,308,000	354,750,000	431,866,000	77,116,000
Point-of Use Installation and Maintenance	0	3,995,000	3,995,000	0	16,400,000	16,400,000
Public Education and Outreach	48,000	29,364,000	29,316,000	1,093,000	35,491,000	34,398,000
Rule Implementation and Administration	0	1,863,000	1,863,000	0	1,863,000	1,863,000
Total Annual PWS Costs	370,631,000	481,688,000	111,057,000	421,766,000	663,931,000	242,165,000
State Rule Implementation and Administration	5,661,000	20,576,000	14,915,000	6,718,000	22,316,000	15,598,000
Household Lead Service Line Replacement	234,000	5,478,000	5,244,000	9,063,000	20,003,000	10,940,000
Wastewater Treatment Plant Costs	331,000	1,019,000	688,000	862,000	2,065,000	1,203,000
Total Annual Rule Costs	376,857,000	508,762,000	131,905,000	438,408,000	708,314,000	269,906,000

EXHIBIT 6–13—NATIONAL ANNUALIZED RULE COSTS AT 7% DISCOUNT RATE

[2016$]

	Low cost estimate			High cost estimate		
	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
PWS Annual Costs:						
Sampling	$40,064,000	$71,897,000	$31,833,000	$42,039,000	$81,276,000	$39,237,000
PWS Lead Service Line Replacement	573,000	22,335,000	21,762,000	31,776,000	122,270,000	90,494,000
Corrosion Control Technology	312,364,000	332,309,000	19,945,000	339,077,000	414,967,000	75,890,000
Point-of Use Installation and Maintenance	0	3,492,000	3,492,000	0	15,485,000	15,485,000
Public Education and Outreach	65,000	28,765,000	28,700,000	1,513,000	35,525,000	34,012,000
Rule Implementation and Administration	0	3,092,000	3,092,000	0	3,092,000	3,092,000
Total Annual PWS Costs	353,067,000	461,889,000	108,822,000	414,405,000	672,615,000	258,210,000
State Rule Implementation and Administration	5,547,000	20,601,000	15,054,000	6,993,000	22,958,000	15,965,000
Household Lead Service Line Replacement	210,000	5,290,000	5,080,000	12,459,000	22,501,000	10,042,000
Wastewater Treatment Plant Costs	407,000	1,473,000	1,066,000	1,288,000	3,208,000	1,920,000
Total Annual Rule Costs	359,230,000	489,253,000	130,023,000	435,144,000	721,282,000	286,138,000

D. Benefits Analysis

The proposed revisions to the LCR are expected to result in significant health benefits, since both lead and copper are associated with adverse health effects. Lead is a highly toxic pollutant that can damage neurological, cardiovascular, immunological, developmental, and other major body systems. The EPA is particularly concerned about exposure experienced by children because lead can affect brain development. Additionally, children through their physiology and water ingestion requirements may be at higher risk. Research shows that, on average, formula-fed infants and young children consume more drinking water per day on a body weight basis than adolescents. Using the USDA Continuing Survey of Food Intakes by Individuals (CSFII) data, Kahn and Stralka (2009) demonstrated this trend, is most

pronounced in children under 1 year of age who drink more than double older children and adults per kg of body weight. Additionally, children absorb 2–4 times more lead than adults through the gastrointestinal tract ((Mushak, (1991); WHO, (2011) and Ziegler et al. (1978)). No safe level of lead exposure has been identified (USEPA, 2013). The EPA's health risk reduction and benefits assessment of the proposed LCR revisions concentrates on quantification and monetization of the estimated impact of reductions in lead exposure on childhood IQ. As explained in Appendix D in the Economic Assessment of the Proposed Lead and Copper Rule Revision (EA), there are additional non-quantified lead health impacts to both children and adults that will be realized as a result of this rulemaking.

Although copper is an essential element for health, excess intake of copper has been associated with several adverse health effects. Most commonly, excess exposure to copper results in gastrointestinal symptoms such as nausea, vomiting, and diarrhea (National Research Council, 2000). In susceptible populations, such as children with genetic disorders or predispositions to accumulate copper, chronic exposure to excess copper can result in liver toxicity. Because household level data on the change in copper concentrations that result from changes in CCT are not available, this analysis does not quantify any potential benefits from reduced copper exposure that may result from the proposed rule. See Appendix E in the EA for additional copper health impact information.

To quantify the potential impact to exposed populations of changes in lead tap water concentrations as a result of the proposed LCR revisions, the EPA:

- Estimated potential household lead tap water concentrations under various levels of corrosion control treatment, lead service line replacement, and implementation of POU devices;
- Modeled exposure using the lead tap water concentration data, information on peoples' water consumption activities, and background lead levels from other potential pathways;
- Derived the potential change in blood lead levels (BLLs) that result from the changes in drinking water lead exposure;
- Used concentration response functions, from the scientific literature, to measure changes in IQ for children given shifts in BLLs;
- Estimated the unit value of a change in childhood IQ; and
- Applied the unit values to the appropriate demographic groups experiencing changes in lead tap water concentrations as a result of the proposed regulatory changes across the period of analysis.

Subsections VI.D.1 through 4 of this notice outline the estimation of lead concentration values in drinking water used to estimate before and after rule implementation concentration scenarios, the corresponding estimated avoided IQ loss in children, and a summary of the monetized benefits of the proposed LCR Revisions.

1. Modeled Drinking Water Lead Concentrations

The EPA determined the lead concentrations in drinking water at residential locations through the collection and analysis of consecutive sampling data representing homes pre and post removal of LSLs, including partial removal of LSLs, under differing levels of water system corrosion control treatment. The data was collected from multiple sources including: Water systems, the EPA Regional Offices and the Office of Research and Development, and authors of published journal articles (Deshommes et al. 2016). This data includes lead concentrations and information regarding LSL status, location, and date of sample collection, representing 18,039 samples collected from 1,638 homes in 15 cities across the United States and Canada. The EPA grouped the samples into LSL status categories (''LSL,'' ''Partial,'' ''No LSL''). Samples were also grouped by CCT treatment, assigning status as having ''None,'' ''Partial,'' or ''Representative.'' ''Partial'' includes those water systems with some pH adjustment and lower doses of a phosphate corrosion inhibitor, but this treatment is not optimized. ''Representative'' are those water systems in the dataset that have higher doses of phosphate inhibitors, which in the model are considered optimized (see EA Chapter 6, section 6.2.1 for additional detail and docket number EPA–HQ–OW–2017–0300 for the data).

The EPA fit several regression models (see EA Chapter 6, section 6.2.2 for additional detail) of tap water lead concentration as predicted by LSL presence (''LSL'' or ''No LSL''), LSL extent (''Partial''), CCT status, and ''profile liter.'' Profile liter is the cumulative volume a sample represented within a consecutive sampling series at a single location and time. Models to describe the profile liter accounted for the variation among sampling events, sampling sites, and city. The EPA selected one of the regression models based on its fit and parsimony and used it to produce simulated lead concentrations for use in the benefits analysis (Exhibit 6–8, in Chapter 6 of the EA). The selected model suggests that besides water system, residence, and sampling event, the largest effects on lead concentration in tap water come from the presence of LSLs and the number of liters drawn since the last stagnation period. CCT produces smaller effects on lead concentration than LSLs, and these effects are larger in homes with LSLs.

To statistically control for some sources of variability in the input data, the EPA did not use summary statistics from the original data directly in estimating the effects of LSL and CCT status. Instead, the EPA produced simulated mean lead concentrations for 500,000 samples, summarized in Exhibit 6–14, based on the selected regression model. The simulated sample concentrations represent estimates for new cities, sites, and sampling events not included in the original dataset. These simulations rely on estimates of variability and uncertainty from the regression model and given information on LSL and CCT status. Individual estimates are best thought of as the central tendency for a sample concentration given regression model parameters and estimated variance. The simulated samples represent, on average, the lead concentrations taken after a short flushing period of roughly 30 seconds for all combinations of LSL and CCT status. This represents a point near the average peak lead concentration for homes with full or partial LSLs, and a point slightly below the peak lead concentration for homes with no LSLs, regardless of CCT status.

The EPA estimates that improving CCT will produce significant reductions in lead tap water concentration overall. However, for full LSLRs, the final model produced predictions of drinking water concentrations that overlapped almost completely for all CCT conditions. Therefore, the EPA used the pooled estimate of predicted drinking water concentrations for all CCT conditions in residences with no LSL in place for the main analysis in Chapter 6 of the EA. Because, the EPA in using this pooled data the mean and standard deviation values of tap water lead concentrations in Exhibit 6–14 are the same for all three ''no LSLs'' status rows, regardless of whether there is representative, partial, or no CCT. Effectively, in the primary analysis the EPA did not quantify the incremental benefits of CCT when LSLs are absent. On the other hand, because CCT is done on a system-wide basis, there are no incremental costs

associated with providing CCT to homes without LSL when it is being provided for the entire system. The impact of CCT for these no LSL homes likely varies by location depending on the degree to which legacy leaded plumbing materials, including leaded brass fixtures, and lead solder remain at the location.

The EPA does track the number of ''no LSL'' homes potentially affected by water systems increasing their corrosion control during the 35-year period of analysis. The number of no LSL homes that experience increase in CCT over the 35 years ranges from 14 million in the low cost scenario and 26 million in the high cost scenario. The EPA considered one possible approach to estimating the potential benefits to children of reducing lead water concentrations in these homes (see Appendix F of the EA) but has determined that the data are too limited and the uncertainties too significant to include in the quantified and monetized benefit estimates of this regulation. The EPA, therefore, is requesting comment and additional information about the change in lead concentrations that occur in non-LSL households that experience changes in CCT.

Because small CWSs that serve fewer than 10,000 people have flexibility in the compliance option they select in response to a lead action level exceedance, some CWSs are modeled as installing POU devices at all residences. See section III.E of this notice for additional information on the compliance alternatives available to small CWSs. For individuals in these systems the EPA assumes, in the analysis, that consumers in households with POU devises are exposed to the same lead concentration as residents with ''No LSL'' and ''Representative'' CCT in place.

EXHIBIT 6–14—LSL AND CCT SCENARIOS AND SIMULATED GEOMETRIC MEAN TAP WATER LEAD CONCENTRATIONS AND STANDARD DEVIATIONS AT THE FIFTH LITER DRAWN AFTER STAGNATION FOR EACH COMBINATION OF LSL AND CCT STATUS

LSL status	CCT status	Simulated mean of log lead (μg/L)	Simulated SD [a] of log lead (μg/L)	Simulated geometric mean lead (μg/L)	Simulated geometric SD [a] of lead (μg/L)
LSL	None	2.92	1.37	18.62	3.95
Partial	None	2.17	1.38	8.78	3.98
No LSL	None	−0.29	1.38	0.75	3.98
LSL	Partial	2.42	1.37	11.27	3.94
Partial	Partial	1.67	1.37	5.32	3.93
No LSL	Partial	−0.29	1.38	0.75	3.98
LSL	Representative	1.95	1.38	7.01	3.96
Partial	Representative	1.19	1.38	3.3	3.96
No LSL	Representative	−0.29	1.38	0.75	3.98

[a] Standard deviations reflect ''among-sampling event'' variability.

In the estimation of the costs and benefits of the proposed LCR revisions, each modeled person within a water system is assigned to one of the estimated drinking water concentrations in Exhibit 6–14, depending on the CCT, POU, and LSL status. The EPA estimated benefits under both the low cost and high cost scenarios used in the proposed LCRR which characterize uncertainty in the cost estimates. The low cost scenario and high cost scenario differ in their assumptions made about: (1) The existing number of LSLs in PWSs; (2) the number of PWS above the AL or TL under the current and proposed monitoring requirements; (3) the cost of installing and re-optimizing corrosion control treatment (CCT); (4) the effectiveness of CCT in mitigating lead concentrations; and (5) the cost of lead service line replacement (Section VI.C.3. above and Chapter 5, section 5.6 of the EA). The EPA predicted the status of each system under the low and high scenarios at baseline (prior to rule implementation) and in each year of rule implementation. Depending on the timing of required actions that can change CCT, POU, and LSL status under both the baseline and proposed LCRR low and high scenario model runs, changes in lead concentration and resultant blood lead are predicted every year for the total population served by the systems for the 35-year period of analysis. In the primary benefits analysis for the rule, improvements to CCT and the use of installed POU devices are only predicted for individuals in households with LSLs prior to the LCRR (consistent with discussion above about the limits of the data for predicting the impact of CCT when LSL are not present). In the model, LSL removals are predicted by water system, by year, and multiplied by the average number of people per household (across demographic categories) to determine the number of people shifting from one LSL status to another. To predict the changes in exposure that result from an improvement in CCT, the EPA predicts the entire LSL population of a water system will move to the new CCT status at the same time. The EPA also assumes that the entire water system moves to the drinking water lead concentration, assigned to POU when this option is implemented, which implies that everyone in households in a distribution system with LSLs is properly using the POU. See Chapter 6, section 6.3 of the EA for more detailed information on the number of people switching lead concentration categories under the low and high cost scenarios.

2. Impacts on Childhood IQ

The 2013 *Integrated Science Assessment for Lead* (USEPA 2013) States that there is a causal relationship between lead exposure and cognitive function decrements in children based on several lines of evidence, including findings from prospective studies in diverse populations supported by evidence in animals, and evidence identifying potential modes of action. The evidence from multiple high-quality studies using large cohorts of children shows an association between blood lead levels and decreased intelligence quotient (IQ). The 2012 National Toxicology Program Monograph concluded that there is sufficient evidence of association between blood lead levels <5 μg/dL and decreases in various general and specific measures of cognitive function in children from three months to 16 years of age. This conclusion is based on prospective and cross-sectional studies using a wide range of tests to assess

cognitive function (National Toxicology Program, 2012).

The EPA quantitatively assessed and monetized the benefits of avoided losses in IQ as a result of the proposed LCR revisions. Modeled lead tap water concentrations (previously discussed in this notice) are used to estimate the extent to which the proposed rule would reduce avoidable loss of IQ among children. The first step in the quantification and monetization of avoided IQ loss is to estimate the likely decrease in blood lead levels in children based on the reductions in lead in their drinking water as a result of the proposed LCRR.

The EPA estimated the distribution of current blood lead levels in children, age 0 to 7, using the EPA's Stochastic Human Exposure and Dose Simulation Multimedia (SHEDS-Multimedia) model coupled with its Integrated Exposure and Uptake Biokinetic (IEUBK) model. The coupled SHEDS–IEUBK model framework was peer reviewed by the EPA in June of 2017 as part of exploratory work into developing a health-based benchmark for lead in drinking water (ERG, 2017). For further information on SHEDS–IEUBK model development and evaluation, refer to Zartarian et al. (2017). As a first step in estimating the blood lead levels, the EPA utilized the SHEDS-Multimedia model, which can estimate distributions of lead exposure, using a two-stage Monte Carlo sampling process, given input lead concentrations in various media and human behavior data from the EPA's Consolidated Human Activity Database (CHAD) and CDC's National Health and Nutrition Examination Survey (NHANES). SHEDS-Multimedia, in this case, uses individual time-activity diaries from CDC's NHANES and the EPA's CHAD for children aged 0 to 7 to simulate longitudinal activity diaries. Information from these diaries is then combined with relevant lead input distributions (*e.g.,* outdoor air lead concentrations, inhalation rates) to estimate exposure. Drinking water tap concentrations for each of the modeled LSL and CCT scenarios, above, were used as the drinking water inputs to SHEDS-Multimedia. For more detail on the other lead exposure pathways that are held constant as background in the model, see Chapter 6, section 6.4, of the EA.

In the SHEDS–IEUBK coupled methodology, the SHEDS model takes the place of the exposure and variability components of the IEUBK model by generating a probability distribution of lead intakes across media. These intakes are multiplied by route-specific (*e.g.,* inhalation, ingestion) absorption fractions to obtain a distribution of lead uptakes (see Exhibit 6–14 in the EA Chapter 6, section 6.4). This step is consistent with the uptake estimation that would normally occur within the IEUBK model. The media specific uptakes can be summed across exposure routes to give total lead uptake per day. Next, the EPA used age-based relationships derived from IEUBK, through the use of a polynomial regression analysis, to relate these total lead uptakes to blood lead levels. Exhibit 6–14 presents modeled SHEDS–IEUBK blood lead levels in children by year of life and LSL, CCT status, and POU. The blood lead levels in this exhibit represent what children's blood lead level would be if they lived under the corresponding LSL, POU, and CCT status combination for their entire lives. Note that when ''No LSL'' is the beginning or post-rule state, 0.75 μg/L is the assumed concentration across all levels of CCT status (none, partial, representative). The extent to which changes in CCT status make meaningful difference in lead concentrations for those without LSL cannot be determined from this Exhibit.

EXHIBIT 6–14—MODELED SHEDS–IEUBK GEOMETRIC MEAN BLOOD LEAD LEVELS IN CHILDREN FOR EACH POSSIBLE DRINKING WATER LEAD EXPOSURE SCENARIO FOR EACH YEAR OF LIFE

Lead service line status	Corrosion control treatment status	Geometric mean blood lead level (μg/dL) for specified year of life						
		0–1 [a]	1–2	2–3	3–4	4–5	5–6	6–7
LSL	None	3.75	2.60	2.73	2.59	2.56	2.72	2.45
Partial	None	2.43	1.88	1.96	1.89	1.87	1.95	1.69
No LSL	None	0.95	1.15	1.16	1.14	1.14	1.19	0.97
LSL	Partial	2.71	2.05	2.20	2.06	2.08	2.17	1.90
Partial	Partial	1.86	1.58	1.65	1.60	1.60	1.66	1.43
No LSL	Partial	0.95	1.15	1.16	1.14	1.14	1.19	0.97
LSL	Representative	2.14	1.75	1.82	1.73	1.75	1.82	1.57
Partial	Representative	1.51	1.41	1.45	1.42	1.40	1.46	1.24
No LSL	Representative	0.95	1.15	1.16	1.14	1.14	1.19	0.97
POU		0.95	1.15	1.16	1.14	1.14	1.19	0.97

[a] Due to lack of available data, blood lead levels for the first year of life are based on regression from IEUBK for 0.5- to 1-year-olds only.

These represent the blood lead for a child living with the LSL/CCT status in the columns to the left. Each year blood lead corresponding to actual modeled child is summed and divided by 7 in the model to estimate lifetime average blood lead.

This table presents modeled SHEDS–IEUBK blood lead levels in children by year of life.

The blood lead levels presented in Exhibit 6–14, are used as inputs for the benefits modeling. For each year of the analysis modeled, children are assigned blood lead levels, which correspond to a water lead concentration representing the LSL, POU and CCT status of their water system (see section 6.3 of the EA). In the proposed LCRR cost-benefit model, individual children in LSL households for each water system are tracked as they move from one LSL, CCT status, or POU to another as a result of LCRR implementation. The tracking occurs for both the low and high cost scenarios. Because the child's drinking water lead concentration can change annually in the model, the EPA chose to estimate lifetime blood lead levels by taking the average across each year of the child's life, up to age 7. With this averaging, age at implementation of the LCRR (changing LSL, CCT, or POU status), is taken into account when calculating lifetime average blood lead level.

In order to relate the child's estimated lifetime average blood lead level to an estimate of avoided IQ loss, the EPA selected a concentration-response function based on lifetime blood lead from the independent analysis by Crump et al. (2013). This study used data from a 2005 paper by Lanphear et al., which has formed the basis of concentration-response functions used

in several EPA regulations (National Ambient Air Quality Standard, 2008; TSCA Lead Repair and Renovation Rule, 2008; and Steam Electric Effluent Limitation Guidelines Rule, 2005). The Crump et al. (2013) function was selected over the Lanphear et al. (2005) reanalysis to minimize issues with overestimating predicted IQ loss at the lowest levels of lead exposure (less than 1 µg/dL BLL), which is a result of the use of the log-linear function. The Crump et al. (2013) function avoids this issue by adding one to the estimated blood lead levels prior to log-transformation. Since the proposed revisions to the LCR are expected to reduce chronic exposures to lead, the EPA selected lifetime blood lead as the most appropriate measure with which to evaluate benefits. No threshold has been identified for the neurological effects of lead (Budtz-Jørgensen et al., 2013; Crump et al., 2013; Schwartz et al., 1991; USEPA, 2013). Therefore, the EPA assumes that there is no threshold for this endpoint and quantified avoided IQ loss associated with all blood lead levels. The EPA, as part of its sensitivity analysis, estimated the BLL to IQ relationship using Lanphear et al. (2005) and Kirrane and Patel (2014).[1] See Chapter 6, section 6.4.3 and Appendix F of the EA for a more detailed discussion.

The estimated value of an IQ point decrement is derived from the EPA's reanalysis of Salkever (1995), which estimates that a one-point increase in IQ results in a 1.871 percent increase in lifetime earnings for males and a 3.409 percent change in lifetime earnings for females. Lifetime earnings are estimated using the average of 10 American Community Survey (ACS) single-year samples (2008 to 2017) and projected cohort life tables from the Social Security Administration. Projected increases in lifetime earnings are then adjusted for the direct costs of additional years of education and forgone earnings while in school. The reanalysis of Salkever (1995) estimates a change of 0.0812 years of schooling per change in IQ point resulting from a reduction in lead exposure for males and a change of 0.0917 years of schooling for females.

To estimate the uncertainty underlying the model parameters of the Salkever (1995) reanalysis, the EPA used a bootstrap approach to estimate a distribution of model parameters over 10,000 replicates (using random sampling with replacement). For each replicate, the net monetized value of a one-point decrease in IQ is subsequently estimated as the gross value of an IQ point, less the value of additional education costs and lost earnings while in school. The EPA uses an IQ point value discounted to age 7. Based on EPA's reanalysis of Salkever (1995), the mean value of an IQ point in 2016$ discounted to age 7 is $5,708 using a 7 percent discount rate and $22,503 using a 3 percent discount rate.[2] See Appendix F, of the EA for a sensitivity analysis of avoided IQ loss benefits based on Lin et al. (2018).

The EPA used the estimated changes in lifetime (age 0 to 7) average blood lead levels that result from changes in LSL, CCT, or POU status as inputs to the concentration response function from the independent analysis by Crump et al. (2013). The resultant annual avoided IQ decrement is then summed and multiplied by the EPA reanalyzed Salkever (1995) value per IQ point which represent a weighted average for males and females (3 or 7 percent depending on the discount rate being used to annualize the stream of benefits across the period of analysis). This annual stream of benefits was annualized at 3 and 7 percent over the 35-year period of analysis, and further discounted to year one of the period of analysis. See Exhibit 6–18 (discounted at 3 percent) and Exhibit 6–19 (discounted at 7 percent) for the estimated benefit from avoided IQ losses from both lead service line removals and improvements to CCT at public water system as a result of the current rule, the proposed LCR revisions, and the incremental difference between the current and proposed rule estimates under both the low and high cost scenarios.

3. Impacts on Adult Blood Lead Levels

The EPA identified the potential adverse adult health effects associated with lead utilizing information from the 2013 Integrated Science Assessment for Lead (USEPA, 2013) and the U.S. Department of Health and Human Services' National Toxicology Program Monograph on Health Effects of Low-Level Lead (National Toxicology Program, 2012). In these documents, lead has been associated with adverse cardiovascular effects (both morbidity and mortality effects), renal effects, reproductive effects, immunological effects, neurological effects, and cancer. (see Appendix D of the EA).

Although the EPA did not quantify or monetize changes in adult health benefits for the proposed LCRR, the Agency has estimated the potential changes in adult drinking water exposures and thus blood lead levels to illustrate the extent of the lead reduction to the adult population estimated as a result of the proposed LCRR. The EPA estimated blood lead levels in adults for each year of life, beginning at age 20 and ending with age 80. Males and females are assessed separately because data from the CDC's National Health and Nutrition Examination Survey (NHANES) indicate that men have higher average blood lead levels than women. To estimate the changes in blood lead levels in adults associated with the proposed rule, the EPA selected from a number of available models a modified version of its Adult Lead Methodology (ALM). The ALM ''uses a simplified representation of lead biokinetics to predict quasi-steady state blood lead concentrations among adults who have relatively steady patterns of site exposures'' (USEPA, 2003). The model assumes a linear slope between lead uptake and blood lead levels, which is termed the ''biokinetic slope factor'' and is described in more detail in Chapter 6 section 6.5 of the EA. Although the model was originally developed to estimate blood lead level impacts from lead in soil, based on the record, the EPA finds the ALM can be tailored for use in estimating blood lead concentrations in any adult exposed population and is able to consider other sources of lead exposure, such as contaminated drinking water. The biokinetic slope factor of 0.4 µg/dL per µg/day is still valid for use in the case of drinking water since it is in part derived from studies that measure both adult blood lead levels and concentrations of lead in drinking water (Pocock et al., 1983; Sherlock et al., 1982).

The EPA estimated expected BLLs for adults with the ALM using the lead tap water concentration data by LSL, CCT, and POU status derived from the profile dataset, discussed in section VI.D.1 and shown in Exhibit 6–14 of this notice. For the background blood lead levels in the model, the EPA used geometric mean blood lead levels for males and females for each year of life between

[1] Lanphear et al. (2005) published a correction in 2019 that revised the results to be consistent with the Kirrane and Patel (2014) corrections.

[2] It should be noted that these values are slightly different than those used in other recent rulemaking (*e.g.,* the Lead Dust Standard and the Perchlorate rule). This is simply due to the differences in the age of the child when the benefits are accrued in the analysis. Benefits for the LCRR are accrued at age seven and therefore the value of an IQ point is discounted back to age 7 in the LCRR analysis. This results in a slightly higher estimate than the values used for the Perchlorate Rule and the Lead Dust Standard, which are discounted to age zero and age three, respectively. It should also be noted, and is described in Section 6.4.5 of the EA, that the benefits in the LCRR are further discounted back to year one of the analysis and annualized within SafeWater LCR.

ages 20 and 80 from NHANES 2011–2016, which may result in some minor double counting of exposure from drinking water. Exhibit 6–15 displays the estimated blood lead levels for adults by each LSL, POU or CCT combination summarized by age groups (blood lead values for each year of age are used to determine average BLL). The EPA also estimated BLLs using output for other exposure pathways from SHEDS in the ALM and the All Ages Lead Model, these results are shown in Appendix F of the EA. The All Ages Lead Model results are not used in the primary analysis because an ongoing peer review of the model has not been completed.

EXHIBIT 6–15—ESTIMATES OF BLOOD LEAD LEVELS IN ADULTS ASSOCIATED WITH DRINKING WATER LEAD EXPOSURES FROM LSL/CCT OR POU STATUS COMBINATIONS

Lead service line status	Corrosion control treatment status	Sex	Geometric mean blood lead level (μg/dL) for specified age group in years					
			20–29	30–39	40–49	50–59	60–69	70–80
LSL	None	Males	1.90	2.05	2.26	2.46	2.66	2.93
		Females	1.60	1.73	1.92	2.25	2.38	2.55
Partial	None	Males	1.33	1.46	1.67	1.87	2.04	2.28
		Females	1.03	1.14	1.34	1.66	1.77	1.91
No LSL	None	Males	0.86	0.98	1.19	1.39	1.54	1.75
		Females	0.56	0.66	0.86	1.18	1.27	1.38
LSL	Partial	Males	1.47	1.61	1.82	2.02	2.20	2.44
		Females	1.17	1.29	1.48	1.81	1.92	2.07
Partial	Partial	Males	1.13	1.25	1.46	1.66	1.83	2.05
		Females	0.83	0.93	1.13	1.45	1.55	1.68
No LSL	Partial	Males	0.86	0.98	1.19	1.39	1.54	1.75
		Females	0.56	0.66	0.86	1.18	1.27	1.38
LSL	Representative	Males	1.23	1.36	1.56	1.76	1.93	2.16
		Females	0.93	1.03	1.23	1.56	1.66	1.79
Partial	Representative	Males	1.01	1.13	1.34	1.54	1.70	1.92
		Females	0.71	0.81	1.01	1.33	1.43	1.55
No LSL	Representative	Males	0.86	0.98	1.19	1.39	1.54	1.75
		Females	0.56	0.66	0.86	1.18	1.27	1.38
POU		Males	0.86	0.98	1.19	1.39	1.54	1.75
		Females	0.56	0.66	0.86	1.18	1.27	1.38

As discussed in the analysis of childhood IQ impacts section VI.D.2 of this notice), the estimated BLLs in Exhibit 6–15 are average adult annual blood lead levels given the corresponding estimated lead tap water concentrations resulting from LSL, CCT, and POU status. In the proposed LCR revisions cost-benefit model, individual males and females in LSL households for each water system are tracked as they move from one LSL, CCT, or POU status to another as a result of rule implementation. Exhibit 6–16 shows the estimated changes in average lifetime blood lead levels for adults that move from the set of initial LSL, CCT, and POU status combinations to a new status as a result of LSL removal, and/or installation of CCT or POU. Note that when ''No LSL'' is the beginning or post-rule state, 0.75 μg/L is the assumed concentration across all levels of CCT status (none, partial, representative). The extent to which changes in CCT status make meaningful difference in lead concentrations for those without LSL cannot be determined from this Exhibit.

EXHIBIT 6–16—ESTIMATED LIFETIME AVERAGE BLOOD LEAD CHANGE FOR ADULTS MOVING BETWEEN LSL, CCT, AND POU STATUS COMBINATIONS

Pre-rule drinking water			Post-rule drinking water			Estimated average blood lead change (in geometric means)
Lead conc. (μg/L)	LSL status	CCT status	Lead conc. (μg/L)	LSL status	CCT status	Ages 20–80 (μg/dL)
18.62	LSL	None	0.75	No LSL	None	1.09
18.62	LSL	None	7.01	LSL	Representative	0.71
18.62	LSL	None	0.75	No LSL	Representative	1.09
18.62	LSL	None	0.75	POU		1.09
8.78	Partial	None	0.75	No LSL	None	0.49
8.78	Partial	None	3.3	Partial	Representative	0.34
8.78	Partial	None	0.75	No LSL	Representative	0.49
8.78	Partial	None	0.75	POU		0.49

EXHIBIT 6–16—ESTIMATED LIFETIME AVERAGE BLOOD LEAD CHANGE FOR ADULTS MOVING BETWEEN LSL, CCT, AND POU STATUS COMBINATIONS—Continued

Pre-rule drinking water			Post-rule drinking water			Estimated average blood lead change (in geometric means)
Lead conc. (μg/L)	LSL status	CCT status	Lead conc. (μg/L)	LSL status	CCT status	Ages 20–80 (μg/dL)
0.75	No LSL	None	0.75	No LSL	Representative	0.00
0.75	No LSL	None	0.75	POU		0.00
11.27	LSL	Partial	0.75	No LSL	Partial	0.64
11.27	LSL	Partial	7.01	LSL	Representative	0.26
11.27	LSL	Partial	0.75	No LSL	Representative	0.64
11.27	LSL	Partial	0.75	POU		0.64
5.32	Partial	Partial	0.75	No LSL	Partial	0.28
5.32	Partial	Partial	3.3	Partial	Representative	0.12
5.32	Partial	Partial	0.75	No LSL	Representative	0.28
5.32	Partial	Partial	0.75	POU		0.28
0.75	No LSL	Partial	0.75	No LSL	Representative	0.00
0.75	No LSL	Partial	0.75	POU		0.00
7.01	LSL	Representative	0.75	No LSL	Representative	0.38
7.01	LSL	Representative	0.75	POU		0.38
3.3	Partial	Representative	0.75	No LSL	Representative	0.16
3.3	Partial	Representative	0.75	POU		0.16
0.75	No LSL	Representative	0.75	POU		0.00

4. Total Monetized Benefits

Exhibits 6–17 and 6–18 show the estimated, monetized national annualized total benefits, under the low and high cost scenarios, from avoided child IQ decrements associated with the current LCR, the proposed LCRR, and the increment of change between the two, for CCT improvements, LSLR, and POU devise implementation discounted at 3 and 7 percent, respectively. The potential changes in adult blood lead levels estimated from changing LSL and CCT status under the proposed LCRR can be found in section VI.D.3 of this notice and Chapter 6 of the EA. The impact of lead on the risk of attention-deficit/hyperactivity disorder and reductions in birth weight are discussed in Appendix H of the EA. It should also be noted that because of the lack of granularity in the assembled lead concentration profile data, with regard to CCT status when samples were collected (see section VI.D.1 of this notice), the benefits of small improvements in CCT, like those modeled under the ''find-and-fix,'' cannot be quantified in the model. For additional information on non-quantified benefits see section VI.E.2 of this notice.

EXHIBIT 6–17—SUMMARY OF ESTIMATED NATIONAL ANNUAL BENEFITS, 3% DISCOUNT RATE

[2016$]

System type: All estimate	Low cost estimate			High cost estimate		
Estimated child IQ benefits	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
Number of Children Impacted (over 35 years)	71,449	1,148,110	1,076,661	1,034,170	3,431,200	2,397,030
Annual IQ Point Decrement Avoided (CCT)	431	8,764	8,333	6,875	28,127	21,252
Annual Value of IQ Impacts Avoided (CCT)	$7,300,000	$152,661,000	$145,361,000	$129,985,000	$521,356,000	$391,371,000
Annual IQ Point Decrement Avoided (LSLR/POU)	297	4,010	3,713	5,065	12,011	6,946
Annual Value of IQ Impacts Avoided (LSLR/POU)	$5,091,000	$70,811,000	$65,720,000	$99,412,000	$229,200,000	$129,788,000
Total Annual Value of IQ Impacts Avoided	$12,391,000	$223,472,000	$211,081,000	$229,397,000	$750,556,000	$521,159,000

This table summarizes the national annual children's benefit for a 3 percent discount rate under High & Low Cost assumptions. This table uses a 3% discount rate over the 35 year analysis period. Children are modeled throughout their lifetime, and their drinking water concentration and BLL can change in each year of the analysis as CCT, POU or LSL changes happen in their modeled PWS.

EXHIBIT 6–18—SUMMARY OF ESTIMATED NATIONAL ANNUAL BENEFITS, 7% DISCOUNT RATE
[2016$]

System type: All estimate	Low cost estimate			High cost estimate		
Estimated child IQ benefits	Current LCR	Proposed LCRR	Incremental	Current LCR	Proposed LCRR	Incremental
Number of Children Impacted (over 35 years)	71,449	1,148,110	1,076,661	1,034,170	3,431,200	2,397,030
Annual IQ Point Decrement Avoided (CCT)	431	8,764	8,333	6,875	28,127	21,252
Annual Value of IQ Impacts Avoided (CCT)	$1,201,000	$26,219,000	$25,018,000	$25,008,000	$97,772,000	$72,764,000
Annual IQ Point Decrement Avoided (LSLR/POU)	297	4,010	3,713	5,065	12,011	6,946
Annual Value of IQ Impacts Avoided (LSLR/POU)	$858,000	$12,453,000	$11,595,000	$20,311,000	$45,005,000	$24,694,000
Total Annual Value of IQ Impacts Avoided	$2,059,000	$38,671,000	$36,612,000	$45,319,000	$142,778,000	$97,459,000

This table summarizes the national annual children's benefit for a 7 percent discount rate under High & Low Cost assumptions. This table uses a 7% discount rate over the 35 year analysis period. Children are modeled throughout their lifetime, and their drinking water concentration and BLL can change in each year of the analysis as CCT, POU or LSL changes happen in their modeled PWS.

E. Cost-Benefit Comparison

This section summarizes and describes the numeric relationship between the monetized incremental costs and benefits of the proposed LCR revisions. The section also discusses both the non-monetized costs and benefits of the rulemaking. Exhibits 6–19 and 6–20 compare the annualized monetized incremental costs and benefits of the proposed LCRR for the low and high cost scenarios. Under a 3 percent discount rate, the net annualized incremental benefits, under the low and high cost scenarios, range from $79 to $251 million. Under the low and high cost scenarios and a 7 percent discount rate, the net annualized incremental benefits range from a negative $91 to negative $189 million.

EXHIBIT 6–19—COMPARISON OF ESTIMATED MONETIZED NATIONAL ANNUALIZED INCREMENTAL COSTS TO BENEFITS OF THE PROPOSED LCRR AT 3% DISCOUNT RATE

	Low cost scenario	High cost scenario
Annualized Incremental Costs	$131,987,000	$269,989,000
Annualized Incremental Benefits	211,081,000	521,159,000
Annual Net Benefits	79,094,000	251,170,000

EXHIBIT 6–20—COMPARISON OF ESTIMATED MONETIZED NATIONAL ANNUALIZED INCREMENTAL COSTS TO BENEFITS OF THE PROPOSED LCRR AT 7% DISCOUNT RATE

	Low cost scenario	High cost scenario
Annualized Incremental Costs	$130,104,000	$286,219,000
Annualized Incremental Benefits	36,612,000	97,459,000
Annual Net Benefits	−91,492,000	−188,760,000

1. Non-Monetized Costs

The proposed LCRR are expected to result in additional phosphate being added to drinking water to reduce the amount of lead leaching into the water in the distribution system. The EPA's cost model estimated that, nationwide, the proposed LCRR will result in total incremental phosphorus loads increasing over the period of analysis, under the low cost and high cost scenarios, by a range of 202,000 to 460,000 pounds fifteen years after promulgation, and increasing under the low cost and high cost scenarios by a range of 461,000 to 685,000 pounds at year 35. At the national level, under the high cost scenario, this additional phosphorous loading is small, less than 0.09 percent of the total phosphorous load deposited annually from all other anthropogenic sources. However, national average load impacts may obscure significant localized ecological impacts. Impacts, such as eutrophication, may occur in water bodies without restrictions on phosphate deposits, or in locations with existing elevated phosphate levels. See Chapter 5, section 5.5.4 of the EA for additional information.

2. Non-Quantified Non-Monetized Benefits

In addition to the benefits monetized in the proposed rule analysis for reductions in lead exposure, there are several other benefits that are not quantified. The risk of adverse health effects due to lead that are expected to decrease as a result of the proposed LCRR are summarized in Appendix D of the EA and are expected to affect both children and adults. The EPA focused its non-quantified impacts assessment on the endpoint identified using two comprehensive U.S. Government documents summarizing the recent literature on lead exposure health impacts. These documents are the EPA's Integrated Science Assessment for Lead (ISA) (USEPA, 2013); and the U.S. Department of Health and Human Services' National Toxicology Program Monograph on Health Effects of Low-Level Lead (National Toxicology Program (NTP), 2012). Both of these sources present comprehensive reviews of the literature on the risk of adverse health effects associated with lead exposure. The EPA summarized those endpoints to which either the EPA ISA or the NTP Lead Monograph assigned

one of the top two tiers of confidence in the relationship between lead exposure and the risk of adverse health effects. These endpoints include: Cardiovascular effects, renal effects, reproductive and developmental effects, immunological effects, neurological effects, and cancer.

There are a number of proposed rule requirements that reduce lead exposure to both children and adults that the EPA could not quantify. The proposed rule would require additional lead public education requirements that target consumers directly, schools and child care facilities, health agencies, and specifically people living in homes with lead service lines. Increased education will lead to additional averting behavior on the part of the exposed public, resulting in reductions in the negative impacts of lead. The proposed rule also would require the development of lead service line inventories and making the location of lead service lines publicly accessible. This would give exposed consumers more information, and it would provide potential home buyers this information as well, possibly resulting in additional lead service line removals initiated by homeowners before, during, or following home sale transactions. The benefits of these additional removals are not quantified in the analysis of the proposed LCRR. As indicated in section VI.D.4 of this notice, because of the lack of granularity in the lead tap water concentration data available to the EPA for the proposed rule analysis, the benefits of small improvements in CCT to individuals residing in homes with LSLs, like those modeled under the ''find-and-fix,'' are not quantified.

The EPA also did not quantify the benefits of reduced lead exposure to individuals who reside in homes that do not have lead service lines. The EPA has determined that the revised LCR requirements may result in reduced lead exposure to the occupants of these buildings as a result of improved monitoring and additional actions to optimize CCT. In the analysis of the proposed LCRR, the number of non-LSL homes potentially affected by water systems increasing their corrosion control during the 35-year period of analysis is 14 million in the low cost scenario and 26 million in the high cost scenario. These households, while not having an LSL in place, may still contain leaded plumbing materials, including leaded brass fixtures, and lead solder. These households could potentially see reductions in lead tap water concentrations. The EPA has assessed the potential benefits to children of reducing lead water concentrations in these homes (see Appendix F of the EA) but has determined that the data are too limited and the uncertainties too significant to include in the quantified and monetized benefit estimates of this regulation.

Additionally, the risk of adverse health effects associated with copper that are expected to be reduced by the proposed LCRR are summarized in Appendix E of the EA. These risks include acute gastrointestinal symptoms, which are the most common adverse effect observed among adults and children. In sensitive groups, there may be reductions in chronic hepatic effects, particularly for those with rare conditions such as Wilson's disease and children pre-disposed to genetic cirrhosis syndromes. These diseases disrupt copper homeostasis, leading to excessive accumulation that can be worsened by excessive copper ingestion (National Research Council, 2000).

F. Other Regulatory Options Considered

The Office of Management and Budget recommends careful consideration ''of all appropriate alternatives for the key attributes or provisions of a rule (Office of Management and Budget, 2003).'' Pursuant to this guidance, the EPA considered other regulatory options when developing the proposed LCRR related to:

- The lead in drinking water sampling program at schools and licensed child care facilities,
- The lead tap sampling protocol requirements for water systems with LSLs, and
- LSL locational information to be made publicly available.
- Providing small system flexibility to CWSs that serve a population of 3,300 or less.

Exhibit 6–21 provides a summary of the proposed requirement and other option considered for these four areas.

EXHIBIT 6–21—SUMMARY OF OTHER OPTIONS CONSIDERED FOR THE PROPOSED LCRR

Area	Proposed LCRR	Other option considered
Lead in Drinking Water Sampling Program at Schools and Licensed Child Care Facilities.	Mandatory program: • 20% of schools and licensed child care facilities tested *annually*. • 5 samples per school ..... • 2 samples per licensed child care facility.	Upon request program: • Schools and licensed child care facilities would be tested *upon request.* • 5 samples per school. • 2 samples per licensed child care facility.
Lead Tap Sampling Requirements for Systems with Lead Service Lines (LSLs).	• Systems with LSLs collect 100% of their samples from LSLs sites, if available. • Samples are *first* liter, collected after 6-hour minimum stagnation time.	• Systems with LSLs collect 100% of their samples from LSLs sites, if available. • Samples are *fifth* liter, collected after 6-hour minimum stagnation time.
Publicly Available LSL Locational Information ...	Systems report a location identifier (*e.g.,* street, intersection, landmark) for customer-owned portion of LSLs.	Systems report the exact street address of customer-owned portion of LSLs
Small System Flexibility	CWSs that serve 10,000 or less people, and all NTNCWSs, are provided compliance flexibility when they exceed the AL.	CWSs that serve 3,300 or less people, and all NTNCWSs, are provided compliance flexibility when they exceed the AL.

Notes: The fifth liter sample is intended to be representative of water residing in the LSL.

1. Lead Public Education and Sampling at Schools and Child Care Facilities Option

The EPA is proposing that all CWSs conduct a mandatory sampling and public education program for schools and licensed child care facilities that they serve. The EPA is also considering an ''upon request'' option that would contain the same components of the mandatory program under the proposed LCR revisions but would limit the sampling program to K–12 schools or child care facilities served by the water system that request testing. CWSs would be required to annually contact these facilities about this lead sampling program.

For the ''upon request'' option, the EPA assumed that five percent of schools and licensed child care facilities per year would elect to participate in the sampling program and that CWSs would contact each facility annually to determine its interest in the program in lieu of developing a sampling schedule for each facility. CWSs would only be required to sample at those facilities that request this sampling. As shown in Exhibit 6–22, the ''upon request'' option is estimated to be less costly than the proposed option. However, the cost of the ''upon request'' option is highly dependent on the percentage of facilities that request to participate in the sampling program. In addition, there is a great degree of uncertainty regarding the percentage of facilities that will request this sampling and how this interest may fluctuate over time.

EXHIBIT 6–22—NATIONAL ANNUALIZED COSTS FOR SCHOOL SAMPLING OPTIONS

[2016$]

Option	Annualized cost at 3% discount rate	Annualized cost at 7% discount rate
Proposed LCRR: Mandatory Program	$28,540,000	$27,520,000
Other Option Considered: Upon Request Program	10,430,000	10,047,200

2. Lead Tap Sampling Requirements for Water Systems With Lead Service Lines

The EPA is proposing that water systems with LSLs collect all one-liter, first-draw tap samples from sites served by LSLs as opposed to a minimum of 50 percent as currently required. As noted in section III.E.1 of this notice, tap sample sites served by an LSL are at the highest risk for elevated lead levels in drinking water, therefore, the EPA is revising the tap sample site selection criteria to ensure water systems with LSLs use those sites for lead tap sampling. The EPA is proposing to retain the first draw sampling procedure because this approach has been effectively implemented by water systems and can identify when systems must take additional actions to address elevated lead exposure. However, studies have shown LSLs to be one of the greatest contributors to lead, and first-draw samples of one-liter may not capture water that has sat in the lead service line, which may contain the highest lead in drinking water levels. When the 1991 LCR was promulgated, the best available data was first draw one-liter samples. Recent studies have been conducted to identify which liter from the tap best captures the highest level of lead that could potentially be consumed by residents. The EPA has evaluated these studies and determined that a fifth liter tap sample may be a more conservative option than a first-draw sample, because it would capture water from the lead service line, and sample results would theoretically result in more protective measures, even though it is unlikely that any given person consistently drinks water at the level of the fifth liter draw. Therefore, the EPA is considering a ''fifth-liter option.'' To take a fifth liter tap sample, the person sampling, in accordance with all proposed tap sampling revisions, would fill a one-gallon container that would not be analyzed, then immediately collect a one-liter sample for lead in a separate bottle without turning off the tap. While technically this is not the fifth liter of water, the EPA will refer to this sample as the fifth liter.

Under this proposal, copper samples would continue to be first-draw, which would necessitate collection of two tap samples using different protocols at each sampling site for systems with LSLs. Collection of tap samples for both lead and copper at a single tap sample site could not be achieved on the same day under the alternative option above. To accomplish tap sampling for both lead and copper on a single visit would require collection of five consecutive one liter tap samples without turning the tap off. The first liter would be analyzed for copper and the fifth liter would be analyzed for lead. This procedure significantly complicates tap sample collection and may introduce error, such as misidentifying the correct liter for the two different analyses. Due to this complexity, copper samples may need to be collected on a different day to meet stagnation time and first draw requirements in the current LCR. The EPA requests comment on the feasibility of the fifth liter collection option.

The EPA expects that the fifth liter sampling for LSL water systems will increase the percent of water systems with a trigger level exceedance or action level exceedance and the probability that individual tap samples would exceed 15 μg/L. The EPA estimated that the number and percentage of LSL water systems with an action level exceedance would be two to three times higher under the fifth liter option for water systems without and with CCT, respectively, than the proposed LCR revisions. The EPA also estimated a larger number and percentage of water systems would have a trigger level exceedance under the fifth liter option, while the number and percentages of LSL water systems with no trigger level exceedance or action level exceedance would be lower. Note that these numbers would not change for non-LSL water systems under the fifth liter option compared to the proposed LCR revisions since the requirement to collect a fifth liter would only apply to LSL water systems.

Exhibits 6–23 and 6–24 provide the national annualized rule costs and benefits, under the low cost scenario, discounted at 3 and 7 percent, for the current rule, proposed LCRR, and the fifth liter option. Exhibits 6–25 and 6–26 provide the high cost scenario national annualized rule costs and benefits at the 3 and 7 percent discount rates. The EPA predicts higher State oversight costs, LSLR costs assigned to households, and wastewater treatment plant costs associated with CCT under the fifth liter option than under the proposed LCRR and current rule. At a 3 percent discount rate, the EPA estimates higher total benefits under the fifth liter option ($429 to $946 million) compared to the proposed LCRR ($223 to $751 million) and current rule ($12 to $229 million) based on estimated IQ point decrement avoided benefits. The EPA estimates that the cost of the rule will be higher under the fifth liter option ($543 to $762 million) compared to the proposed LCRR ($509 to $708 million) and current rule ($377 to 438 million) because more water systems will be required to conduct additional tap sampling and treatment requirements in response to higher measured fifth liter tap sample lead levels.

At a 7 percent discount rate, the EPA estimates higher total benefits under the fifth liter option ($76 to $178 million) compared to the proposed LCRR ($39 to $143 million) and current rule ($2 to

$45 million) based on estimated IQ point decrement avoided benefits. The EPA estimates that the cost of the rule will be higher under the fifth liter option ($524 to $777 million) compared to the proposed LCRR ($489 to $721 million) and current rule ($359 to $435 million) because more water systems will be required to conduct additional tap sampling and treatment requirements in response to higher measured fifth liter tap sample lead levels.

EXHIBIT 6–23—ESTIMATED NATIONAL ANNUALIZED RULE COSTS FOR THE LOW COST SCENARIO AT 3% DISCOUNT RATE CURRENT RULE, PROPOSED LCRR, AND FIFTH LITER OPTION

[2016$]

Benefit/cost category	Current LCR total	Proposed LCRR		Fifth liter option	
		Total	Incremental	Total	Incremental
Total Annual Rule Costs	$376,857,000	$508,762,000	$131,905,000	$543,079,000	$166,222,000
Total Annual PWS Costs	370,631,000	481,688,000	111,057,000	512,176,000	141,545,000
Total Annual Benefits	12,391,000	223,472,000	211,081,000	428,597,000	416,206,000

EXHIBIT 6–24—ESTIMATED NATIONAL ANNUALIZED RULE COSTS FOR THE LOW COST SCENARIO AT 7% DISCOUNT RATE CURRENT RULE, PROPOSED LCRR, AND FIFTH LITER OPTION

[2016$]

Benefit/cost category	Current LCR total	Proposed LCRR		Fifth liter option	
		Total	Incremental	Total	Incremental
Total Annual Rule Costs	$359,230,000	$489,253,000	$130,023,000	$523,524,000	$164,294,000
Total Annual PWS Costs	353,067,000	461,889,000	108,822,000	491,005,000	137,938,000
Total Annual Benefits	2,059,000	38,671,000	36,612,000	75,895,000	73,836,000

EXHIBIT 6–25—ESTIMATED NATIONAL ANNUALIZED RULE COSTS FOR THE HIGH COST SCENARIO AT 3% DISCOUNT RATE CURRENT RULE, PROPOSED LCRR, AND FIFTH LITER OPTION

[2016$]

Benefit/cost category	Current LCR total	Proposed LCRR		Fifth liter option	
		Total	Incremental	Total	Incremental
Total Annual Rule Costs	$438,408,000	$708,314,000	$269,906,000	$762,023,000	$323,615,000
Total Annual PWS Costs	421,766,000	663,931,000	242,165,000	717,537,000	295,771,000
Total Annual Benefits	229,397,000	750,556,000	521,159,000	946,051,000	716,654,000

EXHIBIT 6–26—ESTIMATED NATIONAL ANNUALIZED RULE COSTS FOR THE HIGH COST SCENARIO AT 7% DISCOUNT RATE CURRENT RULE, PROPOSED LCRR, AND FIFTH LITER OPTION

[2016$]

Benefit/cost category	Current LCR total	Proposed LCRR		Fifth liter option	
		Total	Incremental	Total	Incremental
Total Annual Rule Costs	$435,144,000	$721,282,000	$286,138,000	$777,471,000	$342,327,000
Total Annual PWS Costs	414,405,000	672,615,000	258,210,000	728,865,000	314,460,000
Total Annual Benefits	45,319,000	142,778,000	97,459,000	178,024,000	132,705,000

3. Reporting of LSL-Related Information

The EPA is proposing to require water systems to make their LSL inventory publicly available with a locational identifier associated with each LSL. The EPA is not proposing that address-level information must be provided to protect information regarding real property (see section II.E.3 of this notice). Public disclosure of the LSL inventory would increase transparency and consumer awareness of the extent of LSLs in the distribution system. The EPA is considering an additional option in which systems with LSLs would be required to make the address associated with each LSL publicly available. Available information indicates that prospective buyers and renters value reductions in risks associated with LSLs. Public disclosure of LSL locations can create an incentive, through increased property values or home sale incentives, to replace LSLs.

The EPA anticipates that the costs between these two options would be similar because the system would use the same method for publicly providing and maintaining information regarding its LSL information and LSL locational information, *e.g.,* posting information to the water system's website. The EPA anticipates the benefits between the address-level and location identifier options would be similar.

4. Small System Flexibility

As discussed in section III.E of this notice, the proposed LCRR includes significant flexibility for CWSs that serve 10,000 or fewer people, and all

NTNCWSs. If these PWSs have an action level exceedance, they can choose from three options (modeled in the cost-benefit model) to reduce the concentration of lead in their water. These options are: (1) Replace seven percent of their baseline number of LSLs per year until all LSLs are replaced; (2) optimize existing CCT or install new CCT; (3) Provide POU devices to all customers. The EPA is proposing the above three flexibilities for NTNCWS and an additional option of replacement of all lead bearing plumbing fixtures at every tap where water could be used for human consumption.

The EPA is considering limiting small system flexibility to CWSs that serve 3,300 or fewer people and all NTNCWSs. Exhibits 6–27 and 6–28 provide the range of the estimated incremental annualized rule costs and benefits, under both the low and high cost scenarios, for the proposed LCRR and the alternative small system flexibility option at a 3% and 7% discount rate, respectively.

EXHIBIT 6–27—ESTIMATED NATIONAL ANNUALIZED INCREMENTAL RULE COSTS AT 3% DISCOUNT RATE FOR THE PROPOSED LCRR AND ALTERNATIVE SMALL SYSTEM FLEXIBILITY OPTION

Benefit/cost category	Proposed LCRR: Small system flexibility for CWSs serving <=10,000 people and all NTNCWSs		Alternative small system flexibility option: CWSs serving <=3,300 people and all NTNCWSs	
	Low cost scenario	High cost scenario	Low cost scenario	High cost scenario
Total Annual Rule Costs	$131,987,000	$269,989,000	$134,385,000	$292,863,000
Total Annual PWS Costs	111,057,000	242,165,000	112,734,000	260,053,000
Total Annual Benefits	211,081,000	521,159,000	215,070,000	548,382,000

EXHIBIT 6–28—NATIONAL ANNUALIZED INCREMENTAL RULE COSTS AT 7% DISCOUNT RATE FOR THE PROPOSED LCRR AND ALTERNATIVE SMALL SYSTEM FLEXIBILITY OPTION

Benefit/cost category	Proposed LCRR: Small system flexibility for CWSs serving <=10,000 people and all NTNCWSs		Alternative small system flexibility option: CWSs serving <=3,300 people and all NTNCWSs	
	Low cost scenario	High cost scenario	Low cost scenario	High cost scenario
Total Annual Rule Costs	$130,104,000	$286,219,000	$132,748,000	$314,163,000
Total Annual PWS Costs	108,822,000	258,210,000	110,742,000	280,731,000
Total Annual Benefits	36,612,000	97,459,000	37,310,000	102,741,000

G. Cost-Benefit Determination

The Administrator has determined that the quantified and non-quantified benefits of the proposed LCR revisions justify the costs.

Under section 1412(b)(3)(C)(ii) of the 1996 Amendments to the SDWA, when the EPA proposes a NPDWR that includes a treatment technique, the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered. Sections VI.A through F of this notice summarize the results of this proposed rule analysis. As indicated in section VI.E of this notice, the monetized costs and benefits result in net annualized incremental benefits that range from $79 to $251 million, under the low and high cost scenarios at a 3 percent discount rate. Under the low and high cost scenarios at a 7 percent discount rate, the net annualized incremental benefits range from a negative $91 to negative $189 million.

In addition to the monetized benefits of the proposed rule, a number of potentially significant non-quantified and non-monetized sources of benefit exist that further strengthen the determination of benefits justifying costs. The harmful impacts of lead exposure include: Cardiovascular effects (both morbidity and mortality effects), renal effects, reproductive and developmental effects, immunological effects, neurological effects, and cancer. The EPA has only monetized a portion of the benefits associated with neurodevelopmental endpoints. Although the EPA did estimate the reductions to adult blood lead levels that could potentially result from changes to LSL and CCT status, the Agency did not quantify or monetize the potential benefits associated with reductions in adverse cardiovascular effects, renal effects, reproductive effects, immunological effects, neurological effects, and cancer. The EPA analysis has not quantified the positive impacts from increases in consumer averting behavior and the potential for customer initiated LSLR due to the proposed rule's additional lead public education requirements that target all potential affected consumers directly, schools and child care facilities, health agencies, and people living in homes with LSLs; and the development of LSL inventories with the requirement for public access to the information. The analysis was also unable to quantify the potentially significant benefits of reducing lead concentrations in drinking water from: Households without LSLs in water systems where the proposed rule triggered an installation or re-optimization of CCT; and all households in systems implementing small improvement in CCT because of the ''find-and-fix'' proposed rule requirements.

VII. Request for Comment

The EPA is requesting comments upon all aspects of the proposed revisions described in this notice. While all comments relevant to the LCR revisions proposed in this notice will be considered by the EPA, comments on the following issues will be especially helpful to the EPA in developing a final

rule. The EPA specifically requests comment on the following issues.

General Matters

The EPA is requesting comment on the overall framework for the proposed LCR revisions. Has the EPA developed proposed revisions that address the variability in conditions among the regulated water systems that effect the levels of lead that may be present in drinking water? Do the proposed revisions to the LCR target the appropriate treatment technique actions to prevent known or anticipated adverse health effects to the extent feasible in accordance with the Safe Drinking Water Act (SDWA)?

The EPA requests comment on the complexity of the regulatory requirements that result from targeting different actions for different types of water systems and challenges States and water systems will encounter.

The EPA requests comment on ways that the proposed LCR revisions could be simplified and burden, including paperwork burden, could be reduced while still assuring adverse health effects are prevented to the extent feasible. The EPA solicits comment on ways it can improve the ability of State or Federal government to enforce this rule. The EPA solicits comment on ways it can improve the ability of State or Federal government to assist water systems with compliance.

Trigger Level

The EPA requests comment on the proposed trigger level of 10 μg/L and the actions water systems must take if they exceed this trigger level. Does this level represent an appropriate 90th percentile level at which to require systems to initiate progressive actions to reduce drinking water lead levels? The EPA requests comment on other 90th percentile level thresholds that would be reasonable for water systems to initiate progressive actions to reduce drinking water lead levels.

Lead Service Line Requirements

The EPA requests comment on the feasibility of creating initial lead service line inventories by the compliance date, which is three years after publication of the final rule, and if a different frequency (other than annual) would be more appropriate for inventory updates. The EPA requests comment on whether additional requirements or guidance are needed relating to the content or format of inventories. The EPA also requests comment on the actions that system with limited records can take to improve their understanding of the number and location of lead service lines in their water system.

The EPA request comment on whether small water systems should be exempt from the requirement to prepare a LSLR plan concurrent with their LSL inventory, given that they may opt not to select LSLR as a compliance option if the action level is exceeded.

The EPA requests comment on including galvanized pipe in lead service line (LSL) inventories and in goal-based and mandatory lead service line replacement (LSLR) rates under the proposed LCR revisions.

The EPA requests comment on the treatment of unknown service lines in the inventory.

The EPA requests comment on whether the Agency should require water systems to distribute education materials to homes with unknown service lines to inform them of the potential for their line to be made of lead and the actions they can take to reduce their exposure to drinking water lead.

The EPA requests comment on proposed revisions to the lead service line replacement program requirements.

The EPA requests comment on the goal-based lead service line requirement for systems that exceed the trigger level. Does the goal based LSLR requirement provide adequate incentives for water systems to achieve meaningful reductions in their lead service line inventory? Does the goal based program enable systems to effectively incorporate LSLR into their infrastructure replacement programs? The EPA requests comment on what criteria must be met for the EPA to establish a federal goal rate for water system under § 142.19.

The EPA also requests comment upon the feasibility of replacing a minimum of three percent of the lead service lines a year for the systems that exceed the action level. The EPA requests comment on whether the number of lines required to be replaced should be three percent of the number of lead service lines plus the number of unknown service lines at the time the systems exceeds the action level.

The EPA requests comment on the feasibility for a water system to replace its portion of an LSL within 45 days of being notified that a customer has replaced the customer portion of an LSL. Should this time frame be longer? Should this time frame be shorter? The EPA also requests comment on whether such replacement by a water system should be mandatory or voluntary.

The EPA requests comment on how water systems that are conducting LSLR can identify and prioritize replacements at the locations that have the highest lead levels and/or the most susceptible populations. The EPA requests comment on whether to require water systems to describe in their LSLR plan, how LSLR will be prioritized or to require a prioritization plan at the time LSLR is compelled.

The EPA is requesting comment on the appropriateness of requiring two years of tap sample monitoring before water systems may stop LSLR. Under this proposal, corrosion control treatment (CCT) or re-optimization of CCT may not immediately reduce lead levels at the tap. The EPA proposes that two years of monitoring would be enough time to evaluate and ensure these measures consistently reduce lead to meet the action level.

The EPA requests comment on requiring systems with LSLs to make publicly available the exact address of the LSL in the inventory instead of a location identifier (street, intersection, landmark) as proposed. As discussed in section VI of this notice, the EPA estimates that the costs and benefits of this alternative would be similar to the proposal.

The EPA request comment on the appropriateness of pitcher filters for risk mitigation after LSLR or LSL disturbances given that the customer would be responsible for operation and maintenance.

Corrosion Control Treatment

The EPA is requesting comment on the proposed CCT re-optimization requirements. EPA requests comment upon the potential actions water systems could take to adjust their corrosion control treatment and how they should work with the State to determine if adjustments to the treatment would better optimize corrosion control.

Tap Sampling

The EPA is requesting comment on an alternative revision to the LCR's existing tap sample collection method provisions. In promulgating the LCR, the EPA noted ''the rule contains other procedures to ensure that excessive lead and/or copper levels would be detected in monitoring by requiring, for example, sampling of the first liter of water from the tap after water has been standing for at least six hours, conditions under which higher than average contaminant levels are likely to occur'' (58 FR 26514). The EPA continues to believe that first draw sampling following a 6-hour stagnation period is an effective technique to determine when optimal corrosion control treatment is being maintained. However, the EPA notes

that research using sequential tap sample collection techniques on homes with LSLs indicates that a first draw sample may not represent the significant contributions of LSLs (Lytle et al., 2019). The EPA evaluated the feasibility of conducting sequential sampling techniques for every tap sample site for the public water systems that are subject to the LCR. The EPA finds it is not feasible due to the complexity of the sequential sampling technique, the number of samples that must be analyzed and the difficulty of interpreting the results from multiple tap samples. However, the EPA is requesting comment on whether water systems with lead service lines should be required to collect tap samples that are representative of water that was in contact with lead service lines during the 6-hour stagnation period.

The EPA requests comment on an alternative tap sampling technique for sampling locations with LSLs. The EPA requests comment on requiring tap samplers to collect the first gallon of water from the tap following the stagnation period (referred to as the fifth liter), then to collect a one-liter sample for analysis. The sampler would be instructed to pour out the gallon container or to use it for other purposes (*e.g.,* watering plants) and to submit the one-liter tap sample for analysis. The EPA finds this approach would be more representative of lead concentrations in service lines (Del Toral, 2013) and would be more likely to identify a greater number of water systems that would be required to take action to address elevated levels of lead. The EPA has included an analysis of the costs and benefits of this option in Section VI of this notice and Chapter 9 of the Economic Analysis of the Proposed Lead and Copper Rule Revisions (USEPA, 2019a). The EPA also requests comment on how the EPA could develop tap sample protocols that would allow for collection of a first draw copper sample and a fifth liter lead tap sample during a single tap sample event. The EPA requests data that demonstrate collecting a tap sample liter (*i.e.,* 5th liter) other than a first draw is more representative of water that has been in contact with a lead service line during the six hour stagnation period.

The EPA is proposing to require that all water systems that change their source water or make significant treatment changes obtain approval from their primacy agency prior to making the change. The EPA expects that in addition to evaluating and mitigating the impacts of the source water change or treatment change on corrosion control, many primacy agencies will require the water systems to conduct more frequent tap sampling following the change in treatment or source. The EPA requests comment on whether the regulation should specify a minimum tap sampling frequency of once every six months or once per year following the source water change or significant treatment change.

Testing in Schools and Child Care Facilities

The EPA requests comment on whether it should revise the rule to require community water systems (CWSs) to offer to collect samples from schools and child care facilities every five years or to collect samples from a school or a child care facility only if requested. The CWS would still be required to provide the schools and child care facilities information on the health effects and sources of lead in drinking water, and the 3Ts guidance. Under this approach, CWS would be able to respond to requests for sampling in a way that allows the water system to spread out the cost burden over multiple years (*i.e.,* delay fulfilment of requests to future years) if the water system samples at a minimum of five percent of schools and child care facilities each year. Additionally, a facility could decline the offer. The EPA has included an analysis of the costs and benefits of this option in section VI of this notice and Chapter 9 of the Economic Analysis of the Proposed Lead and Copper Rule Revisions (USEPA, 2019a).

Small System Flexibilities

The EPA is proposing that small system flexibilities be allowed for CWSs serving 10,000 or fewer persons and all NTNCWS. The EPA request comment on whether this flexibility is needed by systems serving between 3,301 and 10,000 persons and whether a different threshold is more appropriate. EPA requests comment on whether different flexibilities would be more appropriate for small systems whether defined as water systems serving 10,000 or fewer persons or 3,300 or fewer persons.

Public Education and Outreach

The EPA requests comment on whether the Agency should require water systems to distribute education materials to homes with unknown service line types to inform them of the potential for their line to be made of lead and the actions they can take to reduce their exposure to drinking water lead.

The EPA requests comment on the appropriateness of required outreach activities a water system would conduct if they do not meet the goal LSLR rate in response to a trigger level exceedance. The EPA also requests comments on other actions or additional outreach efforts water systems could take to meet their LSLR goal rate.

The EPA requests comment on the appropriateness, frequency, and content of required outreach to State and local health agencies and whether the requirement should apply only to a subset of the country's community water systems.

Economic Analysis

The EPA is soliciting comment on all aspects of the analysis for this rule. The agency offers a fulsome discussion on assumptions, models and related uncertainties in the regulatory impact analysis. In particular, the EPA requests comment on the five drivers of costs identified including rate of LSLR in its economic analysis. EPA requests comments on whether this estimated rate of lead service lines being replaced is appropriate. The EPA also solicits comment on: (1) The existing number of LSLs in PWSs; (2) the number of PWS above the AL or TL under the current and proposed monitoring requirements; (3) the cost of installing and optimizing corrosion control treatment (CCT); (4) the effectiveness of CCT in mitigating lead concentrations; and (5) the cost of lead service line replacement cost of lead service line replacement, cost of CCT, effectiveness of CCT. In addition to these cost drivers, the EPA solicits comment on the assumptions regarding labor required to comply with this rule, including labor required to collect and analyze samples. As described in section VI.E.2 of this notice, the EPA is not estimating benefits of avoided cardiovascular mortality that may result from the proposed LCR revisions. The EPA acknowledges the scientific understanding of the relationship between lead exposure and cardiovascular mortality is evolving and scientific questions remain. The EPA intends to conduct additional analysis and conduct a peer review that includes an opportunity for public comment. In the interim, EPA solicits peer reviewed information on the evidence relevant to quantifying the incremental contribution of blood lead concentrations (especially at BLL <5 μg/dL) to cardiovascular disease (and associated mortality) relative to strong predictors such as diet, exercise, and genetics that may be useful in future benefits analysis.

As mentioned in Section VI, and detailed in Appendix F of the EA, the EPA in a secondary analysis has

estimated the changes in lead concentrations at non-LSL households that result from changes in CCT. The lead concentration values used in this assessment come from data EPA collected from 15 cities across the United States and Canada (See Chapter 6, section 6,2 of the EA for more detail). The EPA has not found additional studies to corroborate this data. The EPA, therefore, is requesting comment and additional information about the change in lead concentrations that occur in non-LSL households that experience changes in CCT.

Recordkeeping

The EPA requests comment on the utility of States maintaining records of water system actions related to find-and-fix.

VIII. Administrative Requirements

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, the *Economic Analysis of the Proposed Lead and Copper Rule Revisions* (USEPA, XX), is available in the docket and is summarized in section VI of this notice.

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

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action summarized in section VI.

C. Paperwork Reduction Act (From the Office of Mission Support's Information Collection Request Center) (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned the Agency's ICR number 2040–NEW. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 13, 2019. You can find a copy of the ICR in the docket for this rule (EPA–HQ–OW–2017–0300), and it is briefly summarized here. The burden includes the time needed to conduct Primacy Agency and public water system activities during the first three years after promulgation, as described in Chapter 8 from the Economic Analysis of the Proposed Lead and Copper Rule Revisions (USEPA, 2019a)).

Burden means the total time, effort, or financial resources expended by people to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology, and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The paperwork burden associated with this proposal consists of the burden imposed on systems to read and understand the LCRR as well as the burden associated with certain new or revised collections of information. Specifically, public water systems will have to assign personnel and devote resources in order to implement the rule. In addition, public water systems will need to conduct training sessions and receive technical assistance from their Primacy Agency during implementation of the LCRR. Furthermore, public water systems will have to develop a lead service line inventory or submit a demonstration to the Primacy Agency that they do not have lead service lines. For the public water systems that have lead service lines, a lead service replacement plan will need to be developed.

Likewise, the paperwork burden for primacy agencies include reading and understanding the LCRR. The primacy agencies will have to adopt the rule and develop programs to implement the LCRR. This may result in the Primacy Agency modifying their data system while implementing the LCRR. Also, the Primacy Agency will have to provide the Primacy Agency's staff with training and technical assistance during implementation of the LCRR. The Primacy Agency is also responsible for reviewing demonstration of no lead service lines from systems and reviewing lead service replacement plans.

The information collected under the ICR is critical to States and other authorized entities that have been granted primacy (*i.e.,* primary enforcement authority) for the Lead and Copper Rule (LCR). These authorized entities are responsible for overseeing the LCR implementation by certain public water systems within their jurisdiction. Primacy agencies would utilize these data to determine compliance, designate additional treatment controls to be installed, and establish enforceable operating parameters. The collected information is also necessary for public water systems. Public water systems would use these data to demonstrate compliance, assess treatment options, operate and maintain installed treatment equipment, and communicate water quality information to consumers served by the water system. Primacy agencies would also be required to report a subset of these data to the EPA. The EPA would utilize the information to protect public health by ensuring compliance with the LCR, measuring progress toward meeting the LCR's goals, and evaluating the appropriateness of State implementation activities. No confidential information would be collected as a result of this ICR.

Respondents/affected entities: Data associated with this proposed ICR would be collected and maintained at the public water system, and by State and Federal governments. Respondents would include owners and operators of public water systems, who must report to their primacy agency(s).

Respondent's obligation to respond: If the proposed LCR is finalized, then the respondent's obligation to respond would be mandatory. Section 1401(1)(D) of the Safe Drinking Water Act (SDWA) requires that ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels [or treatment techniques promulgated in lieu of a maximum contaminant level]; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system. . .'' Furthermore, section 1445(a)(1)(A) of the SDWA requires that ''[e]very person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing

regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter. . .'' In addition, section 1413(a)(3) of the SDWA requires States to ''keep such records and make such reports . . . as the Administrator may require by regulation.''

Estimated number of respondents: If the proposed rule is finalized, the total number of respondents for the ICR would be 67,712. The total includes 56 primacy agencies and 67,656 public water systems.

Frequency of Response: The average burden per response (*i.e.,* the amount of time needed for each activity that requires a collection of information) is 8.15 to 8.41 hours; the average cost per response is $288 to $298.

Total estimated burden: For the first three years after the final rule is published, water systems and primacy agencies will implement several proposed rule requirements. Since, the first three years of the rule focuses on the creation of inventories for lead service lines, households are not faced with costs. The public water systems burden will include the following activities: Reading and understanding the revised rule, personnel time for attending trainings, clarifying regulatory requirements with the Primacy Agency during rule implementation. Public water systems would also be required to create a lead service line (LSL) materials inventory and develop an initial lead service line replacement (LSLR) plan. The total burden hours for public water systems ranges from 2.24 to 2.35 million hours. The total cost for public water systems ranges from $68.3 to $72 million. For additional information on the public water systems activity burden see sections VI.C.3 and VI.C.4 of this notice.

The Primacy Agency burden for the first three years of proposed rule implementation would include the following: Reading and understanding the rule; adopting the rule and developing an implementation program; modifying data recording systems; training staff; providing water system staff with initial and on-going technical assistance and training; coordinating annual administration tasks with the EPA; reporting data to SDWIS/Fed; reviewing public water system (PWS) inventory data; and conferring with LSL water systems on initial planning for LSLR program activities. The total burden hours for primacy agencies is 485,821 to 508,207 hours. The total cost for primacy agencies is $27.8 to $29.1 million. See section VI.C.8 of this notice for additional discussion on burden and cost to the Primacy Agency.

The net change burden associated with moving from the information requirements of the current rule to those in the proposed LCRR over the three years covered by the ICR is 2.72 to 2.86 million hours, for an average of 0.91 to 0.95 million hours per year. The range reflects the upper- and lower-bound estimates of the number of systems that need to develop LSL inventories. The total net change in costs over the three-year clearance period are $96.2 to 101.2 million, for an average of $32.1 to $33.7 million per year (simple average over three years).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the EPA's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the Docket ID. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than December 13, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act as Amended by the Small Business Regulatory Fairness Act (RFA)

Pursuant to section 603 of the RFA, the EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The complete IRFA is available in Part 8.4 of the EA and is summarized here.

For purposes of assessing the impacts of this proposed rule on small entities, the EPA considered small entities to be water systems serving 10,000 people or fewer. This is the threshold specified by Congress in the 1996 Amendments to the SDWA for small water system flexibility provisions. As required by the RFA, the EPA proposed using this alternative definition in the **Federal Register** (FR) (63 FR 7620, February 13, 1998), sought public comment, consulted with the Small Business Administration, and finalized the small water system threshold in the Agency's Consumer Confidence Report regulation (USEPA, 1998b, 63 FR 44524, August 19, 1998). As stated in that document, the alternative definition would apply to this regulation.

The SDWA is the core statute addressing drinking water at the Federal level. Under the SDWA, the EPA sets public health goals and enforceable standards for drinking water quality. As previously described, the LCR requires water systems to minimize lead and copper in drinking water, primarily by reducing water corrosivity and preventing the leaching of these metals from the premise plumbing and drinking water distribution system components. The EPA is proposing regulatory revisions to strengthen public health protection and improve implementation in the following areas: Tap sampling, corrosion control treatment; LSLR; consumer awareness; and public education.

The EPA identified over 65,000 small public water systems that may be impacted by the proposed LCR revisions. A small public water system serves between 25 and 10,000 people. These water systems include over 45,758 community water systems that serve year-round residents and more than 17,566 non-transient non-community water systems that serve the same persons over six months per year (*e.g.,* a public water system that is an office park or church). The proposed revisions to the LCR include requirements for: Conducting an LSL inventory that is updated annually; installing or re-optimizing corrosion control treatment when water quality declines; enhanced water quality parameter monitoring; establishment of a ''find-and-fix'' provision to evaluate and remediate elevated lead at a site where the tap sample exceeds the lead action level; and improved customer outreach. These proposed revisions also include reporting and recordkeeping requirements. States are required to implement operator certification (and recertification) programs per the SDWA section 1419 to ensure operators of community water systems and non-transient non-community water systems, including small water system operators, have the appropriate level of certification.

Under the proposed rule requirements, small CWSs, serving 10,000 or fewer people, and all NTNCWS with a 90th percentile lead value above the action level of 15 μg/L may choose between LSLR, CCT installation, or POU device installation and maintenance as the compliance option. A fourth option available to NTNCWSs, is the removal of all lead bearing plumbing material from the system was not analyzed in the EPA's

cost-benefit model. The EPA is estimating low and high cost scenarios to characterize uncertainty in the cost model results. These scenarios are functions of assigning different, low and high, input values to a number of variables that affect the relative cost of the small system compliance options. Under the current LCR, the EPA estimates that, under the low cost scenario, 21,435 small CWSs will have annual total LCR related costs of more than one percent of revenues, and that 10,599 of these small CWSs will have annual total costs of three percent or greater of revenue. Under the proposed LCRR, the number of small CWSs that will experience annual total costs of more than one percent of revenues increases by 7,556 to 28,990 and the number of small CWSs that will have annual total costs exceeding three percent of revenues increases by 7,051 to 17,648. Under the high cost scenario, the EPA estimates that under the current LCR, 22,732 small CWSs will have annual total costs of more than one percent of revenues, and that 12,127 of these small CWSs will have annual total costs of three percent or greater of revenue. Under the proposed LCRR, the number of small CWSs that will experience annual total costs of more than one percent of revenues increases by 8,274 to 31,002 and the number of small CWSs that will have annual total costs of more than three percent of revenues increases by 7,749 to 19,873. See section 8.4 of the proposed LCRR Economic Analysis for more information on the characterization of the impacts under the proposed rule. The EPA has considered an alternative approach to provide regulatory flexibility to small water systems. Section 8.4 of the LCRR Economic Analysis contains an assessment of impacts for an alternative option that sets the threshold for system compliance flexibility at systems serving 3,300 or fewer people.

As required by section 609 (b) of the RFA, the EPA also convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. The SBAR panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. A copy of the full SBAR panel report is available in the rulemaking docket.

E. The Unfunded Mandates Reform Act (UMRA)

This action contains a Federal mandate under UMRA, 2 U.S.C. 1531–1538, 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. Accordingly, the EPA has prepared a written statement required under section 202 of UMRA. The statement is included in the docket for this action (see Chapter 8 in the Economic Analysis of the Proposed Lead and Copper Rule Revisions (USEPA, 2019a)) and is briefly summarized here.

Consistent with the intergovernmental consultation provisions of UMRA section 204, the EPA consulted with governmental entities affected by this rule. The EPA describes the government-to-government dialogue and comments from State, local, and tribal governments in section VIII.F Executive Order 13132: Federalism and section VIII.G Executive Order 13175: Consultation and Coordination with Indian Tribal Governments of this notice.

Consistent with UMRA section 205, the EPA identified and analyzed a reasonable number of regulatory alternatives to determine the treatment technique requirements in the proposed LCR revisions. Sections III, IV, and V of this notice describe the proposed options. See section VI.F of this notice and Chapter 9 in the Economic Analysis of the Proposed Lead and Copper Rule Revisions (USEPA, 2019a)) for alternative options that were considered.

This action may significantly or uniquely affect small governments. The EPA consulted with small governments concerning the regulatory requirements that might significantly or uniquely affect them. The EPA describes this consultation above in the Regulatory Flexibility Act (RFA), section VIII.D of this notice.

F. Executive Order 13132: Federalism

The EPA has concluded that this action has Federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it imposes substantial direct compliance costs on State or local governments. The EPA consulted with State and local governments early in the process of developing the proposed action to allow them to provide meaningful and timely input into its development. The EPA held Federalism consultations on November 15, 2011, and on January 8, 2018. The EPA invited the following national organizations representing State and local elected officials to a meeting on January 8, 2018, in Washington, DC: The National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the International City/County Management Association, the National Association of Towns and Townships, the County Executives of America, and the Environmental Council of States. Additionally, the EPA invited the Association of State Drinking Water Administrators, the Association of Metropolitan Water Agencies, the National Rural Water Association, the American Water Works Association, the American Public Works Association, the National School Board Association, the American Association of School Administrators, and the Western Governors' Association to participate in the meeting. The EPA also provided the associations' membership an opportunity to provide input during follow-up meetings. The EPA held five follow up meetings between January 8, 2018, and March 8, 2018. In addition to input received during the meetings, the EPA provided an opportunity to receive written input within 60 days after the initial meeting. A summary report of the views expressed during Federalism consultations is available in the Docket (EPA–HQ–OW–2017–0300).

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA consulted with Tribal officials during the development of this action to gain an understanding of Tribal views of potential revisions to key areas of the LCR. The EPA held consultations with federally-recognized Indian Tribes in 2011 and 2018. The 2018 consultations with federally-recognized Indian Tribes began on January 16, 2018 and ended March 16, 2018. The first national webinar was held January 31, 2018, while the second national webinar was held February 15, 2018. A total of 48 tribal representatives participated in the two webinars. Updates on the consultation process were provided to the National Tribal Water Council upon request at regularly scheduled monthly meetings during the consultation process. Also, upon request, informational webinars were provided to the National Tribal Toxics Council's Lead Subcommittee on

January 30, 2018, and the EPA Region 9's Regional Tribal Operations Committee (RTOC) on February 8, 2018. Additionally, the EPA received written comments from the following Tribes and Tribal organizations: The Navajo Tribal Utility Authority, the National Tribal Water Council, the United South and Eastern Tribes Sovereignty Protection Fund, and the Yukon River Inter-Tribal Watershed Council. A summary report of the views expressed during Tribal consultations is available in the Docket (EPA–HQ–OW–2017–0300).

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

This action is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866, and, based on the record, the EPA finds that the environmental health or safety risk addressed by this action has a disproportionate effect on children. Accordingly, the EPA has evaluated the environmental health or safety effects of lead found in drinking water on children and estimated the risk reduction and health endpoint impacts to children associated with the adoption and optimization of corrosion control treatment technologies and the replacement of LSLs. The results of these evaluations are contained in the *Economic Analysis of the Proposed Lead and Copper Rule Revisions* (USEPA, 2019a) and described in section VI.D.2 of this notice. Copies of the *Economic Analysis of the Proposed Lead and Copper Rule Revisions* and supporting information are available in the Docket (EPA–HQ–OW–2017–0300).

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The public and private water systems affected by this action do not, as a rule, generate power. This action does not regulate any aspect of energy distribution as the water systems that are regulated by the LCR already have electrical service. Finally, The EPA has determined that the incremental energy used to implement corrosion control treatment at drinking water systems in response to the proposed regulatory requirements is minimal. As such, the EPA does not anticipate that this rule will have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act of 1995

The proposed revisions may involve existing voluntary consensus standards in that it requires additional monitoring for lead and copper. Monitoring and sample analysis methodologies are often based on voluntary consensus standards. However, the proposed LCR revisions does not change any methodological requirements for monitoring or sample analysis. The EPA's approved monitoring and sampling protocols generally include voluntary consensus standards developed by agencies such as the American National Standards Institute (ANSI) and other such bodies wherever the EPA deems these methodologies appropriate for compliance monitoring. The EPA notes that in some cases, the proposed LCR revises the required frequency and number of lead tap samples.

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

Based on the record the EPA finds that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the Environmental Justice Analysis for the Proposed Lead and Copper Revision Rule Report, which can be found in the docket ID EPA–HQ–OW–2017–0300. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission. Agencies must do this by identifying and addressing as appropriate any disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

In evaluating baseline exposure to lead in drinking water, data indicate that the possibility of a disproportionately high and adverse human health risk among minority populations and low-income populations exist. Higher than expected proportions of children in minority households and/or low-income households live in housing built during decades of higher LSL usage. The proposed LCR revisions seek to reduce the health risks of exposure to lead in drinking water provided by CWS and NTNCWS. Because water systems LSLs are more likely to have an action level exceedance or a trigger level exceedance and, therefore, engage in actions to reduce lead concentrations, the proposed revisions should help improve the baseline environmental justice concerns.

The proposed LCR revisions are not expected to have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. The proposed revisions should result in CCT and LSLR changes at water systems with higher baseline lead concentrations. It increases the level of health protection for all affected populations. The LSLR provision may be less likely than the CCT provision to address baseline health risk disparity among low-income populations because LSLR may not be affordable for low-income households.

However, there are Federal and State programs that may be used to fund LSLR programs including the cost of LSLR for customer-owned LSLs. Financing support for lead reduction efforts may be available from State and local governments, EPA programs (*e.g.,* the Drinking Water State Revolving Fund (DWSRF), the WIFIA Program, and the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act) grant programs), and other federal agencies (*e.g.,* HUD's Community Development Block Grants).

The benefit-cost analysis of the rule indicates that CCT changes will account for most of the benefits. Therefore, health risk reduction benefits will be more uniformly distributed among populations with high baseline health risks including minority and low-income households. Also, given the availability of Federal and State funding sources to support full LSLR, the proposed LCR revisions meet the intent of the Federal policy requiring incorporation of environmental justice into Federal agency missions.

L. Consultations With the Science Advisory Board and the National Drinking Water Advisory Council

1. Consultation With the Science Advisory Board (SAB)

As required by section 4365 of the SDWA, in 2011, the EPA sought an evaluation of current scientific data to determine whether partial LSLR effectively reduce water lead levels. When the LCR was promulgated in

1991, large water systems, serving greater than 50,000 people, were required to install CCT and small and medium water systems, serving 50,000 or fewer people if samples exceeded the action level for lead. If the action level was not met after installing CCT, water systems are required to replace 7 percent of its LSLs annually. However, in 2000, revisions to the LCR allowed water systems, if they exceeded the action level, to replace only the portion of the LSL that the water system owned and to replace the customer's portion of the LSL at the customer's expense. This practice is known as a partial LSLR.

The EPA asked the SAB to evaluate the current scientific data on the following five partial LSLR issues: (1) Associations between partial LSLR and blood lead levels in children; (2) lead tap water sampling data before and after partial LSLR; (3) comparisons between partial and full LSLR; (4) partial LSLR techniques; and (5) the impact of galvanic corrosion. The EPA identified several studies for the SAB to review while the SAB selected additional studies for their evaluation. The SAB deliberated and sought input from public meetings held on March 30 and 31, 2011, and during a public conference call on May 16, 2011. The SAB's final report, titled ''SAB Evaluation of the Effectiveness of Partial Lead Service Line Replacements'' was approved by the SAB on July 19, 2011, and transmitted to the EPA Administrator on September 28, 2011.

The SAB determined that the quality and quantity of data was inadequate to fully evaluate the effectiveness of partial LSLR in reducing drinking water lead concentrations. Both the small number of studies and the limitations within these studies (*i.e.,* lack of comparability between studies, small sample size) barred a comprehensive assessment of partial LSLR efficacy. However, despite the limitations, the SAB concluded that partial LSLR's have not been shown to reliably reduce drinking water lead levels in the short-term of days to months, and potentially even longer. Additionally, partial LSLR is often associated with elevated drinking water lead levels in the short-term. The available data suggested that the elevated drinking water lead levels after the partial LSLR tend to stabilize over time to lower than or to levels similar to before the partial LSLR. Therefore, the SAB concluded that available data suggest that partial LSLR's may pose a risk to the population due to short-term elevations in drinking water lead concentrations after a partial LSLR, which last for an unknown period. Considering the SAB's findings on partial LSLR, the EPA determined that partial replacements should no longer be required when water systems exceed the action level for lead, but the EPA still considers full replacement of the LSL as beneficial (USEPA, 2011).

2. Consultation With National Drinking Water Advisory Council

The National Drinking Water Advisory Council (NDWAC) is a Federal Advisory Committee that supports EPA in performing its duties and responsibilities related to the national drinking water program and was created through a provision in the SDWA in 1974. The EPA sought advice from the NDWAC as required under § 300j–5 of the SDWA. The EPA consulted with NDWAC on July 21–22, 2011, to provide updates on the proposed LCR revisions and solicit feedback on potential regulatory options under consideration. In November 2011, NDWAC held deliberations on LSLR requirements after they received the SAB's final report on the effectiveness of partial LSLR. In December 2011, a public meeting was held where NDWAC provided the EPA with major recommendations on the potential LCR regulatory revisions, which are outlined in a letter dated December 23, 2011.

In 2014, the NDWAC formed the Lead and Copper Rule Working Group (LCRWG) to provide additional advice to the EPA on potential options for long-term regulatory revisions. The EPA held meetings from March of 2014 until December 2015 where NDWAC LCRWG members discussed components of the rule and provided the EPA with advice for addressing the following issues: Sample site collection criteria, lead sampling protocols, public education for copper, and measures to ensure optimal CCT and LSLR. NDWAC provided the Agency with their final recommendations and findings in a report submitted to the Administrator in December 2015. In the report, NDWAC acknowledged that reducing lead exposure is a shared responsibility between consumers, the government, public water systems, building owners, and public health officials. In addition, they recognized that creative financing is necessary to reach the LSL removal goals, especially for disparate and vulnerable communities. The NDWAC advised the EPA to maintain the LCR as a treatment technique rule but with enhanced improvements. NDWAC qualitatively considered costs before finalizing its recommendations, emphasizing that public water systems and States should focus efforts where the greatest public health protection can be achieved, incorporating their anticipated costs in their capital improvement program or the requests for Drinking Water State Revolving Funds. The LCRWG outlined an extensive list of recommendations for the LCR revisions, including establishing a goal-based LSLR program, strengthening CCT requirements, and tailoring water quality parameters to the specific CCT plan for each water system.

The report NDWAC provided for the EPA also included recommendations for renewed collaborative commitments between government and all levels of the public from State and local agencies, to other stakeholders and consumers while recognizing the EPA's leadership role in this area. These complementary actions as well as a detailed description of the provisions for NDWAC's recommendations for the long-term revisions to the LCR can be found in the ''Report of the Lead and Copper Rule Working Group to the National Drinking Water Advisory Council'' (NDWAC, 2015). The EPA took into consideration NDWAC's recommendations when developing these proposed revisions to the LCR.

M. Consultation With Health and Human Services

On June 12, 2019, the EPA consulted with the Department of Health and Human Services (HHS). The EPA received and considered comments from the HHS through the inter-agency review process described in section VIII.A of this notice.

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List of Subjects

40 CFR Part 141 National Primary Drinking Water Regulations

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142 National Primary Drinking Water Regulations Implementation

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 10, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 141 and part 142 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Amend § 141.2 by:
■ a. Revising the definition of ''action level'';
■ b. Adding in alphabetical order the definitions of ''aerator'', ''child care facility'', ''consumer'', ''customer'', and ''find-and-fix'';
■ c. Revising the definition for ''first-draw sample'';
■ d. Adding in alphabetical order the definitions of ''galvanized service line'', ''gooseneck, pigtail or connector'', and ''hydrovacing'';
■ e. Revising the definition of ''lead service line''; and
■ f. Adding in alphabetical order the definitions of ''method detection limit''; ''monitoring period (tap sampling)'', ''pitcher filter''; ''potholing'', ''pre-stagnation flushing''; ''sampling period'', ''school'', ''tap sampling protocol'', ''trenching'', ''trigger level'', and ''wide-mouth bottles''.

The revisions and additions read as follows:

§ 141.2 Definitions

* * * * *

Action level means the concentrations of lead or copper in water as specified in § 141.80(c) which determines, in some cases, the treatment, lead service line replacement, and tap sampling requirements that a water system is required to complete. The action level for lead is 0.015 mg/L and the action level for copper is 1.3 mg/L.

Aerator means the device embedded in the water faucet to enhance air flow with the water stream and to prevent splashing.

* * * * *

Child care facility means a location that houses a licensed provider of child care, day care or early learning services to children, as determined by the State, local, or tribal licensing agency.

* * * * *

Consumer means customers and other users of a public water system.

* * * * *

Customer means a paying user of a public water system.

* * * * *

Find-and-Fix means the requirement in 141.82(j) that water systems must perform at every sampling site that yielded a lead result above the action level (0.015 mg/L). Follow-up sampling results must be provided to the consumer in accordance with § 141.85(d).

First-draw sample means a one-liter sample of tap water, collected in accordance with § 141.86(b)(2).,

* * * * *

Galvanized service line generally means iron or steel piping that has been dipped in zinc to prevent corrosion and rusting.

Gooseneck, pigtail or connector is a short section of piping, usually one to two feet long, which can be bent and used for connections between rigid service piping.

* * * * *

Hydrovacing means an alternative method to digging up a lead service line to identify it using high-pressure water and a vacuum system to dig a hole.

* * * * *

Lead service line means a service line made of lead, which connects the water main to the building inlet. A lead service line may be owned by the water system, owned by the property owner, or both. For the purposes of this subpart, a galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material. If the only lead piping serving the home or building is a lead gooseneck, pigtail, or connector, and it is not a galvanized service line that is considered an LSL the service line is not a lead service line.

* * * * *

Medium-size water system, for the purpose of subpart I of this part only, means a water system that serves greater than 10,000 and less than or equal to 50,000 persons.

Method Detection Limit (MDL) means the minimum concentration of a substance that can be measured and reporting with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

Monitoring period for the purposes of subpart I of this part only means the schedule during which each water system must conduct tap sampling for lead and copper analysis. A monitoring period is determined by lead and copper concentrations in tap samples and the frequency can range from every six months (*i.e.,* semi-annual) up to once every nine years. The start of each new lead monitoring period, with the exception of semi-annual monitoring, must begin on January 1.

* * * * *

Pitcher filter means the filtration insert for water pitchers that removes lead in drinking water, and that is certified to remove lead in accordance with applicable standards established by the American National Standards Institute.

* * * * *

Potholing means the practice of digging a test hole to expose a potential lead service line.

* * * * *

Practical quantitation Limit (PQL) means the minimum concentration of an analyte (substance) that can be measured with a high degree of confidence that the analyte is present at or above that concentration.

* * * * *

Pre-stagnation flushing is the running of taps to flush water from plumbing prior to the minimum 6-hour stagnation period required for lead and copper tap sampling.

* * * * *

Sampling period for the purpose of subpart I of this part only means the time period, within a tap sampling monitoring period, during which the water system is required to collect samples for lead and copper analysis. The annual sampling period must be between the months of June and September, unless a different sampling period is approved in writing to be more appropriate by the primacy agency.

* * * * *

School for the purpose of subpart I of this part only means any public, private, charter or other location that provides student learning for elementary or secondary students.

* * * * *

Small water system, for the purpose of subpart I of this part only, means a water system that serves 10,000 persons or fewer.

* * * * *

Tap sampling protocol means the instructions given to residents or those sampling on behalf of the water system to conduct tap sampling for lead and copper. Tap sampling protocols may not include any instructions or recommendations for pre-stagnation flushing or removal or cleaning of faucet aerators prior to sample collection.

* * * * *

Trenching is a method of excavation, in this case to identify a lead service line, where a depression is dug that is generally deeper than its width.

Trigger level means a particular concentration of contaminants in water as specified in § 141.80(c) that prompts certain activities. The trigger level for lead is a concentration greater than 0.010 mg/L but less than or equal to 0.015 mg/L. The trigger level for lead determines the treatment, lead service

line replacement, and tap sampling requirements applicable to each water system.

* * * * *

Wide-mouth bottles for the purpose of subpart I of this part only means bottles configured with a mouth that is at least 55 mm wide, required to be used for lead and copper tap sampling collection to optimize capturing accurate lead measurements.

* * * * *

■ 3. Amend § 141.31 to revise paragraph (d)(1) to read as follows:

§ 141.31 Reporting requirements.

* * * * *

(d)(1) The public water system, within 10 days of completing the public notification requirements under subpart Q of this part for the initial public notice and any repeat notices, must submit to the primacy agency a certification that it has fully complied with the public notification regulations. For Tier 2 and 3 notices, the public water system must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media. (2) For Tier 1 notices public water systems must provide a copy of any Tier 1 notice to the Administrator and the head of the Primacy Agency as soon as practicable, but not later than 24 hours after the public water system learns of the violation or exceedance.

* * * * *

■ 4. Amend § 141.80 by:

■ a. Revising paragraphs (a), (b), (c), (d)(1) and (f);

■ b. Adding paragraph (d)(3);

■ c. Revising paragraph (g);

■ e. Redesignating paragraph (k) as paragraph (m);

■ d. Redesignating paragraphs (h) through (j) as paragraphs (i) through (k); and

■ f. Adding new paragraphs (h) and (1).

The revisions and additions read as follows:

§ 141.80 General requirements.

(a) *Applicability, effective date, and compliance deadlines.* The requirements of this subpart constitute the National Primary Drinking Water Regulations for lead and copper.

(1) The provisions of this subpart apply to community water systems and non-transient, non-community water systems (hereinafter referred to as ''water systems'' or ''systems'') as defined at 40 CFR 141.2.

(2) The requirements of this subpart are effective as of [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(3) Community water systems and non-transient, non-community water systems must comply with the requirements of this subpart no later than [DATE THREE YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], except where otherwise specified at §§ 141.81, 141.84, 141.85, 141.86, and 141.90, or where an exemption in accordance with 40 CFR 142 at subpart C or F has been established by the Administrator.

(4)(i) Between [DATE 60 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**] and [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], community water systems and non-transient, non-community water systems must comply with 40 CFR 141.80 through 141.90 as promulgated in 56 FR 26548, June 7, 1991; 57 FR 28788, June 29, 1992; 59 FR 33862, June 30, 1994; 65 FR 2004, January 12, 2000; 72 FR 57814, October 10, 2007.

(ii) If an exemption from Subpart I has been issued in accordance with 40 CFR 142 subpart C or F, then the water systems must comply with 40 CFR 141.80 through 141.90 as promulgated in 56 FR 26548, June 7, 1991; 57 FR 28788, June 29, 1992; 59 FR 33862, June 30, 1994; 65 FR 2004, January 12, 2000; 72 FR 57814, October 10, 2007 until the expiration of that exemption.

(b) *Scope.* These regulations establish a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line inventory, lead service line replacement, public notice, monitoring for lead in schools and child care facilities, and public education. Several of these requirements are prompted by the lead and copper action levels or the lead trigger level, specified in paragraph (c) of this section, as measured in samples collected at consumers' taps. All community water systems are subject to sampling for lead in schools and child care facilities and public education requirements regardless of the results of the compliance tap sampling.

(c) *Lead trigger level, lead action level, and copper action level.* Trigger levels and action levels must be determined based on tap water samples collected in accordance with the monitoring requirements of § 141.86 and tested using the analytical methods specified in § 141.89. The trigger level and action levels described in this paragraph are applicable to all sections of subpart I. Trigger level and action levels for lead and copper are as follows:

(1) The *lead trigger level* is exceeded if the 90th percentile concentration of lead as specified in (c)(4) of this section is greater than 0.010 mg/L.

(2) The *lead action level* is exceeded if the 90th percentile concentration of lead as specified in (c)(4) of this section is greater than 0.015 mg/L.

(3) The *copper action level* is exceeded if the 90th percentile concentration of copper as specified in (c)(4) of this section is greater than 1.3 mg/L.

(4) For purposes of this subpart, the *90th percentile concentration* shall be computed as follows:

(i) For systems that do not have lead service line sites and only have sites identified as Tier 3 or 4 under § 141.86(a).

(A) The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(B) The number of samples taken during the monitoring period shall be multiplied by 0.9.

(C) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(4)(i)(B) of this section is the 90th percentile concentration.

(D) For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile concentration is the average of the highest and second highest concentration.

(E) For a public water system that has been allowed by the State to collect fewer than five samples in accordance with § 141.86(c), the sample result with the highest concentration is considered the 90th percentile value.

(ii) For public water systems with lead service lines with sites identified as Tier 1 or 2 under § 141.86(a) with enough Tier 1 or 2 sites to meet the minimum number of sites listed in § 141.86(c):

(A) The results of all lead or copper samples taken at Tier 1 or Tier 2 sites during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Sample results from Tier 3 and Tier 4 sites shall not be included in this calculation. Each sampling result shall be assigned a number, ascending

by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(B) The number of samples taken at Tier 1 or Tier 2 sites during the monitoring period shall be multiplied by 0.9.

(C) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(4)(ii)(B) of this section is the 90th percentile concentration.

(D) For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile concentration is the average of the highest and second highest concentration.

(E) For a public water system that has been allowed by the State to collect fewer than five samples in accordance with § 141.86(c), the sample result with the highest concentration is considered the 90th percentile value.

(iii) For systems with lead service lines with sites identified as Tier 1 or 2 under § 141.86(a) with insufficient number of Tier 1 or 2 sites to meet the minimum number of sites listed in § 141.86(c):

(A) The results of all lead or copper samples taken at Tier 1 or Tier 2 sites along with the highest results from Tier 3 or Tier 4 sites sufficient to meet the minimum number of sites shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Sample results from any remaining Tier 3 and Tier 4 sites shall not be included in this calculation. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total minimum number of sites listed in § 141.86(c).

(B) The required minimum number of sites listed in § 141.86(c) shall be multiplied by 0.9.

(C) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(4)(iii)(B) is the 90th percentile concentration.

(D) For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile concentration is the average of the highest and second highest concentration.

(E) For a public water system that has been allowed by the State to collect fewer than five samples in accordance with § 141.86(c), the sample result with the highest concentration is considered the 90th percentile value.

(d) *Corrosion control requirements.* (1) All water systems shall install and operate corrosion control treatment in accordance with §§ 141.81 and 141.82, and that meets the definition of *optimal corrosion control treatment* at § 141.2 of this chapter.

* * * * *

(3) Any small water system that complies with the applicable small system compliance flexibility requirements specified by the State under § 141.81 and § 141.93 shall be deemed in compliance with the treatment requirement in paragraph (d)(1) of this section.

* * * * *

(f) *Lead service line replacements.* Lead service line replacements must be conducted as follows:

(1) Any water system exceeding the lead action level specified at (c) of this section must complete mandatory lead service line replacement. Lead service line replacement must be conducted in accordance with § 141.84 and must include public education pursuant to § 141.85.

(2) Any water system exceeding the lead trigger level specified at (c) of this section must complete goal-based lead service line replacement pursuant to § 141.84 and public education pursuant to § 141.85.

(g) *Service line inventory.* All water systems must prepare an inventory of service lines connected to its distribution system, whether or not they are owned or controlled by the water system, to identify those service lines that are made of lead or of unknown material. The inventory must be prepared in accordance with § 141.84(a).

(h) *Public education and notification requirements.* Pursuant to § 141.85(d), all water systems must provide notification of lead tap water monitoring results to persons served at the sites (taps) that are tested. In addition:

(1) Any water system exceeding the lead action level specified at (c) of this section shall implement the public education requirements in accordance with § 141.85(a) and (b).

(2) Any water system exceeding the lead trigger level specified at (c) of this section shall provide notification to all customers with a lead service line in accordance with § 141.85(f).

(3) Any water system exceeding the lead action level specified at (c) of this section shall notify the public in accordance with the public notification requirements in subpart Q of this part.

* * * * *

(l) *Testing in schools and child care facilities.* All water systems must collect samples from all schools and child care facilities within its distribution system in accordance with § 141.92.

(m) *Violation of national primary drinking water regulations.* Failure to comply with the applicable requirements of §§ 141.80 through 141.93, including requirements established by the State pursuant to these provisions, shall constitute a violation of the national primary drinking water regulations for lead and/or copper.

■ 5. Revise § 141.81 to read as follows:

§ 141.81 Applicability of corrosion control treatment steps to small, medium, and large water systems.

(a) *Corrosion control treatment.* Water systems shall complete the applicable corrosion control treatment requirements described in § 141.82 by the deadline established in this section.

(1) Large water system (serving >50,000 people).

(i) Large water systems with corrosion control treatment that exceed either the lead trigger level or copper action level shall complete the corrosion control treatment steps specified in paragraph (d) of this section.

(ii) Large water systems without corrosion control treatment that exceed either the lead trigger level or the copper action level shall complete the corrosion control treatment steps specified in paragraph (e) of this section.

(iii) Large water systems with corrosion control treatment that do not exceed the lead trigger level and copper action level but are not deemed to have optimized corrosion control under paragraph (b)(3) of this section may be required by the State to complete the corrosion control treatment steps in paragraph (d) of this section.

(iv) Large water systems without corrosion control treatment that do not exceed the lead trigger level and copper action level but are not deemed to have optimized corrosion control under paragraph (b)(3) of this section may be required by the State to complete the corrosion control treatment steps in paragraph (e) of this section.

(2) Medium-size water systems (serving >10,000 and ≤50,000 people).

(i) Medium-size water systems with corrosion control treatment that exceed either the lead trigger level or copper action level shall complete the corrosion control treatment steps specified in paragraph (d) of this section.

(ii) Medium-size water systems without corrosion control treatment that exceed either the lead or copper action

level shall complete the corrosion control treatment steps specified in paragraph (e) of this section.

(iii) Medium-size water systems without corrosion control treatment that exceed the lead trigger level shall complete the treatment recommendation steps specified in paragraph (e) of this section. The water system shall complete the remaining steps in paragraph (e) of this section if it subsequently exceeds either the lead or copper action level.

(3) Small water systems (serving ≤10,000 people).

(i) Small water systems with corrosion control treatment that exceed either the lead trigger level or copper action level shall complete the corrosion control treatment steps specified in paragraph (d) of this section.

(ii) Small water systems without corrosion control treatment that exceed either the lead or copper action level shall complete the corrosion control treatment steps specified in paragraph (e) of this section.

(iii) Small water systems without corrosion control treatment that exceed the lead trigger level shall complete the treatment recommendation steps specified in paragraph (e) of this section. The water system shall complete the remaining steps in paragraph (e) of this section, if it subsequently exceeds either the lead or copper action level.

(b) *Optimized corrosion control.* A system is deemed to have optimized or re-optimized corrosion control and is not required to complete the applicable corrosion control re-optimization steps identified in this section if the system satisfies one of the criteria specified in (b)(1) through (b)(3) of this section. Any such system deemed to have optimized corrosion control under this paragraph and which has treatment in place shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the State determines to be appropriate to ensure optimal corrosion control treatment is maintained. Any small community water system or Non-transient Non-community water system selecting a small system option under paragraph (b)(4) of this section shall follow the schedule for that small system option under § 141.81(f). Any small system selecting a small system option under § 141.93 and which has treatment in place shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the State determines to be appropriate to ensure optimal corrosion control treatment is maintained.

(1) A small or medium-size water system is deemed to have optimized corrosion control if the water system does not exceed the lead trigger level and copper action level during two consecutive 6-month monitoring periods conducted in accordance with § 141.86(b) and (d)(i) or does not exceed the lead trigger level and copper action level in monitoring conducted in accordance with § 141.86(b) and (d)(ii)(C) or (D). A small or medium-size water system is deemed to have re-optimized corrosion control if the water system does not exceed the lead trigger level and copper action level during two consecutive 6-month monitoring periods conducted in accordance with § 141.86.

(2) Small or medium-size systems that exceed the lead trigger level but do not exceed the lead and copper action levels during two consecutive 6-month monitoring periods conducted in accordance with § 141.86(b) and (d)(i) or small or medium-size systems that exceed the lead trigger level but do not exceed the lead and copper action levels in monitoring conducted in accordance with § 141.86(d)(1)(ii)(B). A small or medium-size water system is deemed to have re-optimized corrosion control if the water system does not exceed the lead trigger level and copper action level during two consecutive 6-month monitoring periods conducted in accordance with § 141.86.

(i) Water systems without corrosion control treatment must complete the treatment recommendation step to be deemed optimized under this section.

(ii) Water systems with corrosion control treatment are deemed optimized or re-optimized if the system meets the requirements of this section and the State has not required the system to meet optimal water quality parameters and monitor under § 141.87(d).

(3) Any water system is deemed to have optimized or re-optimized corrosion control if it submits results of tap water monitoring in accordance with § 141.86 demonstrating that the 90th percentile tap water lead level is less than or equal to the practical quantitation level of 0.005 mg/L for two consecutive 6-month monitoring periods.

(i) [Reserved].

(ii) Any water system deemed to have optimized or re-optimized corrosion control in accordance with this paragraph shall continue monitoring for lead and copper at the tap no less frequently than once every three calendar years using the reduced number of sites specified in § 141.86(c) and collecting samples at times and locations specified in § 141.86(d)(4)(iv).

(iii) Any water system deemed to have optimized or re-optimized corrosion control pursuant to this paragraph shall notify the State in writing pursuant to § 141.90(a)(3) of any upcoming long-term change in treatment or addition of a new source as described in § 141.90. The State must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. The State may require any such water system to conduct additional monitoring or to take other action the State deems appropriate to ensure that such water system maintains minimal levels of corrosion control in its distribution system.

(iv) A water system is not deemed to have optimized or re-optimized corrosion control under this paragraph and shall implement corrosion control treatment pursuant to (b)(3)(v) of this section unless it meets the copper action level.

(v) Any water system triggered into corrosion control because it is no longer deemed to have optimized or re-optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in paragraph (d) or (e) of this section. The time period for completing each step shall be triggered by the date the sampling was conducted showing that the water system no longer meets the requirements to be deemed to have optimized or re-optimized corrosion control under this paragraph.

(4) Any small system selecting a small system compliance option shall monitor and follow the small system option steps described in § 141.93.

(c) *Corrosion control steps completion for small and medium-size water systems without corrosion control treatment.* (1) Any small or medium-size water system that is required to complete the corrosion control steps in paragraph (e) of this section due to its exceedance of the lead or copper action level may cease completing the treatment steps after paragraph (e), Step 2 of this section, when the water system meets both action levels during each to two consecutive 6-month monitoring periods conducted pursuant to § 141.86 and submits the results to the State. Any such system required to conduct a corrosion control treatment study under paragraph (e), Step 3 of this section, shall complete the study and paragraph (e), Step 4 of this section, unless the water system meets both action levels during each of two consecutive six-month monitoring periods prior to the start of the study. If any such water system thereafter exceeds the lead or copper action level during any

monitoring period, the water system (or the State) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety, and complete all the steps through installation of optimal corrosion control treatment (paragraph (e), Step 5 of this section). The State may require a water system to repeat treatment steps previously completed by the water system when the State determines that this is necessary to implement the treatment requirements of this section. The State shall notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small or medium-size water system to implement corrosion control treatment steps in accordance with paragraph (e) of this section (including water systems deemed to have optimized corrosion control under paragraph (b)(1) of this section) is triggered whenever any small or medium-size water system exceeds the lead or copper action level.

(2) Any small or medium-size water system that is required to complete the corrosion control steps in paragraph (e) of this section due to its exceedance of the lead trigger level may cease completing the treatment steps after paragraph (e), Step 2 of this section. Any such system required to conduct a corrosion control treatment study under paragraph (e), Step 3 of this section, shall complete the study and paragraph (e), Step 4 of this section. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the water system (or the State) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety and complete all the steps through installation of optimal corrosion control treatment paragraph (e), (Step 5) of this section. The State may require a water system to repeat treatment steps previously completed by the water system when the State determines that this is necessary to implement the treatment requirements of this section. The State shall notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small or medium-size water system to implement corrosion control treatment steps in accordance with paragraph (e) of this section (including water systems deemed to have optimized corrosion control under paragraph (b)(2)(i) of this section) is triggered whenever any small or medium-size water system exceeds the lead trigger level or copper action level.

(d) *Treatment steps and deadlines for water systems re-optimizing corrosion control treatment.* Except as provided in paragraph (b) of this section, water systems with corrosion control treatment shall complete the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86 and 141.87) by the indicated time periods.

(1) *Step 1.* The water system shall complete the initial tap sampling (§ 141.86(d)(1) and § 141.87(b)) until the water system either exceeds the lead trigger level or copper action level or becomes eligible for reduced monitoring under § 141.86(d)(4)(ii)(A). A water system exceeding the lead trigger level or copper action level shall recommend optimal corrosion control treatment (§ 141.82(a)(5) or (6) or (7)) within six months after the end of the monitoring period during which it exceeds either the lead trigger level or copper action level.

(2) *Step 2.* (i) Large water systems that exceed the lead trigger level or copper action level shall conduct the corrosion control studies for re-optimization under paragraph (d), Step 3 of this section.

(ii) Within 12 months after the end of the monitoring period during which a small or medium-size water system with corrosion control treatment exceeds the lead trigger level or copper action level, the State may require the water system to perform corrosion control studies for re-optimization (§ 141.81(d)(2) or (3)). If the State does not require the system to perform such studies, the State shall specify re-optimized corrosion control treatment (§ 141.82(d)(3) or (4)) within the following timeframes:

(A) For medium-size water systems, within 12 months after the end of the monitoring period during which such water system exceeds the lead trigger level or copper action level.

(B) For small water systems, within 18 months after the end of the monitoring period during which such water system exceeds the lead trigger level or copper action level.

(3) *Step 3.* (i) Large water systems that exceed the lead trigger level or copper action level shall complete the corrosion control treatment studies for re-optimization within 18 months.

(ii) If the State requires a water system to perform corrosion control studies under paragraph (d), Step 2 of this section, the water system shall complete the studies (§ 141.82(c)(1)) within 18 months after the State requires that such studies be conducted.

(4) *Step 4.* (i) The State shall designate re-optimized corrosion control treatment (§ 141.82(d)(3)) within six months after completion of paragraph (d)(3)(i), Step 3 of this section.

(ii) If the water system has performed corrosion control studies under paragraph (d), Step 2 of this section, the State shall designate re-optimized corrosion control treatment (§ 141.82(d)(3) or (4) within six months after completion of paragraph (d), Step 3(ii) of this section.

(5) *Step 5.* (i) Large water systems shall complete modifications to corrosion control treatment to have re-optimized corrosion control treatment installed within 12 months after completion of paragraph (d), Step 4(i) of this section.

(ii) Small or medium-size water systems that exceed the lead trigger level or copper action level shall install re-optimized corrosion control treatment (§ 141.82(e)(3) or (4)) within 12 months after completion of paragraph (d), Step 4(ii) of this section.

(6) *Step 6.* Water systems shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) within 12 months after completion of paragraph (d), Step 5(i) or (ii) of this section.

(7) *Step 7.* The State shall review the water system's installation of treatment and designate optimal water quality control parameters (§ 141.82(f)(1)) within six months of completion of paragraph (d)(6), Step 6 of this section.

(8) *Step 8.* The water system shall operate in compliance with the State-designated optimal water quality control parameters (§ 141.82(g)(1)) and continue to conduct tap sampling (§ 141.86(d)(3) and water quality parameter monitoring under § 141.87(d)).

(e) *Treatment steps and deadlines for small and medium-size systems without corrosion control treatment.* Except as provided in paragraph (b) of this section, small and medium-size water systems without corrosion control treatment shall complete the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86 and 141.87) by the indicated time periods.

(1) *Step 1.* The water system shall complete the initial tap sampling (§ 141.86(d)(1) and § 141.87(b)) until the water system either exceeds the lead trigger level or copper action level or becomes eligible for reduced monitoring under § 141.86(d)(4)(i)(A) or (B). A water system exceeding the lead trigger level or copper action level shall recommend optimal corrosion control treatment (§ 141.82(a)(1) or (2) or (3) or (4)) within six months after the end of

the monitoring period during which it exceeds either the lead trigger level or copper action level.

(2) *Step 2.* Within 12 months after the end of the monitoring period during which a water system exceeds the lead trigger level or copper action level, the State may require the water system to perform corrosion control studies (§ 141.82(b)(1)); the State shall notify the system in writing of this requirement. If the State does not require the system to perform such studies, the State shall specify optimal corrosion control treatment (§ 141.82(d)(1) or (2)) within the following timeframes:

(i) For medium-size water systems, within 18 months after the end of the monitoring period during which such water system exceeds the lead trigger level or copper action level.

(ii) For small water systems, within 24 months after the end of the monitoring period during which such water system exceeds the lead trigger level or copper action level.

(3) *Step 3.* If the State requires a water system to perform corrosion control studies under paragraph (e), Step 2 of this section, the water system shall complete the studies (§ 141.82(c)(1)) within 18 months after the State notifies the system in writing that such studies must be conducted.

(4) *Step 4.* If the water system has performed corrosion control studies under paragraph (e), Step 2 of this section, the State shall designate optimal corrosion control treatment (§ 141.82(d)(1) or (2)) within six months after completion of paragraph (e), Step 3 of this section.

(5) *Step 5.* Any water system that exceeds the lead or copper action level after the State designates optimal corrosion control treatment under paragraph (e), Step 4 of this section shall install optimal corrosion control treatment (§ 141.82(e)(1) or (2)) within 24 months.

(6*) Step 6.* The system shall complete follow-up sampling (§ 141.86(d)(2)(i) and § 141.87(c) within 12 months after completion of paragraph (e), Step 5 of this section.

(7) *Step 7.* The State shall review the water system's installation of treatment and designate optimal water quality control parameters (§ 141.82(f)(1)) within six months of completion of paragraph (e), Step 6 of this section.

(8) *Step 8.* The water system shall operate in compliance with the State-designated optimal water quality control parameters (§ 141.82(g)(1)) and continue to conduct tap sampling (§ 141.86(d)(3) and water quality parameter monitoring under § 141.87(d)).

(f) *Treatment steps and deadlines for small community water systems and Non-transient Non-community water systems using small system compliance flexibility options under § 141.93.*

Small water systems selecting the corrosion control small system compliance flexibility option shall complete the following steps by the indicated time periods.

(1) *Step 1.* The water system shall complete the initial tap sampling (§ 141.86(d)(1) and § 141.87(b)) until the water system either exceeds the lead trigger level or copper action level or becomes eligible for reduced monitoring under § 141.86(d)(4)(i)(A) or (B). A water system exceeding the lead trigger level or copper action level shall recommend a small system compliance flexibility option (§ 141.93(a) or (b)) within six months after the end of the monitoring period during which it exceeds either the lead trigger level or copper action level.

(2) *Step 2.* The State shall approve in writing the recommended small system treatment option or designate another small system treatment option or require the water system to optimize or re-optimize corrosion control treatment within six months of completion of paragraph (f), Step 1 of this section. Water systems required by the State to optimize or re-optimize corrosion control treatment shall follow the schedules in paragraphs (d) or (e) of this section.

(3) *Step 3.* (i) Small water systems using the lead service line replacement compliance flexibility option under § 141.93.

(A) Small water systems shall begin the lead service line replacement program and must begin to replace lead service line lines at a rate approved by the State within one year after State approval under paragraph (f), Step 2 of this section.

(B) Small water systems shall continue to replace lead service lines at a rate approved by the State and shall complete replacement of all lead service lines no later than 15 years after commencement of the program.

(ii) Small water systems using the point-of-use (POU) device compliance flexibility option under § 141.93.

(A) Small water systems shall install POU devices at the locations listed in § 141.93 on a schedule not to exceed one year after State approval under paragraph (f), Step 2 of this section, or a shorter schedule if specified by the State.

(B) Small water systems shall operate and maintain the POU devices until the water system receives State approval to select one of the other small system compliance flexibility options under § 141.93.

(iii) Non-transient, non-community water systems using the replacement of lead-bearing materials option under § 141.93(d)(4).

(A) Non-transient, non-community water systems with lead service lines shall replace the lead service line within one year after State approval under Step 2 and shall complete the replacement of other lead-bearing materials on a schedule not to exceed one year after State approval under paragraph (f), Step 2 of this section, or a shorter schedule if specified by the State.

(B) Non-transient, non-community water systems without lead service lines shall complete the replacement of lead-bearing material within one year after State approval under paragraph (f), Step 2 of this section, or a shorter schedule if specified by the State.

■ 6. Revise § 141.82 to read as follows:

§ 141.82 Description of corrosion control treatment requirements.

Each system shall complete the corrosion control treatment requirements described as follows, which are applicable to such system under § 141.81.

(a) *System recommendation regarding corrosion control treatment.* (1) Based upon the results of lead and copper tap sampling and water quality parameter monitoring, large systems without corrosion control treatment that exceed the lead trigger level or medium-size water systems without corrosion control treatment that exceed either the lead or copper action level shall recommend designation of one or more of the corrosion control treatments listed in paragraph (c)(1) of this section as the optimal corrosion control treatment for that system. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation. Large systems must complete the study in paragraph (c)(1) of this section.

(2) Based upon the results of lead and copper tap sampling and water quality parameter monitoring, small water systems without corrosion control treatment that exceed the lead or copper action level shall recommend designation of one or more of the corrosion control treatments listed in paragraph (c)(1) of this section as the optimal corrosion control treatment for that system or one of the small system options listed in paragraph § 141.93. The State may require the system to conduct additional water quality parameter monitoring in accordance

with § 141.87(b) to assist the State in reviewing the system's recommendation.

(3) Based upon the results of lead and copper tap sampling and water quality parameter monitoring, any medium-size water systems without corrosion control treatment exceeding the lead trigger level shall recommend designation of one or more of the corrosion control treatments listed in paragraph (c)(1) of this section as the optimal corrosion control treatment for that system. This corrosion control treatment shall be installed if the lead or copper action level is subsequently exceeded. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation.

(4) Based upon the results of lead and copper tap sampling and water quality parameter monitoring, any small water system without corrosion control treatment exceeding the lead trigger level shall recommend designation of one or more of the corrosion control treatments listed in paragraph (c)(1) of this section as the optimal corrosion control treatment for that system or shall recommend State approval to elect one of the small system compliance options listed in paragraph § 141.93. This corrosion control treatment or small system option shall be implemented if the lead or copper action level is subsequently exceeded. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation.

(5) Based upon the results of lead and copper tap sampling and water quality parameter monitoring, any large or medium system with corrosion control treatment that exceeds the lead trigger level shall conduct a re-optimization evaluation of the existing corrosion control treatment and make a recommendation to the State for modification (if any) of the designation of optimal corrosion control treatment. This re-optimization evaluation shall include an evaluation of other corrosion control treatments listed in paragraph (c)(2) of this section to determine the optimal corrosion control treatment. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation for a designation of optimal corrosion control treatment. Large systems must complete the study in paragraph (c)(2) of this section.

(6) Based upon the results of lead and copper tap sampling and water quality parameter monitoring, any small system with corrosion control treatment exceeding an action level shall recommend designation of one or more of the corrosion control treatments listed in paragraph (c)(2) of this section as the optimal corrosion control for that system or State approval of one of the small system options listed in paragraph § 141.93. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation.

(7) Based upon the results of lead and copper tap sampling and water quality parameter monitoring, any small system with corrosion control treatment exceeding the lead trigger level shall recommend designation of one or more of the corrosion control treatments listed in paragraph (c)(2) of this section as the optimal corrosion control treatment for that system or State approval of one of the small system options listed in paragraph § 141.93. This corrosion control treatment or small system option shall be implemented if the lead or copper action level is subsequently exceeded. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation.

(b) *State decision to require studies to identify initial optimal corrosion control treatment (applicable to small and medium-size systems) and re-optimized corrosion control treatment.* (1) The State may require any small or medium-size system without corrosion control that exceeds either the lead or copper action level to perform corrosion control treatment studies under paragraph (c)(1) of this section to identify *optimal corrosion control treatment* for the system.

(2) The State may require any small or medium-size system without corrosion control that exceeds the lead trigger level to perform corrosion control treatment studies under paragraph (c)(1) of this section to *identify optimal corrosion control treatment* for the system. This corrosion control treatment shall be installed if the lead or copper action level is subsequently exceeded.

(3) The State may require any small or medium-size water systems with corrosion control treatment exceeding either the lead trigger level or copper action level to perform corrosion control treatment studies under paragraph (c)(3) of this section to identify re-optimized optimal corrosion control treatment for the system (*i.e.* optimal corrosion control treatment after a re-optimization evaluation).

(c) *Performance of corrosion control studies.* (1) Water systems without corrosion control that are conducting corrosion control studies shall complete the following:

(i) Any water system without corrosion control treatment shall evaluate the effectiveness of each of the following treatments, and if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for the system:

(A) Alkalinity and pH adjustment;

(B) The addition of an orthophosphate- or silicate-based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples;

(C) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain a 1 mg/L orthophosphate residual concentration in all tap test samples, and;

(D) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain a 3 mg/L orthophosphate residual concentration in all tap test samples.

(ii) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry, and distribution system configurations. Metal coupon tests can be used as a screen to reduce the number of options that are evaluated using pipe rig/loops to the current conditions and two options.

(iii) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments previously listed in this section:

(A) Lead;

(B) Copper;

(C) pH;

(D) Alkalinity;

(E) Orthophosphate (when an orthophosphate-based inhibitor is used), and;

(F) Silicate (when a silicate-based inhibitor is used).

(iv) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and

document such constraints with one of the following:

(A) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the constraints identified in this section.

(B) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the constraints identified in this section unless the treatment was found to be ineffective in a previous pipe loop/rig study.

(v) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the effects identified in this section.

(vi) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the State in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (c)(2)(i) through (v) of this section.

(2) Systems with a pH and alkalinity corrosion control treatment process conducting re-optimization corrosion control studies shall complete the following:

(i) Any system with a pH and alkalinity corrosion control treatment process shall evaluate the effectiveness of each of the following treatments, and if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for the system:

(A) Additional alkalinity and/or pH adjustment;

(B) The addition of an orthophosphate- or silicate-based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples;

(C) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain a 1 mg/L orthophosphate residual concentration in all tap test samples, and;

(D) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain a 3 mg/L orthophosphate residual concentration in all tap test samples.

(ii) The system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry, and distribution system configurations. Coupon tests can be used as a screen to reduce the number of options that are evaluated using pipe rig/loops to the current conditions and two options.

(iii) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments listed above:

(A) Lead;

(B) Copper;

(C) pH;

(D) Alkalinity;

(E) Orthophosphate (when an orthophosphate-based inhibitor is used), and;

(F) Silicate (when a silicate-based inhibitor is used).

(iv) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with one of the following:

(A) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the constraints identified in this section.

(B) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the constraints identified in this section unless the treatment was found to be ineffective in a previous pipe loop/rig study.

(v) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the effects identified in this section.

(vi) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the State in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraph (c)(1)(i) through (v) of this section.

(3) Systems with an inhibitor corrosion control treatment process conducting re-optimization corrosion control studies shall complete the following:

(i) Any system with an inhibitor corrosion control treatment process shall evaluate the effectiveness of each of the following treatments, and if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for the system:

(A) Alkalinity and/or pH adjustment;

(B) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain a 1 mg/L orthophosphate residual concentration in all tap test samples unless the current inhibitor process already meets this residual, and;

(C) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain a 3 mg/L orthophosphate residual concentration in all tap test samples unless the current inhibitor process already meets this residual.

(ii) The system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry, and distribution system configurations. Coupon tests can be used as a screen to reduce the number of options that are evaluated using pipe rig/loops to the current conditions and two options.

(iii) The water system shall measure the following water quality parameters in any tests conducted under this

paragraph before and after evaluating the corrosion control treatments listed above:

(A) Lead;

(B) Copper;

(C) pH;

(D) Alkalinity;

(E) Orthophosphate (when an orthophosphate-based inhibitor is used), and;

(F) Silicate (when a silicate-based inhibitor is used).

(iv) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with one of the following:

(A) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the constraints identified in this section.

(B) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the constraints identified in this section unless the treatment was found to be ineffective in a previous pipe loop/rig study.

(v) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes. Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the effects identified in this section.

(vi) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the State in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraph (c)(3)(i) through (v) of this section.

(d) *State designation of optimal corrosion control treatment and re-optimized corrosion control treatment.* (1) *Designation of Initial OCCT for medium systems.* (i) Based upon considerations of available information including, where applicable, studies conducted under paragraph (c)(1) of this section and a system's recommended corrosion control treatment option, the State shall either approve the corrosion control treatment option recommended by the medium-size water system or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(1)(i) of this section. When designating optimal corrosion control treatment, the State shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(ii) The State shall notify the medium-size water system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the State requests additional information to aid its review, the water system shall provide the information.

(2) *Small systems.* (i) Based upon considerations of available information including, where applicable, studies conducted under paragraph (c)(1) of this section and a system's recommended treatment alternative, the State shall either approve the corrosion control treatment option recommended by the small water system or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(1)(i) of this section or a *small water system compliance flexibility* under § 141.93. When designating optimal corrosion control treatment, the State shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(ii) The State shall notify the small water system of its decision on either optimal corrosion control treatment or a *small water system compliance flexibility* in writing and explain the basis for this determination. If the State requests additional information to aid its review, the water system shall provide the information.

(3) *Designation of Re-optimized OCCT for large and medium systems.* (i) Based upon considerations of available information including, where applicable, studies conducted under paragraph (c)(2) or (c)(3) of this section and a system's recommended treatment alternative, the State shall either approve the corrosion control treatment modification option recommended by the water system or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(2)(i) or (c)(3)(i) of this section. When designating re-optimized corrosion control treatment, the State shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(ii) The State shall notify the water system of its decision on re-optimized corrosion control treatment in writing and explain the basis for this determination. If the State requests additional information to aid its review, the water system shall provide the information.

(4) *Designation of Re-optimization of OCCT or small water system compliance flexibility.* (i) Based upon considerations of available information including, where applicable, studies conducted under paragraph (c)(2) or (c)(3) of this section and a system's recommended treatment alternative, the State shall either approve the corrosion control treatment modification recommended by the small water system or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(2)(i) or (c)(3)(i) of this section or an applicable *small water system compliance flexibility* under § 141.93. When designating re-optimized corrosion control treatment, the State shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(ii) The State shall notify the water system of its decision on re-optimized corrosion control treatment in writing and explain the basis for this determination. If the State requests additional information to aid its review, the water system shall provide the information.

(e) *Installation of optimal corrosion control treatment and re-optimization of corrosion control treatment.* (1) Each medium-size water system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the State under paragraph (d)(1) of this section.

(2) Each small water system shall properly install and operate throughout its distribution system the optimal corrosion control treatment or implement the *small water system compliance flexibility* as designated by the State under paragraph (d)(2) of this section.

(3) Each medium-size water system shall properly modify and operate throughout its distribution system the re-optimized corrosion control

treatment designated by the State under paragraph (d)(3) of this section.

(4) Each small water system shall properly modify and operate throughout its distribution system the re-optimized corrosion control treatment or implement the *small water system compliance flexibility* designated by the State under paragraph (d)(2) of this section.

(f) *State review of treatment and specification of optimal water quality control parameters for optimal corrosion control treatment and re-optimized corrosion control treatment.* (1) The State shall evaluate the results of all lead and copper tap sampling and water quality parameter sampling submitted by the water system and determine whether the water system has properly installed and operated the optimal corrosion control treatment designated by the State in paragraph (d)(1) or (d)(2) of this section, respectively. Upon reviewing the results of tap water and water quality parameter monitoring by the water system, both before and after the water system installs optimal corrosion control treatment, the State shall designate:

(i) A minimum value or a range of values for pH measured at each entry point to the distribution system.

(ii) A minimum pH value measured in all tap samples. Such a value shall be equal to or greater than 7.0, unless the State determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control.

(iii) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for orthophosphate or silicate measured at each entry point to the distribution system.

(iv) If a corrosion inhibitor is used, a minimum orthophosphate or silicate concentration measured in all tap samples that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system. When orthophosphate is used, such a concentration shall be equal to or greater than 0.5 mg/L as orthophosphate, unless the State determines that meeting an orthophosphate residual of 0.5 mg/L is not technologically feasible or is not necessary for the system to optimize corrosion control.

(v) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples.

(vi) The values for the applicable water quality control parameters, previously listed in this section, shall be those that the State determines to reflect optimal corrosion control treatment for the water system. The State may designate values for additional water quality control parameters determined by the State to reflect optimal corrosion control for the water system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

(2) The State shall evaluate the results of all lead and copper tap sampling and water quality parameter monitoring submitted by the water system and determine whether the water system has properly installed and operated the re-optimized corrosion control treatment designated by the State in paragraph (d)(3) or (d)(4) of this section, respectively. Upon reviewing the results of tap sampling and water quality parameter monitoring by the water system, both before and after the water system installs re-optimized corrosion control treatment, the State shall designate:

(i) A minimum value or a range of values for pH measured at each entry point to the distribution system.

(ii) A minimum pH value measured in all tap samples. Such a value shall be equal to or greater than 7.0, unless the State determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control.

(iii) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for orthophosphate or silicate measured at each entry point to the distribution system.

(iv) If a corrosion inhibitor is used, a minimum orthophosphate or silicate concentration measured in all tap samples that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system. When orthophosphate is used, such a concentration shall be equal to or greater than 1.0 mg/L as orthophosphate, unless the State determines that meeting an orthophosphate residual of 1.0 mg/L is not technologically feasible or is not necessary for the system to optimize corrosion control.

(v) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples.

(vi) The values for the applicable water quality control parameters, previously listed in this section, shall be those that the State determines to reflect optimal corrosion control treatment for the water system. The State may designate values for additional water quality control parameters determined by the State to reflect optimal corrosion control for the water system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

(g) *Continued operation and monitoring for optimal corrosion control treatment and re-optimized corrosion control treatment.* (1) All systems optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the State under paragraph (f)(1) of this section, in accordance with this paragraph for all samples collected under § 141.87(d) through (f). The requirements of this paragraph (g) apply to all systems, including consecutive systems that distribute water that has been treated to control corrosion by another system. Any water system with optimal corrosion control treatment or re-optimized corrosion control treatment that is not required to monitor water quality parameters under § 141.87 shall continue to operate and maintain such treatment. Compliance with the requirements of this paragraph shall be determined every six months, as specified under § 141.87(d). A water system is out of compliance with the requirements of this paragraph for a six-month period if it has excursions for any State-specified parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the State. Daily values are calculated as follows. States have discretion to delete results of obvious sampling errors from this calculation.

(i) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or a combination of both. If the EPA has approved an alternative formula under § 142.16(d)(1)(ii) of this chapter in the State's application for a program revision submitted pursuant to § 142.12 of this chapter, the State's formula shall be used to aggregate multiple measurements taken at a sampling point for the water quality parameters in lieu of the formula in this paragraph.

(ii) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(iii) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sampling location.

(2) All systems re-optimizing corrosion control shall continue to operate and maintain re-optimized corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the State under paragraph (f)(2) of this section, in accordance with this paragraph for all samples collected under § 141.87(d) through (f). Compliance with the requirements of this paragraph shall be determined every six months, as specified under § 141.87(d). A water system is out of compliance with the requirements of this paragraph for a six-month period if it has excursions for any State-specified parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the State. Daily values are calculated as follows. States have discretion to delete results of obvious sampling errors from this calculation.

(i) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or a combination of both. If the EPA has approved an alternative formula under § 142.16(d)(1)(ii) of this chapter in the State's application for a program revision submitted pursuant to § 142.12 of this chapter, the State's formula shall be used to aggregate multiple measurements taken at a sampling point for the water quality parameters in lieu of this formula in this paragraph.

(ii) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(iii) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sampling location.

(h) *Modification of State treatment decisions for optimal corrosion control and re-optimized corrosion control.* Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the optimal corrosion control treatment under paragraph (d)(1), (d)(2), (d)(3), or (d)(4) of this section, or optimal water quality control parameters under paragraph (f)(1) or (f)(2) of this section. A request for modification by a system or other interested party shall be in writing, explaining why the modification is appropriate, and providing supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the water system continues to optimize corrosion control treatment re-optimized corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements and/or water quality parameters, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications for re-optimized corrosion control treatment.

(i) *Treatment decisions by the EPA in lieu of the State on optimal corrosion control treatment and re-optimized corrosion control treatment.* (1) Pursuant to the procedures in § 142.19 of this chapter, the EPA Regional Administrator may review optimal corrosion control treatment determinations made by a State under paragraph (d)(1), (d)(2), (d)(3), (d)(4), (f)(1), (f)(2), or (h) of this section and issue Federal treatment determinations consistent with the requirements of those paragraphs where the Regional Administrator finds that:

(i) A State has failed to issue a treatment determination by the applicable deadlines contained in § 141.81.

(ii) A State has abused its discretion in a substantial number of cases or in cases affecting a substantial population; or

(iii) The technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a water system.

(j) *Find-and-fix assessment for tap sample sites that exceed the lead action level.* The water system shall conduct the following steps, when a tap sample site exceeds the lead action level under monitoring conducted under § 141.86.

(1) *Step 1.* The water system shall sample at a new water quality parameter site that is on the same size water main in the same pressure zone and located within a half mile of the location with the action level exceedance within 5 days of receiving the sample results. The water system shall measure the following parameters:

(i) pH;

(ii) Alkalinity;

(iii) Orthophosphate, when an inhibitor containing an orthophosphate compound is used;

(iv) Silica, when an inhibitor containing a silicate compound is used; and

(v) Water systems with an existing water quality parameter location that meets the requirements of this section can conduct this sampling at that location. All water systems required to meet optimal water quality control parameters shall add new sites to the minimum number of sites as described in § 141.87(g).

(2) *Step 2.* Water systems shall collect a follow-up sample at any tap sample site that exceeds the action level within 30 days of receiving the sample results. These follow-up samples may use different sample volumes or different sample collection procedures to assess the source of elevated lead levels. Samples collected under this section shall be submitted to the State but shall not be included in the 90th percentile calculation for compliance monitoring under § 141.86. If the water system is unable to collect a follow-up sample at a site, the water system shall provide documentation to the State, explaining why it was unable to collect a follow-up sample.

(3) *Step 3.* Water systems shall evaluate the results of the monitoring conducted under this paragraph to determine if either localized or centralized adjustment of the optimal corrosion control treatment (initial, modified, or re-optimized) is necessary and submit the recommendation to the State within six months after the end of the monitoring period in which the site(s) exceeded the lead action level. Corrosion control treatment modification may not be necessary to address every exceedance. Water systems shall note if the cause of the elevated lead level if known in their recommendation to the State.

(4) *Step 4.* The State shall approve the treatment recommendation or specify a different approach within six months of completion of paragraph (j), Step 3 of this section.

(5) *Step 5.* If the State-approved treatment recommendation requires the water system to adjust the optimal corrosion control treatment process, the water system shall complete modifications to its corrosion control

treatment within 12 months after completion of paragraph (j), Step 4 of this section. Systems without corrosion control treatment required to install optimal corrosion control treatment shall follow the schedule in § 141.81(e).

(6) *Step 6.* Water systems adjusting its optimal corrosion control treatment shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) within 12 months after completion of paragraph (j), Step 5 of this section.

(7) *Step 7.* For water systems adjusting its optimal corrosion control treatment, the State shall review the water system's modification of corrosion control treatment and designate optimal water quality control parameters (§ 141.82(f)(1)) within six months of completion of paragraph (j), Step 6 of this section.

(8) *Step 8.* For water systems adjusting its optimal corrosion control treatment, the water system shall operate in compliance with the State-designated optimal water quality control parameters (§ 141.82(g)(1)) and continue to conduct tap sampling (§§ 141.86(d)(3) and 141.87(d)).

■ 7. Revise § 141.84 to read as follows:

§ 141.84 Lead service line inventory and replacement requirements.

(a) *Lead service line inventory.* All water systems must develop and maintain a publicly accessible inventory of lead service lines and service lines of unknown materials in its distribution system. The inventory must meet the following requirements:

(1) *Deadlines.* All water systems must develop the initial inventory by [DATE 3 YEARS AFTER DATE OF PUBLICATION IN THE **Federal Register**] and submit it to the primacy agency in accordance with § 141.90.

(2) A water system shall use the information on lead and galvanized steel that it is required to collect under § 141.42(d) of this part when conducting the inventory of service lines in its distribution system for the initial inventory under paragraph (a)(1) of this section. The water system shall also review the sources of information listed below to identify service line materials for the initial inventory. In addition, the water system shall seek to collect such information where possible in the course of its normal operations (*e.g.,* checking service line materials when reading water meters or performing maintenance activities):

(i) All plumbing codes, permits, and records in the files of the building department(s) which indicate the service line materials used to connect water system- and customer-owned structures to the distribution system.

(ii) All water system records, including distribution system maps and drawings, historical records on each service connection, meter installation records, historical capital improvement or master plans, and standard operating procedures.

(iii) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system.

(iv) Any resource required by the State to asses service line materials for structures built prior to 1989.

(3) The initial inventory must include all service lines connected to the public water distribution system regardless of ownership status (*e.g.,* where service line ownership is shared, the inventory would include both the portion of the service line owned by the water system and the customer-owned portion of the service line). Service lines shall be categorized in the following manner:

(i) Lead where either the water system portion, customer portion or both portions of the service line are made of lead or where the customer-owned portion is a galvanized pipe where the water system's portion is or was a lead service line.

(ii) Non-lead where both the water system portion and customer portion are non-lead.

(iii) Unknown where the service line material is only known to be non-lead on either the water system portion or the customer portion of the service line or the service line material for both portions of the line is unknown.

(4) Systems shall update the inventory on an annual basis to address any lead service line replacement or service line material identification at sites with lines characterized as unknown. The updated inventory shall be submitted to the State on an annual basis.

(5) Service lines listed as unknown in the initial inventory or the updated inventory in paragraph (a)(4) of this section must be counted as lead service lines for purposes of calculating lead service line replacement rates as well as for issuing targeted public education to consumers served by a lead or unknown service line.

(i) These service lines must be considered lead service lines unless they are demonstrated to be non-lead by records or physical examination.

(ii) Service lines of unknown material shall not be used for Tier 1 sampling sites.

(iii) When a service line initially listed as a lead service line on an inventory is later determined to be non-lead, the water system must update its inventory and shall subtract it from the number of lead service lines used to calculate lead service line replacement rates. Such service lines must not be considered replaced.

(iv) Service lines initially characterized as non-lead that are later found to be made of lead on either the system or customer portion shall be re-characterized as a lead service line and added to the number of lead service lines used to calculate the lead service line replacement rates.

(6) The primacy agency may designate acceptable methods to determine the service line material of unknown lines.

(7) All water systems with lead service lines must make its inventory publicly accessible.

(i) The inventory must include a location identifier, such as a street, intersection, or landmark, served by each lead service line. Water systems are not required to list the exact address of each lead service line.

(ii) Water systems serving greater than 100,000 persons must make the inventory available electronically.

(b) *Lead service line replacement plan.* All water systems with lead service lines in their distribution system shall, by [DATE 3 YEARS AFTER PUBLICATION OF FINAL RULE IN **Federal Register**], submit a lead service line replacement plan and lead service line inventory to the primacy agency described in paragraph (a) of this section. The plan must include procedures to conduct full lead service line replacement, a strategy for informing customers before a full or partial lead service line replacement, a lead service line replacement goal rate in the event of a lead trigger level exceedance, a pitcher filter tracking and maintenance system, a procedure for customers to flush service lines and premise plumbing of particulate lead, and a funding strategy for conducting lead service line replacements.

(c) *Operating procedures for replacing lead goosenecks, pigtails, or connectors.* (1) The water system must replace any lead gooseneck, pigtail, or connector it owns when encountered during emergency repairs or planned water system infrastructure work.

(2) The water system must offer to replace a customer-owned lead gooseneck, pigtail, or connector; however, the water system is not required to bear the cost of replacement of the customer-owned parts.

(3) The water system is not required to replace a customer-owned lead gooseneck, pigtail, or connector if the customer objects to its replacement.

(4) The replacement of a lead gooseneck, pigtail, or connector does not count for the purposes of meeting

the requirements for goal-based or mandatory lead service line replacements, in accordance with paragraphs (e)(2) and (f)(2) of this section, respectively.

(5) Upon replacement of any gooseneck, pigtail, or connector that is attached to a lead service line, the water system must follow risk mitigation procedures specified in 141.85(e)(5)(ii).

(d) *Requirements for conducting lead service line replacement that may result in partial replacement.* (1) Any water system that plans to partially replace a lead service line (*e.g.,* replace only the portion of a lead service line that it owns) in coordination with planned infrastructure work must provide notice to the owner of the lead service line, or the owner's authorized agent, as well as non-owner resident(s) served by the lead service line at least 45 days prior to the replacement. The notice must explain that the system will replace the portion of the line it owns and offer to replace the portion of the service line not owned by the water system. The water system is not required to bear the cost of replacement of the portion of the lead service line not owned by the water system.

(i) The water system must provide notification explaining that consumers may experience a temporary increase of lead levels in their drinking water due to the replacement, information about the health effects of lead, and actions consumers can take to minimize their exposure to lead in drinking water. In instances where multi-family dwellings are served by the lead service line to be partially replaced, the water system may elect to post the information at a conspicuous location instead of providing individual notification to all residents.

(ii) The water system must provide information about service line flushing in accordance with § 141.84(b).

(iii) The water system must provide the consumer with a pitcher filter certified to remove lead, three months of replacement cartridges, and instructions for use. If the lead service line serves more than one residence or non-residential unit (*e.g.,* a multi-unit building), the water system must provide a pitcher filter, three months of replacement cartridges and use instructions to every residence in the building.

(iv) The water system must take a follow up tap sample between three months and six months after completion of any partial lead service line replacement. The water system must provide the results of the sample to the consumer in accordance with § 141.85(d).

(2) Any water system that replaces the portion of the lead service line it owns due to an emergency repair, must provide notice and risk mitigation measures to the customer served by the lead service line within 24 hours. The water system must provide notification and risk mitigation measure in accordance with (d)(1)(i)–(iv) of this section.

(3) A water system must replace the lead service line it owns when it is notified that the customer has replaced the customer-owned portion of the lead service line. When a water system is notified by the customer that he or she intends to replace the customer portion of the lead service line the water system has 45 days from the day of their notification to conduct the replacement of the system-owned portion. The water system must make a good faith effort to coordinate simultaneous replacement. The water system must provide notification and risk mitigation measure in accordance with (d)(1)(i)–(iv) of this section.

(4) When a water system is notified by the customer that he or she has replaced the customer-owned portion and that replacement has occurred within the previous 3 months, the water system must replace its portion within 45 days from the day of their notification. The water system must provide notification and risk mitigation measures in accordance with (d)(1)(i)–(iv) of this section.

(5) When a water system is notified by the customer that he or she has replaced the customer-owned portion and the replacement has occurred more than three months in the past, the water system is not required to complete the lead service line replacement of the system-owned portion.

(e) *Requirements for conducting full lead service line replacement.* (1) Any water system that conducts a full lead service line replacement (*e.g.,* replace both the portion of a lead service line owned by the customer and by the water system) must provide notice to the owner of the lead service line, or the owner's authorized agent, as well as non-owned resident(s) served by the lead service line within 24 hours of the replacement.

(i) The water system must provide notification explaining that consumers may experience a temporary increase of lead levels in their drinking water due to the replacement, information about the health effects of lead, and actions consumers can take to minimize their exposure to lead in drinking water. In instances where multi-family dwellings are served by the lead service line to be replaced, the water system may elect to post the information at a conspicuous location instead of providing individual notification to all residents.

(ii) The water system must provide information about service line flushing in accordance with § 141.84(b).

(iii) The water system must provide the consumer with a pitcher filter certified to remove lead, three months of replacement cartridges, and instructions for use. If the lead service line serves more than one residence or non-residential unit (*e.g.,* a multi-unit building), the water system must provide a pitcher filter, three months of replacement cartridges and use instructions to every residence in the building.

(iv) The water system must take a follow up tap sample between three months and six months after completion of any partial lead service line replacement. The water system must provide the results of the sample to the consumer in accordance with § 141.85(d).

(f) *Water systems whose 90th percentile lead level from tap samples is above the trigger level but at or below the action level.* Water systems whose 90th percentile lead level from tap samples taken pursuant to § 141.86 is above the lead trigger level but at or below the lead action level must conduct goal-based lead service line replacement.

(1) Within six months following completion of the initial invention, pursuant to paragraph (a) of this section, water systems serving over 10,000 persons must determine a goal rate at which it will replace lead service lines after their 90th percentile lead level exceeds of the trigger level but is below the lead action level. This lead service line replacement goal rate must be approved by the State pursuant to (b) of this section.

(2) Water systems must apply the goal replacement rate to the initial number of lead service lines, including service lines of unknown material, in the water system's LSL inventory. If the water system at any time determines a service line of unknown material is non-lead, the water system may subtract it from the initial number of lead service lines used for calculating the lead service line replacement rate.

(3) Lead service line replacement must be conducted in accordance with the requirements of paragraphs (d) or (e) of this section.

(4) Only full lead service line replacements count towards a water system's annual replacement goal. Partial lead service line replacements do not count towards the goal.

(5) The water system must provide notification to customers with lead service lines as required in § 141.85(f).

(6) Any water system that fails to meet its lead service line replacement goal must:

(i) Conduct public outreach activities pursuant to § 141.85(g) until either the water system meets its replacement goal, or tap sampling shows the 90th percentile of lead is below the trigger level for two consecutive monitoring periods.

(ii) Recommence its goal-based lead service line replacement program pursuant to this paragraph if the 90th percentile lead value anytime thereafter exceeds the lead trigger level.

(7) The first year of lead service line replacement shall begin on the first day following the end of the monitoring period in which the lead action level was exceeded. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs. If the State has established an alternate monitoring period, then the end of the monitoring period will be the last day of that period.

(8) Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review the lead service line replacement goal rate determination made by a State under paragraph § 141.84(b) of this section and issue a Federal goal-based lead service line replacement rate determination where the Regional Administrator finds that a higher goal-based lead service line replacement rate is feasible for a water system.

(g) *Lead service line replacement for water systems that exceed the lead action level in tap samples.* Water systems that exceed the lead action level in tap samples taken pursuant to § 141.86 must replace full lead service lines at a minimum annual rate.

(1) Water systems must annually replace three percent of the initial number of lead service lines in the inventory, including service lines of unknown material at time of the action level exceedance. The water system must meet the replacement rate with full lead service line replacements but is not required to bear the cost of removal of the portion of the lead service line it does not own. If the water system later determines a service line of unknown material is non-lead, the water system may subtract it from the initial number of lead service lines used for calculating the lead service line replacement rate.

(2) Lead service line replacement must be conducted in accordance with the requirements of paragraphs (c) or (d) of this section.

(3) Only full lead service line replacements count towards a water system's mandatory replacement rate. Partial lead service line replacements do not count towards the mandatory replacement rate.

(4) Water systems must conduct notification to customers with lead service lines as required in § 141.85(f).

(5) Community water systems serving 10,000 or fewer persons may elect to conduct a corrosion control treatment or point-of-use filter compliance approach as described in section § 141.93 instead of lead service line replacement. Non-transient non-community water systems may elect to conduct a corrosion control treatment, point-of-use filter compliance approach, or choose a replacement of lead-bearing plumbing approach, as described in section § 141.93.

(6) A water system may cease mandatory lead service line replacement when its lead 90th percentile level, calculated under § 141.80(c)(4), is at or below the lead action level during each of four consecutive monitoring periods. If first draw tap samples collected in any such system thereafter exceed the lead action level, the system shall recommence mandatory lead service line replacement.

(7) The water system may cease mandatory lead service line replacement if it obtains refusal to conduct full lead service line replacement from every customer in its distribution area served by a lead service line on the customer's portion. If the water system exceeds the action level again, it must reach out to any customers served by a lead service line where there has been a change in residents with an offer to replace the customer-owned portion. The water system is not required to bear the cost of replacement of the customer-owned lead service line.

(8) The first year of lead service line replacement shall begin on the first day following the end of the monitoring period in which lead action level was exceeded under paragraph (a) of this section. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs. If the State has established an alternate monitoring period, then the end of the monitoring period will be the last day of that period.

(9) The State shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where a shorter replacement schedule is feasible. The State shall make this determination in writing and notify the system of its finding within six months after the system is required to begin lead service line replacement based on monitoring referenced in paragraph (f) of this section.

(h) *State reporting to demonstrate compliance.* To demonstrate compliance with paragraphs (a) through (f) of this section, a system shall report to the State the information specified in § 141.90(e).

■ 8. Amend § 141.85 by:

■ a. Revising the introductory text, paragraphs (a)(1)(ii), (b)(2)(ii)(B), and (b)(2)(ii)(B)(*1*);

■ b. Adding paragraph (b)(2)(ii)(B)(*7*) and removing paragraph (b)(2)(ii)(C);

■ c. Revising paragraphs (d)(1), (2), and (4) ; and

■ d. Adding paragraphs (e), (f), and (g).

The revisions and additions read as follows:

§ 141.85 Public education and supplemental monitoring requirements.

All water systems must deliver a consumer notice of lead tap water monitoring results to persons served by the water system at sites that are tested, as specified in paragraph (d) of this section. A water system with lead service lines must deliver public education materials to persons with a lead service line as specified in paragraph (e) and (f) of this section. All water systems must conduct annual outreach to healthcare providers and caregivers as outlined in section (g) of this section. A water system that exceeds the lead action level based on tap water samples collected in accordance with § 141.86 shall deliver the public education materials contained in paragraph (a) of this section and in accordance with the requirements in paragraph (b) of this section. Water systems that exceed the lead action level must sample the tap water of any customer who requests it in accordance with paragraph (c) of this section.

(a) * * *

(1) * * *

(ii) *Health effects of lead.* Exposure to lead can cause serious health effects in all age groups. Infants and children who drink water containing lead could have decreases in IQ and attention span and increases in learning and behavior problems. Lead exposure among women who are pregnant increases prenatal risks. Lead exposure among women who later become pregnant has similar risks if lead stored in the mother's bones is released during pregnancy. Recent science suggests that adults who drink water containing lead have increased

risks of heart disease, high blood pressure, kidney or nervous system problems.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * *

(*1*) Schools, child care facilities and school boards.

* * * * *

(*7*) Obstetricians-Gynecologists and Midwives.

(d) *Notification of results.* (1) Reporting requirement. All water systems must provide a notice of the individual tap results from lead tap water monitoring carried out under the requirements of § 141.86 to the persons served by the water system at the specific sampling site from which the sample was taken (*e.g.,* the occupants of the residence where the tap was tested).

(2) Timing of notification. A water system must provide the consumer notice as soon as practical, in accordance to the following timeframes:

(i) For individual samples that do not exceed the lead action level, no later than 30 days after the water system learns of the tap monitoring results.

(ii) For individual samples that exceed the lead action level, no later than 24 hours after the water system learns of the tap monitoring results.

* * * * *

(4) Delivery. (i) For lead tap sample results that do not exceed the lead action level of 0.015 mg/L, the water systems must provide consumer notice to persons served at the tap that was tested, either by mail or by another method approved by the State. For example, upon approval by the State, a non-transient non-community water system could post the results on a bulletin board in the facility to allow users to review the information. The system must provide the notice to consumers, including customers at taps where sampling was conducted.

(ii) For tap sample results that exceed the lead action level of 0.015 mg/L, the water systems must provide consumer notice to consumers served at the tap that was tested electronically or by phone or another method approved by the State.

(e) *Notification of lead service line.* (1) *Notification requirements.* All water systems with lead service lines must provide notification to all consumers with a lead service line or a service line of unknown material informing them they have a lead service line or a service line of unknown material.

(2) *Timing of notification.* A water system must provide the initial notification within 30 days of completion of the lead service line inventory required under § 141.84 and repeat the notification on an annual basis until the customer no longer has a lead service line. For new customers, water systems shall provide the notice at the time of service initiation.

(3) *Content.* (i) Consumers with a confirmed lead service line. The notice must include a statement that the consumer's service line is lead, an explanation of the health effects of lead, steps consumers can take to reduce exposure to lead in drinking water, information about opportunities to replace lead service lines and information about programs that provide innovative financing solutions to assist consumers with replacement of their portion of a lead service line, and a statement that the water system is required to replace its portion of a lead service line when the consumer notifies them they are replacing their owned portion of the lead service line.

(ii) Customers with a service line of unknown material. The notice must include a statement that the customer's service line is of unknown material that may be lead, an explanation of the health effects of lead, steps customers can take to reduce exposure to lead in drinking water and information about opportunities to verify the material of the service line.

(4) *Delivery.* The notice must be provided to persons served by a lead service line or service line of unknown material, either by mail or by another method approved by the primacy agency.

(5) *Notification due to a disturbance of a lead service line.* (i) Water systems that cause disturbance to a lead service line that results in the water being shut off, and without conducting a partial or full lead service line replacement, must provide the consumer with information about the potential for elevated lead in drinking water a result of the disturbance as well as a flushing procedure to remove particulate lead.

(ii) If the disturbance of a lead service line results from the replacement of the water meter or gooseneck, pigtail, or connector, the water system must comply with the requirements in paragraph (e)(5)(i) of this section as well as provide the consumer with a pitcher filter certified to remove lead, instructions to use the filter, and three months of filter replacement cartridges.

(iii) A water system that conducts a partial or full lead service line replacement must comply with the requirements in paragraph (e)(5)(i) of this section as well as provide the consumer with a pitcher filter certified to remove lead, instructions to use the filter, and three months of filter replacement cartridges.

(iv) The water system must comply with the requirements of paragraphs (e)(5) of this section before the consumer's water is turned back on after it has been shut off by the water system.

(f) *Notification of exceedance of the lead trigger level.* (1) All water systems with lead service lines that exceed the lead trigger level of 0.010 mg/L must provide customers that have a lead service line information regarding the water system's goal-based lead service line replacement program and opportunities for replacement of the lead service line.

(2) *Timing.* Waters Systems shall send notification within 30 days of the end of the monitoring period in which the trigger level exceedance occurred. Water systems must repeat the notification annually until the results of sampling conducted under § 141.86 is at or below the lead trigger level.

(3) *Delivery.* The notice must be provided to persons served by a lead service line, either by mail or by another method approved by the State.

(g) *Outreach activities for failure to meet the lead service line replacement goal.* (1) In the first year that a water system that does not meet its annual lead service line replacement goal as required under § 141.84, it must conduct one outreach activity from the following list in the following year until the water system meets it replacement goal or until tap sampling shows that the 90th percentile for lead is at or below the trigger level of 0.010 mg/L. Any water system that thereafter continues to fail to meet its lead service line replacement goal must conduct two outreach activities per year from the following list:

(i) Conduct social media campaign.

(ii) Contact organizations representing plumbers and contractors by mail to provide information about lead in drinking water including health effects, sources of lead, and the importance of using lead free plumbing materials.

(iii) Send certified mail to customers with a lead service line to inform them about the water system's goal-based lead service line replacement program and opportunities for replacement of the lead service line.

(iv) Conduct a town hall meeting or participate in a community event to provide information about its lead service line replacement program and distribute public education materials.

(v) Visit targeted customers to discuss the lead service line replacement program and opportunities for replacement.

(vi) In the case where all lead service line customers refuse to participate in the lead service line replacement program, obtain a signed letter from each customer stating such refusal.

(h) *Public education to local and State health agencies.* (1) All water systems shall provide public education materials that meet the content requirements of paragraph (a)(1) of this section.

(2) *Timing.* Water systems must send public education materials no later than January 15 of each calendar year.

(3) *Delivery.* Water systems shall send public education materials or provide public education by mail or by another method approved by the State.

■ 9. Amend § 141.86 by:

■ a. Revising paragraphs (a), (b)(1), and (b)(2);

■ b. Reserving paragraph (b)(3);

■ c. Revising paragraphs (d) and (e);

■ d. Revising the heading of paragraph (f); and

■ e. Adding paragraphs (h) and (i).

The revisions and additions read as follows:

§ 141.86 Monitoring requirements for lead and copper in tap water.

(a) *Sample site location.* (1) By the applicable date for commencement of monitoring under paragraph (d)(1) of this section, each water system shall complete a lead service line inventory of its distribution system and identify a pool of targeted sampling sites that meet the requirements of this section, and which is sufficiently large enough to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (c) of this section. Water systems with lead service lines or service lines of unknown material must re-evaluate the tap sampling locations based on a lead service line inventory conducted under § 141.84(a), which must be updated annually thereafter, including identifying any changes to the sampling locations. Sites may not include faucets that have point-of-use (POU) or point-of-entry (POE) treatment devices designed to remove inorganic contaminants, except for systems monitoring under § 141.93 (Small System Compliance Flexibility). Lead and copper sampling results for systems monitoring under 141.93(c)(3) and (d)(3) may not be used for the purposes of meeting the criteria for reduced monitoring specified in (d)(4) of this section.

(2) A water system shall use the information on lead, copper, and galvanized steel that is required to be collected under § 141.42(d) (special monitoring for corrosivity characteristics) when conducting a materials evaluation. A water system shall use the information on lead service lines that is required to be collected under § 141.84(a) to identify potential lead service line sampling sites. When an evaluation of the information collected pursuant to § 141.42(d) and 141.84(a) is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in paragraph (a) of this section, the water system shall review the sources of information listed below to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (*e.g.,* checking service line materials when reading water meters or performing maintenance activities):

(i) All plumbing codes, permits, and records in the files of the building department(s) that indicate the plumbing materials that are installed within publicly and privately-owned structures connected to the distribution system;

(ii) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(iii) All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(3) The sampling sites selected for a community water system's sampling pool (''Tier 1 sampling sites'') shall consist of single-family structures that are served by a lead service line. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its Tier 1 sampling pool, if served by a lead service line. Service lines of unknown material must not be used as Tier 1 sampling sites.

(4) Any community water system with insufficient Tier 1 sampling sites shall complete its sampling pool with ''Tier 2 sampling sites,'' consisting of buildings, including multiple-family residences that are served by a lead service line.

(5) Any community water system with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with ''Tier 3 sampling sites,'' consisting of single-family structures that contain copper pipes with lead solder.

(6) A community water system with insufficient Tier 1, Tier 2, and Tier 3 sampling sites shall complete its sampling pool with ''Tier 4 sampling sites,'' consisting of single-family structures or buildings, including multiple family residences that are representative of sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(7) The sampling sites selected for a non-transient non-community water system (''Tier 1 sampling sites'') shall consist of buildings that are served by a lead service line. Service lines of unknown material must not be used as Tier 1 sampling sites.

(8) A non-transient non-community water system with insufficient Tier 1 sites that meet the targeting criteria in paragraph (a)(7) of this section shall complete its sampling pool with ''Tier 3 sampling sites,'' consisting of sampling sites that contain copper pipes with lead solder.

(9) A non-transient non-community water system with insufficient Tier 1 and Tier 3 sampling sites shall complete its sampling pool with ''Tier 4 sampling sites,'' consisting of sampling sites that are representative of sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(10) Any water system whose distribution system contains lead service lines shall collect all samples for monitoring under this section from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by lead service lines shall still collect samples from every site served by a lead service line, and collect the remaining samples in accordance with tiering requirements under (a)(2)(iii) of this section.

(b) *Sample collection methods.* (1) All tap samples for lead and copper collected in accordance with this subpart, with the exception of samples collected under paragraph (b)(5) and paragraph (h) of this section, shall be first draw samples.

(2) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. Bottles used to collect these samples shall be wide-mouth one-liter sample bottles. First-draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be one liter in volume and collected at an interior tap from which water is typically drawn for consumption. Non-first-draw samples

collected in lieu of first-draw samples pursuant to paragraph (b)(5) of this section shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First-draw samples may be collected by the system or the system may allow residents to collect first-draw samples after instructing the residents of the sampling procedures specified in this paragraph. Sampling instructions provided to customers shall not include instructions for aerator removal and cleaning or flushing of taps prior to the start of the minimum six-hour stagnation period. To avoid problems of residents handling nitric acid, acidification of first-draw samples may be done up to 14 days after the sample is collected. After acidification to re-solubilize the metals, the sample must stand in the original container for the time specified in the approved EPA method before the sample can be analyzed. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

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(d) *Timing of monitoring* (1) *Initial tap sampling.* (i) All water systems with lead service lines deemed optimized under § 141.81(b)(3) and systems that did not conduct monitoring that meets the requirements of this section prior to the compliance date of this section must begin the first six-month monitoring period on January 1 in the year following the compliance date of this section.

(ii) Systems that conducted monitoring that meets the requirements of this section prior to the effective date of this section shall conduct the next round of monitoring on the following schedules based on the results of that monitoring:

(A) Systems that exceed the action levels for lead or copper shall begin the first six-month monitoring period on January 1 in the year following the effective date of this section.

(B) Systems that exceed the lead trigger level and meet the lead and copper action levels shall begin the first annual monitoring period on January 1 in the year following the effective date of this section. Samples shall be analyzed for lead on an annual basis. Samples shall be analyzed for copper on a triennial basis. Systems without corrosion control treatment that meet the lead trigger level in three annual monitoring periods may reduce monitoring in accordance with paragraph (d)(4) of this section.

(C) Lead service line systems that do not exceed the lead trigger level and copper action level shall begin the next annual monitoring period on January 1 of the year following the effective date of this section. Samples shall be analyzed for lead on an annual basis. Samples shall be analyzed for copper on a triennial basis. Systems that do not exceed the lead trigger level in three annual monitoring periods may reduce monitoring in accordance with paragraph (d)(4) of this section.

(D) Systems without lead service lines that do not exceed the lead trigger level and the copper action level shall begin the next triennial monitoring period within three calendar years of the previous round.

(2) *Monitoring after installation of initial or re-optimized corrosion control treatment and installation of source water treatment.* (i) Any water system that installs or re-optimizes corrosion control treatment shall continue to monitor for lead and copper every six months until the State specifies water quality parameter values for optimal corrosion control.

(ii) Any system that re-optimizes corrosion control treatment as a result of exceeding the lead trigger level shall monitor annually for lead. Samples shall be analyzed for copper on a triennial basis. Small and medium-size systems for which the State did not specify water quality control parameters under § 141.82 that meet the lead trigger level in three annual monitoring periods may reduce monitoring in accordance with paragraph (d)(4) of this section.

(iii) Any system that installs source water treatment pursuant to § 141.83(a)(3) shall monitor every six months until the system meets the lead and copper action levels for two consecutive six-month monitoring periods. Systems that meet the lead and copper action levels, but not the lead trigger level for two consecutive 6-month monitoring periods may reduce monitoring in accordance with paragraph (d)(4) of this section.

(3) *Monitoring after State specifies water quality parameter values for optimal corrosion control treatment.* (i) After the State specifies the values for water quality control parameters under § 141.82(f), all large and any small or medium size systems that exceeded an action level shall continue to monitor every six months until the system does not exceed the lead and copper action levels for two consecutive 6-month monitoring periods. Systems that do not exceed the lead and copper action levels, but exceed the lead trigger level (>10 μg/L) shall monitor annually at the standard number of sites listed in (c) of this section. Systems that do not exceed the lead trigger level and copper action level in three annual monitoring periods may reduce monitoring in accordance with paragraph (d)(4) of this section.

(ii) Any small or medium size system which exceeded the lead trigger level for which the State has specified water quality parameter values for optimal corrosion control treatment shall continue to monitor every six months until the system meets the lead and copper action levels for two consecutive 6-month monitoring periods. Systems that do not exceed the lead and copper action levels, but exceed the lead trigger level shall monitor annually at the standard number of sites listed in paragraph (c) of this section. Systems that do not exceed the lead trigger level and copper action level in three annual monitoring periods may reduce monitoring in accordance with paragraph (d)(4) of this section.

(4) *Reduced Monitoring based on 90th percentile lead levels.* (i) (A) A small or medium-size system that meets the lead trigger level and copper action level under paragraph (d)(1)(i) of this section may reduce the frequency of sampling to annual monitoring. This monitoring shall begin in the calendar year immediately following the end of the second consecutive 6-month monitoring period.

(B) A small or medium-size water system that meets the lead trigger level and copper action level under paragraph (d)(1)(ii)(D) of this section may reduce the number of samples in accordance with paragraph (c) of this section and reduce the sampling frequency to triennial monitoring. This monitoring shall begin during the calendar year three years after the monitoring conducted under paragraph (d)(1)(ii)(D) of this section. A small or medium system collecting fewer than five samples as specified in paragraph (c) of this section that meets the lead trigger level and copper action level under paragraph (d)(1)(ii)(D) of this section may reduce the sampling frequency to triennial monitoring. In no case may the system reduce the number of samples below the minimum of one sample per available tap. This monitoring shall begin during the calendar year three years after the monitoring conducted under paragraph (d)(1)(ii)(D) of this section.

(C) Any small or medium-size system without corrosion control treatment that exceeds the lead trigger level, but meets copper action level, shall collect the standard number of samples on an annual basis. This sampling shall begin in the calendar year following the monitoring conducted under paragraph (d)(1)(i) or (d)(1)(ii)(B) of this section. A small or medium system collecting

fewer than five samples as specified in paragraph (c) of this section that meets the lead trigger level and copper action level under paragraph (d)(1)(i) or (d)(1)(ii)(D) of this section shall collect the standard number of samples on an annual basis. In no case may the system reduce the number of samples below the minimum of one sample per available tap. This sampling shall begin in the calendar year following the monitoring conducted under paragraph (d)(1)(i) or (d)(1)(ii)(B) of this section.

(D) Any small or medium-size system with corrosion control treatment that exceeds the lead trigger level but meets the lead and copper action levels and is not required by the State to make changes to the corrosion control treatment as a result of the re-optimization assessment under § 141.82, shall collect the standard number of samples on an annual basis. This sampling shall begin in the calendar year following the monitoring conducted under paragraph (d)(1)(i) or (d)(1)(ii)(B) of this section. A small or medium system collecting fewer than five samples as specified in paragraph (c) of this section that meets the lead trigger level and copper action level under paragraph (a)(ii)(D) of this section shall collect the standard number of samples on an annual basis. In no case may the system reduce the number of samples below the minimum of one sample per available tap. This monitoring shall begin in the calendar year following the monitoring conducted under paragraph (d)(1)(i) or (d)(1)(ii)(B) of this section.

(ii) (A) Any water system that meets the lead trigger level and copper action level and maintains the range of values for the water quality parameters for optimal corrosion control treatment specified by the State under § 141.82(f) during each of two consecutive six-month monitoring periods may reduce the sampling frequency for the standard number of samples to annual monitoring. This sampling shall begin in the calendar year immediately following the end of the second consecutive six-month monitoring period. The State shall review monitoring, treatment, and other relevant information submitted by the water system in accordance to § 141.90 and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring pursuant to this paragraph. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the frequency of tap sampling becomes available.

(B) Any water system that exceeds the lead trigger level but meets the lead and copper action levels and maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during each of two consecutive six-month monitoring periods may reduce the monitoring frequency at the standard number of sites to annual monitoring. This sampling shall begin in the calendar year immediately following the end of the second consecutive 6-month monitoring period. The State shall review monitoring, treatment, and other relevant information submitted by the water system in accordance to § 141.90 and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring pursuant to this paragraph. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the frequency of monitoring becomes available.

(iii) (A) A small or medium-size water system that meets the lead trigger level and copper action level under paragraph (d)(4)(i)(D) of this section may reduce the number of samples in accordance with paragraph (c) of this section and reduce the monitoring frequency to triennial monitoring. This sampling should begin during the calendar year three years after the monitoring conducted under paragraph (d)(ii)(D) of this section. A small or medium system collecting fewer than five samples as specified in paragraph (c) of this section that meets the lead trigger level and copper action level under paragraph (d)(ii)(D) of this section may reduce the monitoring frequency to triennial monitoring. This monitoring should begin during the calendar year three years after the monitoring conducted under paragraph (d)(ii)(D) of this section. In no case may the system reduce the number of samples below the minimum of one sample per available tap. This sampling should begin during the calendar year three years after the monitoring conducted under paragraph (a)(ii)(D) of this section.

(B) Any small or medium-size system monitoring under § 141.86(d)(4)(i)(A) or (B) that meets the lead trigger level and the copper action level in three consecutive rounds of annual monitoring may reduce the number of samples in accordance with paragraph (c) of this section and reduce the sampling frequency to triennial monitoring. This sampling should begin during the calendar year three years after the monitoring conducted under paragraph (a)(ii)(D) of this section. A small or medium system collecting fewer than five samples as specified in paragraph (c) of this section that meets the lead trigger level and copper action level under paragraph (a)(ii)(D) of this section may reduce the sampling frequency to triennial monitoring. In no case may the system reduce the number of samples below the minimum of one sample per available tap. This monitoring must begin during the calendar year three years after the monitoring conducted under paragraph (a)(ii)(D) of this section.

(iv) A water system that reduces the frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in paragraph (a) of this section. Systems monitoring annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August, or September unless the State has approved a different monitoring period in accordance with paragraph (d)(iv)(A) of this section.

(A) The State at its discretion may approve a different period for conducting the lead and copper tap sampling for systems collecting samples at a reduced frequency. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a non-transient non-community water system that does not operate during the months of June through September and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the State shall designate a period that represents normal operation for the system. This monitoring shall begin during the period approved or designated by the State in the calendar year immediately following the end of the second 6-month monitoring period for systems initiating annual monitoring and during the 3-year period following the end of the third consecutive year of annual monitoring for systems initiating triennial monitoring.

(B) Systems monitoring annually that have been collecting samples during the months of June through September and that receive State approval to alter their monitoring period under paragraph (d)(4)(iv)(A) of this section must collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling. Systems monitoring triennially that have been collecting samples during the month of June through September and receive State approval to alter their sampling

collection period as per paragraph (d)(4)(iv)(A) of this section must collect their next round of samples during a time period that ends no later than 45 months after the previous monitoring period. Subsequent monitoring must be conducted annually or triennially, as required by this section. Small systems with waivers, granted pursuant to paragraph (g) of this section that have been collecting samples during the months of June through September and receive State approval to alter their monitoring period as per paragraph (d)(4)(iv)(A) of this section must collect their next round of samples before the end of the 9-year period.

(v) Any water system that demonstrates for two consecutive 6-month monitoring periods that its 90th percentile lead level, calculated under § 141.80(c)(4), is less than or equal to 0.005 mg/L and the 90th percentile copper level, calculated under § 141.80(c)(4), is less than or equal to 0.65 mg/L may reduce the number of samples in accordance with paragraph (c) of this section and reduce the frequency of monitoring to triennial monitoring.

(vi)(A)(*1*) A small or medium-size water system on reduced triennial monitoring that exceeds the lead or copper action level shall resume monitoring in accordance with paragraph (d)(3)(i) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section. Such a system shall also conduct water quality parameter monitoring in accordance with § 141.87(b), (c) or (d) (as appropriate) during the monitoring period in which it exceeded the action level. Any such water system may resume annual monitoring for lead and copper and discontinue water quality parameter monitoring in accordance with § 141.87(b), (c) or (d) (as appropriate) after it has completed two consecutive 6-month rounds of monitoring that meet the criteria of (d)(4)(i)(A) of this section, and may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(4)(iii)(B) or (d)(4)(v) of this section.

(*2*) A small or medium-size water system subject to annual monitoring that exceeds the lead or copper action level shall resume sampling in accordance with paragraph (d)(3)(i) of this section. Such a system shall also conduct water quality parameter monitoring in accordance with § 141.87(b), (c) or (d) (as appropriate) during the monitoring period in which it exceeded the action level. Any such system may resume annual monitoring for lead and copper and discontinue water quality parameter monitoring in accordance with § 141.87(b), (c) or (d) (as appropriate) after it has completed two subsequent consecutive 6-month rounds of monitoring that meet the criteria of (d)(4)(i)(A) of this section, and may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(4)(iii)(B) or (d)(4)(v) of this section.

(*3*) A small or medium-size system subject to reduced triennial monitoring that exceeds the lead trigger level shall resume sampling in accordance with (d)(4)(ii)(B) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section. If required by the State, such a system shall also conduct water quality parameter monitoring in accordance with § 141.87(b), (c) or (d) (as appropriate) during the monitoring period in which it exceeded the action level. Any such system may resume triennial monitoring for lead and copper and discontinue water quality parameter monitoring in accordance with § 141.87(b), (c) or (d) (as appropriate) after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(4)(iii) or (d)(4)(v) of this section.

(B)(*1*) Any water system subject to the reduced triennial monitoring frequency that fails to meet the lead or copper action level during any four-month monitoring period or fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State under § 141.82(f) for more than nine days in any 6-month monitoring period specified in § 141.87(d) shall conduct tap water monitoring for lead and copper at the frequency specified in paragraph (d)(3)(i) of this section, collect the number of samples specified for standard monitoring under paragraph (c) of this section, and shall resume sampling for water quality parameters in accordance with § 141.87(d). This standard tap water monitoring shall begin no later than the 6-month period beginning January 1 of the calendar year following the lead action level exceedance or water quality parameter excursion. Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(*i*) The system may resume annual monitoring for lead and copper after it has completed two subsequent 6-month rounds of monitoring that meet the criteria of paragraph (d)(4)(ii)(A) of this section and the system has received written approval from the State that it is appropriate to resume reduced monitoring on an annual frequency. This monitoring shall begin during the calendar year immediately following the end of the second consecutive 6-month monitoring period.

(*ii*) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(4)(iii) or (d)(4)(v) of this section and the system has received written approval from the State that it is appropriate to resume triennial monitoring.

(*iii*) The system may reduce the number of water quality parameter tap water samples required in accordance with § 141.87(e)(1) and the frequency with which it collects such samples in accordance with § 141.87(e)(2). Such a system may not resume triennial monitoring for water quality parameters at the tap until it demonstrates, in accordance with the requirements of § 141.87(e)(2), that it has re-qualified for triennial monitoring.

(*2*) Any water system subject to the reduced annual monitoring frequency that fails to meet the lead or copper action level during any four-month monitoring period or fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State under § 141.82(f) for more than nine days in any 6-month monitoring period specified in § 141.87(d) shall conduct tap water monitoring for lead and copper at the frequency specified in paragraph (d)(3)(i) of this section, and shall resume sampling for water quality parameters in accordance with § 141.87(d). This standard monitoring shall begin no later than the 6-month period beginning January 1 of the calendar year following the lead action level exceedance or water quality parameter excursion. Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(*i*) The system may resume annual monitoring for lead and copper after it has completed two subsequent 6-month rounds of monitoring that meet the criteria of paragraph (d)(4)(ii)(A) of this section and the system has received written approval from the State that it is appropriate to resume reduced monitoring on an annual frequency.

This sampling shall begin during the calendar year immediately following the end of the second consecutive 6-month monitoring period.

(*ii*) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(4)(iii) or (d)(4)(v) of this section and the system has received written approval from the State that it is appropriate to resume triennial monitoring.

(*iii*) The system may reduce the number of water quality parameter tap water samples required in accordance with § 141.87(e)(1) and the frequency with which it collects such samples in accordance with § 141.87(e)(2). Such a system may not resume triennial monitoring for water quality parameters at the tap until it demonstrates, in accordance with the requirements of § 141.87(e)(2), that it has qualified for triennial monitoring.

(*3*) Any water system subject to the reduced triennial monitoring frequency that exceeds the lead trigger level during any four-month monitoring period shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (d)(4)(ii)(B) of this section, collect the number of samples specified for standard monitoring under paragraph (c) of this section, and shall resume sampling for water quality parameters in accordance with § 141.87(d). This standard tap water monitoring shall begin no later than the 6-month period beginning January 1 of the calendar year following the lead trigger level exceedance or water quality parameter excursion. Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(*i*) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(4)(iii) or (d)(4)(v) of this section and the system has received written approval from the State that it is appropriate to resume triennial monitoring.

(*ii*) The system may reduce the number of water quality parameter tap water samples required in accordance with § 141.87(e)(1) and the frequency with which it collects such samples in accordance with § 141.87(e)(2). Such a system may not resume triennial monitoring for water quality parameters at the tap until it demonstrates, in accordance with the requirements of § 141.87(e)(2), that it has re-qualified for triennial monitoring.

(*iii*) Any water system subject to a reduced monitoring frequency under paragraph (d)(4) of this section shall notify the State in writing in accordance with § 141.90(a)(3) of any upcoming long-term change in treatment or addition of a new source as described in that section. The State must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. The State may require the system to resume sampling in accordance with paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section or take other appropriate steps such as increased water quality parameter monitoring, or re-evaluation of corrosion control treatment given the potentially different water quality considerations.

(e) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section (such as customer-requested sampling) shall be considered by the system and the State in making any determinations (*i.e.,* calculating the 90th percentile lead or copper level) under this subpart. Lead service line water systems that are unable to collect the minimum number of samples from Tier 1 or Tier 2 sites shall calculate the 90th percentile using data from all the lead service lines sites and the highest values from lower tier sites to meet the specified minimum number of sites. Data from additional lower tier sites shall be submitted to the State but shall not be used in the 90th percentile calculation. Customer-requested samples from known lead service line sites shall be included in the 90th percentile calculation when they meet the requirements of paragraph (b) of this section.

(f) *Invalidation of lead and copper tap samples collected under § 141.86(d).*

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(h) *Follow-up samples for ''find-and-fix'' under § 141.82(j).* Systems shall collect a follow-up sample at any site that exceeds the action level within 30 days of receiving the sample results. These follow-up samples may use different sample volumes or different sample collection procedures to assess the source of elevated lead. Samples collected under this section shall be submitted to the State but shall not be included in the 90th percentile calculation.

(i) *Public availability of tap monitoring results used in the 90th percentile calculation.* All water systems shall make available to the public the results of the tap water monitoring used to make the 90th percentile calculation under § 141.80(c)(4). Water systems shall not be required to list the addresses of the sites where the tap samples were collected. Large systems shall make available the monitoring results in a digital format. Small and medium-size systems shall make available the monitoring results in either a written or digital format.

* * * * *

■ 11. Revise § 141.87 to read as follows:

§ 141.87 Monitoring requirements for water quality parameters.

All large water systems, and all small- and medium-size water systems that exceed the lead or copper action level, and all small- and medium-size water systems with corrosion control treatment that exceed the lead trigger level shall monitor water quality parameters in addition to lead and copper in accordance with this section. The requirements of this section are summarized in the table at the end of this section.

(a) *General requirements.* (1) *Sample collection methods.* (i) Tap samples shall be representative of water quality throughout the distribution system, taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under § 141.86(a).

Note to paragraph (a)(1)(i): Systems may find it convenient to conduct tap sampling for water quality parameters at sites used for coliform sampling under § 141.21 in this chapter.

(ii) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (*i.e.,* when water is representative of all sources being used).

(2) *Number of samples.* (i) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under paragraphs (b) through (e) of this section from the following minimum number of sites. Systems that add sites as a result of the ''find-and-fix'' requirements in § 141.82(j) shall collect tap samples for applicable water quality

parameters during each monitoring period under paragraphs (c) through (e) of this section and shall sample from that adjusted minimum number of sites.

TABLE 1 TO PARAGRAPH (a)(2)(i)

System size (number people served)	Minimum number of sites for water quality parameters
100,000	25
10,001–100,000	10
3,301–10,000	3
501–3,300	2
101–500	1
≤100	1

(ii)(A) Except as provided in paragraph (c)(2) of this section, water systems without corrosion control treatment shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in paragraph (b) of this section. During each monitoring period specified in paragraphs (c) through (e) of this section, water systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(B) During each monitoring period specified in paragraphs (b) through (e) of the section, water systems with corrosion control treatment shall continue to collect one sample for each applicable water quality parameter at each entry point to the distribution system no less frequently than once every two weeks.

(b) *Initial sampling for water systems without corrosion control treatment.* (1) Water systems without corrosion control treatment shall measure the applicable water quality parameters at the locations specified below during each 6-month monitoring period specified in § 141.86(d)(1), during which the water system exceeds the lead or copper action level, and continue until the water system meets the lead and copper action levels for two consecutive 6-month monitoring periods.

(i) At taps:

(A) pH;

(B) Alkalinity;

(C) Orthophosphate, when an inhibitor containing an orthophosphate compound is used;

(D) Silica, when an inhibitor containing a silicate compound is used;

(ii) At each entry point to the distribution system all of the applicable parameters listed in paragraph (b)(1) of this section.

(2) All large water systems shall measure the applicable water quality parameters as specified in paragraph (b)(1) of this section, at taps and at each entry point to the distribution system during each 6-month monitoring period specified in § 141.86(d)(1). All small and medium-size systems with corrosion control shall measure the applicable water quality parameters at the locations specified below during each 6-month monitoring period specified in § 141.86(d)(1) during which the system exceeds the lead trigger level or copper action level.

(i) At taps:

(A) pH;

(B) Alkalinity;

(C) Orthophosphate, when an inhibitor containing an orthophosphate compound is used;

(D) Silica, when an inhibitor containing a silicate compound is used;

(ii) At each entry point to the distribution system, all of the applicable parameters listed in paragraph (b)(2) of this section.

(c) *Monitoring after installation of optimal corrosion control or re-optimized corrosion control treatment.* (1) Any large water system that re-optimizes corrosion control treatment pursuant to § 141.81(d)(5)(i) and any small or medium-size water system that exceeds the lead or copper action level and re-optimizes corrosion control treatment pursuant to § 141.81(d)(5)(ii) shall measure the water quality parameters at the locations and frequencies specified in paragraph (c)(1)(i) of this section, during each 6-month monitoring period specified in § 141.86(d)(2)(i). Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each 6-month monitoring period specified in § 141.86(d)(2)(i).

(i) At taps, two samples for:

(A) pH;

(B) Alkalinity;

(C) Orthophosphate, when an inhibitor containing an orthophosphate compound is used;

(D) Silica, when an inhibitor containing a silicate compound is used;

(ii) Except as provided in paragraph (c)(3) of this section, at each entry point to the distribution system, at least one sample no less frequently than every two weeks (biweekly) for:

(A) pH;

(B) When alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(C) When a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(iii) Any groundwater system can limit entry point sampling described in paragraph (c)(2) of this section to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated groundwater sources mixes with water from treated groundwater sources, the system must monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the water system shall provide to the State, written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(2) States have the discretion to require small and medium-size systems that exceed the lead trigger level but not the lead and copper action levels to conduct water quality parameter monitoring as described in paragraph (c)(ii) of this section or the State can develop its own water quality control parameter monitoring structure for these systems.

(d) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* (1) After the State specifies the values for applicable water quality parameters reflecting optimal corrosion control treatment under § 141.87(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section and determine compliance with the requirements of § 141.82(g) every six months with the first 6-month period to begin on either January 1 or July 1, whichever comes first, after the State specifies the optimal values under § 141.82(f). Any small or medium-size water system that exceeded an action level shall conduct such monitoring until the water system meets the lead and copper action levels and the optimal water quality control parameters in two consecutive 6-month monitoring periods under § 141.86(d)(3)(i) and this paragraph. For any such small and medium-size system that is subject to a reduced monitoring frequency pursuant to § 141.86(d)(4) at the time of the action level exceedance, the start of the applicable 6-month monitoring period under this paragraph shall coincide with the start of the applicable monitoring period under § 141.86(d)(4). Compliance with State-

designated optimal water quality parameter values shall be determined as specified under § 141.82(g).

(2) Any small or medium-size system that exceeds the lead trigger level, but not the lead and copper action levels for which the State has set optimal water quality control parameters shall monitor according to the structure in paragraph (c)(ii) of this section, until the system no longer exceeds the lead trigger level in three consecutive annual monitoring periods. States have the discretion to continue to require these systems to monitor optimal water quality control parameters.

(e) *Reduced monitoring.* (1) Any large water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) and does not exceed the lead trigger level during each of two consecutive 6-month monitoring periods under paragraph (d) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in paragraph (c)(ii) of this section. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each 6-month monitoring period.

TABLE 1 TO PARAGRAPH (e)(1)

System size (number of people served)	Reduced minimum number of sites for water quality parameters
100,000	10
10,001–100,000	7
3,301–10,000	3
501–3,300	2
101–500	1
≤100	1

(2)(i) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) and does not exceed the lead trigger level during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in this paragraph (e)(1) of this section, from every six months to annually. This sampling begins during the calendar year immediately following the end of the monitoring period in which the third consecutive year of 6-month monitoring occurs. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) and meets the lead trigger level during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (e)(1) of this section from annually to every three years. This sampling begins no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

(ii) A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in paragraph (e)(1) of this section to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead specified in § 141.89(a)(1)(ii), that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L in § 141.80(c)(3), and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f). Monitoring conducted every three years shall be done no later than every third calendar year.

(3) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(4) Any water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State in § 141.82(f) for more than nine days in any 6-month period specified in § 141.82(g) shall resume distribution system tap water sampling in accordance with the number and frequency requirements in paragraph (d) of this section. Such a system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (e)(1) of this section after it has completed two subsequent consecutive 6-month rounds of monitoring that meet the criteria of that paragraph and/or may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (e)(2)(i) or (e)(2)(ii) of this section.

(f) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the water system and the State in making any determinations (*i.e.,* determining concentrations of water quality parameters) under this section or § 141.82.

(g) *Additional sites added from Find-and-Fix.* Any water system that adds water quality parameter sites through the ''find-and-fix'' provisions pursuant to § 141.82(j) shall add those sites to the minimum number of sites specified under paragraphs (a) through (e) of this section.

■ 12. Amend § 141.88 by:

■ a. Revising paragraphs (a)(1)(i), (b), paragraph (d) introductory text, paragraph (d)(1) introductory text, paragraph (e)(1) introductory and paragraph (e)(1)(i);

■ b. Removing and reserving paragraph (e)(1)(ii);

■ c. Revising paragraph (e)(2); and

■ d. Removing and reserving paragraph (e)(2)(ii).

The revisions read as follows:

§ 141.88 Monitoring requirements for lead and copper in source water.

(a) * * *

(1) * * *

(i) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point). The system shall take one sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

* * * * *

(b) *Monitoring frequency after system exceeds tap water action level.* Any system which exceeds the lead or copper action level at the tap for the first time or for the first time after a change in source or source water treatment required under § 141.83(b)(2) shall collect one source water sample from each entry point to the distribution system no later than six months after the end of the monitoring period during which the lead or copper action level was exceeded. For monitoring periods that are annual or less frequent, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the State has established an alternate monitoring period, the last day of that period. If the State determines that source water treatment is not required under § 141.83(b)(2), the system is not required to conduct additional source water monitoring unless directed by the State. A system subject to discontinued source water monitoring under this paragraph, shall notify the State in writing

pursuant to § 141.90(a)(3) of the addition of a new source.

(1) The State may waive additional source water monitoring under the following conditions:

(i) The water system has already conducted source water monitoring following a previous action level exceedance;

(ii) The State has determined that source water treatment is not required; and

(iii) The system has not added any new water sources.

(2) [Reserved].

* * * * *

(d) *Monitoring frequency after State specifies maximum permissible source water levels.* (1) A system shall monitor at the frequency specified in paragraphs (d)(1) and (2) of this section, in cases where the State specifies maximum permissible source water levels under § 141.83(b)(4).

* * * * *

(e) * * *

(1) A water system using only groundwater may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle (as that term is defined in § 141.2) provided that the samples are collected no later than every ninth calendar year and if the system meets the following criteria:

(i) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the State in 141.83(b)(4) during at least three consecutive compliance periods under section (d)(1) of this section.

(ii) [Reserved].

(2) A water system using surface water (or a combination of surface water and groundwater) may reduce the monitoring frequency in paragraph (d)(1) of this section to once during each 9-year compliance cycle (as that term is defined in § 141.2 of this chapter) provided that the samples are collected no later than every ninth calendar year and if the system meets the following criteria:

(i) * * *

(ii) [Reserved].

* * * * *

■ 13. Amend § 141.89 by revising paragraph (a) introductory text, paragraph (a)(1) introductory text and paragraph (a)(1)(iii) to read as follows:

§ 141.89 Analytical methods.

(a) Analyses for lead, copper, pH, alkalinity, orthophosphate, and silica shall be conducted in accordance with methods in 141.23(k)(1).

(1) Analyses for alkalinity, orthophosphate, pH, and silica may be performed by any person acceptable to the State. Analyses under this section for lead and copper shall only be conducted by laboratories that have been certified by EPA or the State. To obtain certification to conduct analyses for lead and copper, laboratories must:

* * * * *

(iii) Achieve method detection limit for lead of 0.001 mg/L according to the procedures in Appendix B of part 136 of this title.

* * * * *

■ 14. Revise § 141.90 to read as follows:

§ 141.90 Reporting Requirements.

All water systems shall report all of the following information to the State in accordance with this section.

(a) *Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring except for small systems using the point-of-use compliance flexibility option.* (1) Except as provided in paragraph (a)(1)(viii) of this section, a water system shall report the information specified in paragraphs (a)(1)(i) through (ix) of this section, for all tap water samples specified in § 141.86 and for all water quality parameter samples specified in § 141.87 within the first 10 days following the end of each applicable monitoring period specified in §§ 141.86 and 141.87 (*i.e.,* every six months, annually, every three years, or every nine years). For monitoring periods with a duration less than six months, the end of the monitoring period is the last date samples can be collected during that period as specified in §§ 141.86 and 141.87.

(i) The results of all tap samples for lead and copper including the location of each site and the criteria under § 141.86(a)(3) through (8), and/or (9), under which the site was selected for the water system's sampling pool;

(ii) Documentation for each tap water lead or copper sample for which the water system requests invalidation pursuant to § 141.86(f)(2);

(iii) For lead service line systems, documentation of sampling pools with insufficient number of lead service line sites to meet the minimum number of sites criterion in § 141.86(c).

(A) Community water systems shall document why the system was unable to meet the minimum number of sites in § 141.86(c) with sites meeting the criteria under § 141.86(a)(3) or (4) with the inventory developed under § 141.84(a).

(B) Non-transient, non-community water systems shall document why the system was unable to meet the minimum number of sites in § 141.86(c) with sites meeting the criteria under § 141.86(a)(7) with the inventory developed under § 141.84(a).

(iv) The 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with § 141.80(c)(4) or (c)(4)(ii)), unless the State calculates the water system's 90th percentile lead and copper levels under paragraph (h) of this section;

(v) The water system shall identify any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(vi) The results of all tap samples for pH, and where applicable, alkalinity, orthophosphate, or silica collected under § 141.87(b) through (e);

(vii) The results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under § 141.87(b) through (e);

(viii) A water system shall report the results of all water quality parameter samples collected under § 141.87(c) through (f) during each 6-month monitoring period specified in § 141.87(d) within the first 10 days following the end of the monitoring period unless the State has specified a more frequent reporting requirement.

(ix) A copy of the tap sampling protocol provided to residents or those sampling, to verify that pre-stagnation flushing, aerator cleaning or removal and the use of narrow-necked collection bottles were not included as recommendations.

(2) For a non-transient non-community water system, or a community water system meeting the criteria of § 141.85(b)(7), that does not have enough taps that can provide first-draw samples, the water system must either:

(i) Provide written documentation to the State identifying standing times and locations for enough non-first-draw samples to make up its sampling pool under § 141.86(b)(5) by the start of the first applicable monitoring period under § 141.86(d) unless the State has waived prior State approval of non-first-draw sample sites selected by the water system pursuant to § 141.86(b)(5); or

(ii) If the State has waived prior approval of non-first-draw sample sites selected by the water system, identify, in writing, each site that did not meet the 6-hour minimum stagnation time and the length of stagnation time for that particular substitute sample

collected pursuant to § 141.86(b)(5) and include this information with the lead and copper tap sample results required to be submitted pursuant to paragraph (a)(1)(i) of this section.

(3) At a time specified by the State, or if no specific time is designated by the State, then as early as possible prior to the addition of a new source or any long-term change in water treatment, a water system shall submit written documentation to the State describing the change or addition referred to in § 141.86(d)(4). The State must review and approve the addition of a new source or long-term change in treatment before it is implemented by the water system. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants (*e.g.,* alum to ferric chloride), and switching corrosion inhibitor products (*e.g.,* orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the water system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(4) Any small water system applying for a monitoring waiver under § 141.86(g), or subject to a waiver granted pursuant to § 141.86(g)(3), shall provide the following information to the State in writing by the specified deadline:

(i) By the start of the first applicable monitoring period in § 141.86(d), any small water system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of §§ 141.86(g)(1) and (2).

(ii) No later than nine years after the monitoring previously conducted pursuant to § 141.86(g)(2) or § 141.86(g)(4)(i), each small water system desiring to maintain its monitoring waiver shall provide the information required by §§ 141.86(g)(4)(i) and (ii).

(iii) No later than 60 days after it becomes aware that it is no longer free of lead-containing and/or copper-containing material, as appropriate, each small water system with a monitoring waiver shall provide written notification to the State, setting forth the circumstances resulting in the lead-containing and/or copper-containing materials being introduced into the water system and what corrective action, if any, the water system plans to remove these materials.

(iv) Reserved.

(5) Each groundwater system that limits water quality parameter monitoring to a subset of entry points under § 141.87(c)(3) shall provide, by the commencement of such monitoring, written correspondence to the State that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the water system.

(b) *Source water monitoring reporting requirements.* (1) A water system shall report the sampling results for all source water samples collected in accordance with § 141.88 within the first 10 days following the end of each source water monitoring period (*i.e.,* annually, per compliance period, per compliance cycle) specified in § 141.88.

(2) With the exception of the first round of source water sampling conducted pursuant to § 141.88(b), the water system shall specify any site which was not sampled during previous monitoring periods and include an explanation of why the sampling point has changed.

(c) *Corrosion control treatment reporting requirements.* By the applicable dates under § 141.81, water systems shall report the following information:

(1) For water systems demonstrating that they have already optimized corrosion control, information required in § 141.81(b)(2) or (3).

(2) For water systems required to reoptimize corrosion control, their recommendation regarding optimal corrosion control treatment under § 141.82(a).

(3) For water systems required to evaluate the effectiveness of corrosion control treatments under § 141.82(c), the information required by that paragraph.

(4) For water systems required to install optimal corrosion control designated by the State under § 141.82(d), a letter certifying that the water system has completed installing that treatment.

(d) *Source water treatment reporting requirements.* By the applicable dates in § 141.83, water systems shall provide the following information to the State:

(1) If required under § 141.83(b)(1), their recommendation regarding source water treatment;

(2) For water systems required to install source water treatment under § 141.83(b)(2), a letter certifying that the water system has completed installing the treatment designated by the State within 24 months after the State designated the treatment.

(e) *Lead service line inventory and replacement reporting requirements.* Water systems shall report the following information to the State to demonstrate compliance with the requirements of § 141.84:

(1) No later than 12 months after the end of a monitoring period in which a water system exceeds the lead action level in sampling referred to in § 141.84(f), the water system must submit written documentation to the State of the material evaluation conducted as required in § 141.84(a), identify the initial number of lead service lines in its distribution system at the time the water system exceeds the lead action level, and provide the water system's schedule for annually replacing at least 3 percent of the initial number of lead service lines in its distribution system.

(2) No later than 12 months after the end of a monitoring period in which a water system exceeds the lead action level in sampling referred to in § 141.84(f), and every 12 months thereafter, the water system shall certify to the State in writing that the water system has:

(i) Replaced in the previous 12 months at least 3 percent of the initial lead service lines (or a greater number of lines specified by the State under § 141.84(f)(10)) in its distribution system,

(ii) Conducted consumer notification as specified in § 141.84(e).

(iii) Additionally, the water system must certify to the State that it delivered public education materials to the affected consumers as specified in § 141.85(a) and the notification of lead service line materials as specified in § 141.85(e).

(3) The annual letter submitted to the State under paragraph (e)(2) of this section shall contain the following information:

(i) The number of lead service lines scheduled to be replaced during the previous year of the water system's replacement schedule;

(ii) The location of each lead service line replaced, and total number replaced during the previous year of the water system's replacement schedule;

(iii) The certification that the water system has notified the resident(s) served by the lead service line at least 45 days prior to the planned lead service line replacement or within 24 hours of an emergency full or partial replacement;

(iv) The certification that the water system delivered lead service line

information materials in § 141.85(e) to the affected consumers; and

(v) The certification that results of samples collected between three months and six months after the date of a full or partial lead service line replacement were provided to the customer in accordance with the timeframes in 141.85(d)(2). Mailed notices post-marked within three business days of receiving the results shall be considered ''on time.''

(4) [Reserved].

(5) No later than the compliance date of the rule, the water system must submit to the State an inventory of lead service lines as required in § 141.84(a), and every 12 months thereafter, any water system that has lead service lines must submit to the State an updated inventory that includes the number of lead service lines remaining in the distribution system as required in § 141.84(a).

(i) Any water system that contains a lead service line in their distribution system must submit to the State, as specified in section § 141.84(b) a lead service line replacement plan at the same time the lead service line inventory is submitted.

(ii) Any water system that contains a lead service line in their distribution system or a service line of unknown material must certify to the State annually that it conducted consumer notification as specified in § 141.85(e).

(iii) Any water system that contains a lead service line in their distribution system or a service line of unknown material must certify to the State annually that it delivered lead service line information materials to the affected consumers as specified in § 141.85(e).

(6) No later than 12 months after the end of a monitoring period in which a water system exceeds the lead trigger level but not the lead action level in sampling referred to in § 141.84(e) has replaced lead service lines at the annual goal rate. In addition, every 12 months thereafter, the water system shall certify to the State in writing that the water system has:

(i) Replaced in the previous 12 months, at least enough of the initial lead service lines to meet the annual goal-based rate set by the State under § 141.84(d)(1) in its distribution system;

(ii) Conducted consumer notification as specified in § 141.85(f);

(iii) Additionally, the water system must certify to the State that it delivered the notification of lead service line materials as specified in § 141.85(b); and

(iv) A water system that does not meet its annual service line replacement goal as required under § 141.84(f) shall certify to the State in writing that the water system has conducted customer outreach as specified in § 141.85(g).

(f) *Public education program reporting requirements.* (1) Any water system that is subject to the public education requirements in § 141.85 shall, within 10 days after the end of each period in which the water system is required to perform public education in accordance with § 141.85(b), send written documentation to the State that contains:

(i) A demonstration that the water system has delivered the public education materials that meet the content requirements in § 141.85(a) and the delivery requirements in § 141.85(b); and

(ii) A list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(2) Unless required by the State, a water system that previously has submitted the information required by paragraph (f)(1)(ii) of this section need not resubmit the information required by paragraph (f)(1)(ii) of this section, as long as there have been no changes in the distribution list and the water system certifies that the public education materials were distributed to the same list submitted previously.

(3) No later than three months following the end of the monitoring period, each water system must mail a sample copy of the consumer notification of tap results to the State along with a certification that the notification has been distributed in a manner consistent with the requirements of § 141.85(d).

(4) Annually on July 1, a demonstration that the water system delivered annual notification to customers with a lead service line or service line of unknown material in accordance with § 141.85(e).

(5) Annually on July 1, a demonstration that the water conducted an outreach activity in accordance with § 141.85(g) when failing to meet the lead service line replacement goal as specified in § 141.84(f).

(g) *Reporting of additional monitoring data.* Any water system which collects sampling data in addition to that required by this subpart shall report the results to the State within the first 10 days following the end of the applicable monitoring period under §§ 141.86, 141.87 and 141.88 during which the samples are collected. This includes the monitoring data pertaining to ''find and fix'' pursuant to §§ 141.86(h) and 141.87(g).

(h) *Reporting of 90th percentile lead and copper concentrations where the State calculates a water system's 90th percentile concentrations.* A water system is not required to report the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period, as required by paragraph (a)(1)(iv) of this section if:

(1) The State has previously notified the water system that it will calculate the water system's 90th percentile lead and copper concentrations, based on the lead and copper tap results submitted pursuant to paragraph (h)(2)(i) of this section, and has specified a date before the end of the applicable monitoring period by which the water system must provide the results of lead and copper tap water samples;

(2) The water system has provided the following information to the State by the date specified in paragraph (h)(1) of this section:

(i) The results of all tap samples for lead and copper including the location of each site and the criteria under § 141.86(a)(3) through (8) and/or (9), under which the site was selected for the water system's sampling pool, pursuant to paragraph (a)(1)(i) of this section; and

(ii) An identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation why sampling sites have changed; and

(3) The State has provided the results of the 90th percentile lead and copper calculations, in writing, to the water system before the end of the monitoring period.

(i) *Reporting requirements for a community water system's public education and sampling in schools and child care facilities.* (1) A community water system shall send a report to the State by July 1 of each year for the previous calendar year's activity. The report must include the following:

(i) Certification that it made a good faith effort to identify schools and child care facilities in accordance with § 141.92(a). The good faith effort may include reviewing customer records and requesting lists of schools and child care facilities from the primacy agency or other licensing agency. A water system that certifies that no schools or child care facilities are served by the water system is not required to include information in paragraph (i)(1)(ii) through (i)(1)(iii) of this section in the report.

(ii) Certification that the water system has completed the notification and sampling requirements of §§ 141.86 and 141.92 at a minimum of 20 percent of schools and child care facilities;

(A) The number of schools and child care facilities served by the water system;

(B) The number of schools and child care facilities sampled in the calendar year;

(C) The number of schools and child care facilities that have refused sampling;

(D) Information pertaining to attempts to gain entry for sampling that were declined by the customer; and

(iii) Certification that sampling results were provided to schools, child care facilities, and local or State health departments.

(iv) Certification of compliance with an alternative school and childcare testing program at least as stringent paragraphs (a) through (c) of § 141.92, if applicable.

(j) *Small system compliance flexibility option using point-of-use devices.* Small water systems and non-transient, non-community water systems shall report the results from the tap sampling required under § 141.93 and any corrective actions taken if the trigger level was exceeded in that monitoring. Small water systems shall also provide documentation to certify maintenance of the point-of-use devices if requested by the State.

■ 15. Add § 141.92 to subpart I to read as follows:

§ 141.92 Monitoring for lead in schools and child care facilities.

All community water systems must conduct directed public education to schools and child care facilities served by the water system, including any facilities that are consecutive water systems if those schools or child care facilities were constructed prior to January 1, 2014.

(a) Public Education to schools and child care facilities. (1) By the compliance date for the rule, each water system shall compile a list of schools or licensed child care facilities served by the system. The provisions of this section do not apply to a school or child care facility that is a regulated as a public water system, including consecutive public water systems.

(2) Each water system shall contact schools or licensed child care facilities identified by the system in paragraph (a) of this section to provide:

(i) Information about health risks from lead in drinking water on at least an annual basis;

(ii) Notification that the water system will be conducting sampling for lead at the facility, including information about testing for lead in schools and child care facilities (EPA's 3Ts for Reducing Lead in Drinking Water Toolkit, EPA–815–B–18–007 or subsequent EPA guidance), and;

(iii) Instructions for identifying outlets for sampling and preparing for a sampling event 30 days prior to the event.

(3) The water system must include documentation in the proposed reporting requirement in § 141.90(i) if a school or child care facility refuses entry or otherwise declines to participate in the monitoring or education requirements of this section.

(b) Monitoring for lead in schools and child care facilities. (1) A water system shall collect five samples per school and two samples per child care facility at outlets typically used for consumption. The outlets shall not have point-of-use (POU) devices and shall consist of the following locations:

(i) For schools: Two drinking water fountains, one kitchen faucet used for food or drink preparation, one classroom faucet, and one nurse's office faucet, as available.

(ii) For child care facilities: One drinking water fountain and one of either a kitchen faucet used for preparation of food or drink or one classroom faucet.

(iii) If any facility has fewer than the required number of outlets, the water system shall sample all outlets used for consumption.

(iv) If any facility does not contain the type of faucet listed above, the water system shall collect a sample from another outlet typically used for consumption as identified by the facility.

(v) Samples shall be collected from the cold water tap subject to the following additional requirements:

(A) Each sample for lead shall be a first-draw sample;

(B) The sample must be 250 ml in volume;

(C) The water must have remained stationary in the plumbing system of the sampling site (building) for at least 8 but no more than 18 hours;

(D) Samples may be collected by either the customer, school or child care facility, or the water system, and;

(E) Samples shall be analyzed using acidification and the corresponding analytical methods in § 141.89.

(2) [Reserved].

(c) Frequency of sample collection at schools and child care facilities. (1) A water system shall collect samples from at least 20 percent of schools served by the system and 20 percent of child care facilities served by the system per year until all schools and child care facilities identified under paragraph (a) of this section have been sampled or have declined to participate.

(2) A water system shall continue to collect samples from at least 20 percent of school and child care facilities in its distribution system each year thereafter.

(3) A water system shall conduct monitoring at all schools and child care facilities at least once every five years.

(4) The water system must include documentation in the report required in § 141.90(i) if a school or child care facility refuses entry or otherwise declines to allow the system to conduct the monitoring or education requirements of this section.

(d) Alternative School Sampling Programs. (1) If Local or State law or regulations require schools and childcare facilities to be tested, by either the school or the water system, in a way that is at least as stringent as paragraphs (a) through (c) of this section, the water system may execute that program to comply with the requirements of this section.

(2) The water system must include documentation in the report required in § 141.90(i) if a school or child care facility refuses entry or otherwise declines to allow the system to conduct the monitoring or education requirements of this section.

(e) Confirmation or revision of schools and child care facilities in inventory. A water system shall either confirm that there have been no changes to its list of schools and child care facilities served by the system developed pursuant to § 141.92(a), or submit a revised list at least once every five years.

(f) Notification of Results. A water system shall provide analytical results as soon as practicable but no late than 30 days after receipt of the results to:

(1) The school or child care facility, along with information about remedial options;

(2) the local or State health department; and

(3) the primacy agency.

■ 16. Add § 141.93 to subpart I to read as follows:

§ 141.93 Small Water System Compliance Flexibility

The compliance alternatives described in this section apply to small community water systems serving 10,000 or fewer persons or non-transient non-community water systems.

(a) A small community water system that exceeds the lead trigger level but meets the lead and copper action levels must evaluate compliance options in paragraphs (a)(1) through (3) of this section and make a compliance option

recommendation to the State within six months of the end of the monitoring period in which the exceedance occurred. A State must approve the recommendation or designate an alternative from compliance options in paragraphs (a)(1) through (3) of this section within six months of the recommendation by the water system. If the water system subsequently exceeds the lead action level it must implement the approved option. Community water systems must select from the following compliance options:

(1) *Lead Service Line Replacement.* A water system shall implement a full lead service line replacement program and replace its lead service lines on a schedule approved by the State and shall complete replacement of all lead service lines within 15 years, even if its 90th percentile is below the action level in future monitoring periods.

(2) *Corrosion Control Treatment.* A water system must install and maintain corrosion control treatment in accordance with § 141.82, even if its 90th percentile is below the action level in future monitoring periods. Any water system that has corrosion control treatment installed must re-optimize as per § 141.82(d).

(3) *Point-of-Use Devices.* A water system must install, maintain, and monitor POU devices in each household or building, even if its 90th percentile is below the action level in future monitoring periods.

(i) A community water system must install a minimum of one POU device (at one tap) in every household or building in its distribution system.

(ii) The POU device must be certified by the American National Standards Institute to reduce lead in drinking water, and

(iii) The POU device must be maintained by the water system to ensure continued effective filtration, including but not limited to changing filter cartridges and resolving any operational issues.

(iv) The community water system must monitor one-third of the POU devices each year and all POU devices must be monitored within a three-year cycle. First-draw tap samples collected under this section must be taken after water passes through the POU device to assess its performance. Samples should be one-liter in volume and have had a minimum 6-hour stagnation time. All samples must be at or below the lead trigger level. The system must document the problem and take corrective action at any site where the sample result exceeds the lead trigger level.

(b) A non-transient non-community water system that exceeds the lead trigger level but meets the lead and copper action levels must evaluate compliance options in paragraphs (b)(1) through (4) of this section and make a compliance option recommendation to the State within six months of the end of the monitoring period in which the exceedance occurred. A State must approve the recommendation or designate an alternative from compliance options in paragraphs (b)(1) through (4) of this section within six months of the recommendation by the water system. If the water system subsequently exceeds the lead action level it must implement the approved option. Non-transient non-community water system must select from the following compliance options:

(1) *Lead Service Line Replacement.* A water system shall implement a full lead service line replacement program and replace its lead service lines on a schedule approved by the State and shall complete replacement of all lead service lines within 15 years, even if its 90th percentile is at or below the action level in future monitoring periods.

(2) *Corrosion Control Treatment.* A water system must install and maintain corrosion control treatment in accordance with § 141.82, even if its 90th percentile is below the action level in future monitoring periods. Any water system that has corrosion control treatment installed must re-optimize as per § 141.82(e).

(3) *Point-of-Use Devices.* A water system must install, maintain, and monitor POU devices in each household or building, even if its 90th percentile is at or below the action level in future monitoring periods.

(i) A non-transient non-community water system must provide a POU device to every tap that is used for cooking and/or drinking.

(ii) The POU device must be certified by the American National Standards Institute to reduce lead in drinking water and:

(iii) The POU device must be maintained by the water system to ensure continued effective filtration, including but not limited to changing filter cartridges and resolving any operational issues.

(iv) The non-transient non-community water system must monitor one-third of the POU devices each year and all POU devices must be monitored within a three-year cycle. First-draw tap samples collected under this section must be taken after water passes through the POU device to assess its performance. Samples should be one-liter in volume and have had a minimum 6-hour stagnation time. All samples must be at or below the lead trigger level. The system must document the problem and take corrective action at any site where the sample result exceeds the lead trigger level.

(4) *Replacement of Lead-Bearing Plumbing.* A water system must replace all plumbing that is not lead free in accordance with Section 1417 of the Safe Drinking Water Act, as amended by the Reduction of Lead in Drinking Water Act and any future amendments applicable at the time of replacement, including a lead service line, even if its 90th percentile is below the action level in future monitoring periods. A water system must have control over all plumbing in its buildings. The replacement of all lead-bearing plumbing must occur on a schedule established by the State, not to exceed one year.

(c) A small community water system that exceeds the lead action level but meets the copper action level must evaluate according to paragraphs (c)(1) through (3) of this section and make a compliance option recommendation to the State within six months of the end of the monitoring period in which the exceedance occurred. A State must approve the recommendation or designate an alternative from compliance options in paragraphs (c)(1) through (3) of this section within six months of the recommendation by the water system. If the water system subsequently exceeds the lead action level it must implement the approved option. Community water systems must select from the following compliance options:

(1) *Lead Service Line Replacement.* A water system shall implement full lead service line replacement program and replace its lead service lines on a schedule approved by the State and shall complete replacement of all lead service lines within 15 years, even if its 90th percentile is below the action level in future monitoring periods.

(2) *Corrosion Control Treatment.* A water system must install and maintain corrosion control treatment in accordance with § 141.82, even if its 90th percentile is below the action level in future monitoring periods.

(3) *Point-of-Use Devices.* A water system must install, maintain, and monitor POU devices in each household or building, even if its 90th percentile is below the action level in future monitoring periods.

(i) A community water system must install a minimum of one POU device (at one tap) in every household or building in its distribution system.

(ii) The POU device must be certified by the American National Standards

Institute to reduce lead in drinking water, and

(iii) The POU device must be maintained by the water system to ensure continued effective filtration, including but not limited to changing filter cartridges and resolving any operational issues.

(iv) The community water system must monitor one-third of the POU devices each year and all POU devices must be monitored within a three-year cycle. First-draw tap samples collected under this section must be taken after water passes through the POU device to assess its performance. Samples should be one-liter in volume and have had a minimum 6-hour stagnation time. All samples must be at or below the lead trigger level. The system must document the problem and take corrective action at any site where the sample result exceeds the lead trigger level.

(d) A non-transient non-community water system that exceeds the lead action level but does not exceed the copper action level must evaluate (1) through (4) of this section and make a compliance recommendation to the State from compliance options in paragraphs (d)(1) through (4) of this section within six months of the end of the monitoring period in which the exceedance occurred. A State must approve the recommendation or designate an alternative within six months of the recommendation by the water system. If the water system subsequently exceeds the lead action level it must implement the approved option. Non-transient non-community water systems must select from the following compliance options:

(1) *Lead Service Line Replacement.* A water system shall implement full lead service line replacement program and replace its lead service lines on a schedule approved by the State and shall complete replacement of all lead service lines within 15 years, even if its 90th percentile is at or below the action level in future monitoring periods.

(2) *Corrosion Control Treatment.* A water system must install and maintain corrosion control treatment in accordance with § 141.82, even if its 90th percentile is at or below the action level in future monitoring periods. Any water system that has corrosion control treatment installed must re-optimize as per § 141.82(e).

(3) *Point-of-Use Devices.* A water system must install, maintain, and monitor POU devices in each household or building, even if its 90th percentile is at or below the action level in future monitoring periods.

(i) A non-transient non-community water system must provide a POU device to every tap that is used for cooking and/or drinking.

(ii) The POU device must be certified by the American National Standards Institute to reduce lead in drinking water and:

(iii) The POU device must be maintained by the water system to ensure continued effective filtration, including but not limited to changing filter cartridges and resolving any operational issues.

(iv) The non-transient non-community water system must monitor one-third of the POU devices each year and all POU devices must be monitored within a three-year cycle. First-draw tap samples collected under this section must be taken after water passes through the POU device to assess its performance. Samples should be one-liter in volume and have had a minimum 6-hour stagnation time. All samples must be below the lead trigger level. The system must document the problem and take corrective action at any site where the sample result exceeds the lead trigger level.

(4) *Replacement of Lead-Bearing Plumbing.* A water system must replace all plumbing that is not lead free in accordance with section 1417 of the Safe Drinking Water Act as amended by the Reduction of Lead in Drinking Water Act and any future amendments applicable at the time of replacement, including a lead service line, even if its 90th percentile is below the action level in future monitoring periods. A water system must have control over all plumbing in its buildings. The replacement of all lead-bearing plumbing must occur on a schedule established by the State, not to exceed one year.

■ 17. Amend § 141.153 by revising paragraph (d)(4)(vi) to read as follows:

§ 141.153 Content of the reports

* * * * *

(d) * * *

(4) * * *

(vi) For lead and copper: The 90th percentile concentration of the most recent round of sampling, the number of sampling sites exceeding the action level, and the range of tap sampling results;

* * * * *

■ 18. Amend § 141.154 to revise paragraph (d)(1) to read as follows:

§ 141.154 Required additional health information.

* * * * *

(d) * * *

(1) A short informational statement about lead in drinking water and its effects on children. The statement must include the following information:

If present, lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. [NAME OF UTILITY] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. You share the responsibility for protecting yourself and your family from the lead in your home plumbing. You can take responsibility by identifying and removing lead materials within your home plumbing and taking steps to reduce your family's risk. Before drinking, flush your pipes for several minutes by running your tap, taking a shower, doing laundry or a load of dishes. You can also use a filter certified to remove lead from drinking water. If you are concerned about lead in your water you may wish to have your water tested, contact [NAME OF UTILITY and CONTACT INFORMATION]. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available at *http://www.epa.gov/safewater/lead.*

* * * * *

■ 19. Amend Appendix A to Subpart O of Part 141 by revising the entry for lead to read as follows:

APPENDIX A TO SUBPART O OF PART 141—REGULATED CONTAMINANTS

Contaminant	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
*	*	*	*	*	*	*
Lead	AL = .015	1000	AL = 15	0	Corrosion of household plumbing systems, Erosion of natural deposits.	*Exposure to lead can cause serious health effects in all age groups. Infants and children who drink water containing lead could have decreases in IQ and attention span and increases in learning and behavior problems. Lead exposure among women who are pregnant increases prenatal risks. Lead exposure among women who later become pregnant has similar risks if lead stored in the mother's bones is released during pregnancy. Recent science suggests that adults who drink water containing lead have increased risks of heart disease, high blood pressure, kidney or nervous system problems.*
*	*	*	*	*	*	*

■ 20. Amend § 141.201 by:
■ a. Adding entry (a)(3)(vi) in Table 1 to § 141.201; and
■ b. Revising paragraph (c)(3).

The additions read as follows.

§ 141.201 General public notification requirements.

* * * * *

(a) * * *

TABLE 1 TO § 141.201—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE

(3) Special public notices:						
*	*	*	*	*	*	*
(vi) Exceedance of the lead action level.						

* * * * *

(c) * * *

(3) A copy of the notice must also be sent to the primacy agency and the Administrator (as applicable) in accordance with the requirements of § 141.31(d).

■ 21. In § 141.202 amend paragraph (a) by adding entry (10) in Table 1 to § 141.202, to read as follows:

§ 141.202 Tier 1 Public Notice—Form, manner and frequency of notice.

(a) * * *

TABLE 1 TO § 141.202—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

*	*	*	*	*	*	*
(10) Exceedance of the Action Level for lead as specified in § 141.80(c).						

* * * * *

■ 22. Amend Appendix A to subpart Q by adding an entry for Violations of National Primary Drinking Water Regulations (NPDWR) under ''C. Lead and Copper Rule'' to read as follows:

APPENDIX A TO SUBPART Q OF PART 141—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
*	*	*	*	*
C. Lead and Copper Rule (Action Level for lead is 0.015 mg/L, for copper is 1.3 mg/L)				
*	*	*	*	*
2. Exceedance of the Action Level for lead	1	141.80(c)		

APPENDIX A TO SUBPART Q OF PART 141—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]—Continued

Contaminant	MCL/MRDL/TT violations [2]		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
* * *	*	*	*	*

[1] Violations and other situations not listed in the table (*e.g.,* failure to prepare Consumer Confidence Reports), do not require notice unless determined by the primacy agency. Primacy agencies may, at their options, also require a more stringent public notice tier (*e.g.,* Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).
[2] MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique.

* * * * *

■ 23. Amend Appendix B to subpart Q by revising the entry for contaminant ''23. Lead'' to read as follows:

APPENDIX B TO SUBPART Q OF PART 141—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
*	*	*	* * * *
D. Lead and Copper Rule			
23. Lead	zero	TT [13]	Exposure to lead can cause serious health effects in all age groups. Infants and children who drink water containing lead could have decreases in IQ and attention span and increases in learning and behavior problems. Lead exposure among women who are pregnant increases prenatal risks. Lead exposure among women who later become pregnant has similar risks if lead stored in the mother's bones is released during pregnancy. Recent science suggests that adults who drink water containing lead have increased risks of heart disease, high blood pressure, kidney and nervous system problems.
*	*	*	* * * *

[1] MCLG—Maximum contaminant level goal.
[2] MCL—Maximum contaminant level.
* * * * * * *
[13] Action Level = 0.015 mg/L.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 24. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 25. Amend § 142.14 by revising paragraphs (d)(8)(iii) and (d)(8)(vii) and adding paragraphs (d)(8)(xviii) through (xx) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(d) * * *

(8) * * *

(iii) Section 141.82(d)—designations of optimal corrosion control treatment and any simultaneous compliance considerations that factored into the designation;

* * * * *

(viii) Section 141.84(e)—determinations of lead service line replacement goal rate as well as mandatory full lead service line service line replacement rates below 3 percent;

* * * * *

(xviii) Section 141.88—evaluation of water system source water or treatment changes;

(xix) Section 141.93—identification of small water systems and non-transient non-community water systems utilizing the compliance alternatives, and the compliance alternative selected by the water system and the compliance option approved by the State;

(xx) Section 141.84(a)—completed lead service line inventories and annual updates to inventories.

* * * * *

■ 26. Amend § 142.15 by:

■ a. Revising paragraphs (b)(4)(i), (b)(4)(i)(A), (b)(4)(ii), and (b)(4)(ii)(A) through (E) to read as follows; and removing paragraph (b)(4)(iii).

§ 142.15 Reports by States.

* * * * *

(b) * * *

(4) * * *

(i) States shall report the name and PWS identification number:

(A) Each public water system which exceeded the lead and copper action levels and the date upon which the exceedance occurred;

* * * * *

(ii) States shall report the PWS identification number of each public water system identified in paragraphs (c)(4)(iii)(A) through (F) of this section.

(A) For each public water system, regardless of size, all 90th percentile lead levels calculated during each monitoring period specified in § 141.86 of this chapter, and the first and last day of the monitoring period for which the 90th percentile lead level was calculated;

(B) For each public water system (regardless of size), the 90th percentile copper level calculated during each monitoring period in which the system exceeds the copper action level, and the first and last day of each monitoring period in which an exceedance occurred;

(C) For each public water system for which the State has designated optimal water quality parameters under § 141.82(f) of this chapter, or which the State has deemed to have optimized corrosion control under § 141.81(b)(1) or (b)(3) of this chapter, the date of the determination and the paragraph(s) under which the State made its determination, the corrosion control treatment status of the water system, and the water system's optimal water quality parameters;

(D) For each public water system, the number of lead service lines in its distribution system, including service lines of unknown material;

(E) For each public water system required to begin replacing lead service lines after a lead trigger level or action level exceedance, as specified in § 141.84 of this chapter and the date each system must begin replacement; and

* * * * *

■ 27. Amend § 142.16 by:

■ a. Adding paragraphs (d)(5) through (9); and

■ b. Revising paragraph (o)(2)(i)(B).

The additions and revision to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(d) * * *

(5) Section 141.84—Establishing lead service line replacement goal rates.

(6) Section 141.84—Designating acceptable methods for determining service line material for the lead service line inventory.

(7) Section 141.92—Defining a school or childcare facility and determining any existing State testing program is at least as stringent as the Federal requirements.

(8) Section 141.82—Verifying compliance with ''find-and-fix'' requirements.

(9) Section 141.88—Reviewing any change in source water or treatment and how this change may impact other National Primary Drinking Water Regulations.

* * * * *

(o)(2)(i)(B) Treatment, including corrosion control treatment and water quality parameters as applicable,

* * * * *

■ 28. Amend § 142.19 redesignating paragraphs (b) through (f) as paragraphs (c) through (g) and adding a new paragraph (b) to read as follows:

§ 142.19 EPA review of State implementation of national primary drinking water regulations for lead and copper.

* * * * *

(b) Pursuant to the procedures in this section, the Regional Administrator may review state determinations establishing a goal lead service line replacement rate and may issue an order establishing federal goal rate requirements for a public water system pursuant to § 141.84(b) where the Regional Administrator finds that an alternative goal lead service line replacement rate is feasible.

* * * * *

[FR Doc. 2019–22705 Filed 11–12–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 219 November 13, 2019

Part III

Department of Treasury

Office of the Comptroller of the Currency

12 CFR Parts 1, 3, 5, 6, et al.

Federal Reserve System

12 CFR Parts 206, 208, 211, 215, et al.

Federal Deposit Insurance Corporation

12 CFR Parts 303, 324, 337, 347, et al.

Regulatory Capital Rules; Final Rules

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 3, 5, 6, 23, 24, 32, 34, 160, and 192

[Docket ID OCC–2018–0040]

RIN 1557–AE59

FEDERAL RESERVE SYSTEM

12 CFR Parts 206, 208, 211, 215, 217, 223, 225, 238, and 251

[Regulation Q; Docket No. R–1638]

RIN 7100–AF 29

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 324, 337, 347, 362, 365, and 390

RIN 3064–AE91

Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule that provides for a simple measure of capital adequacy for certain community banking organizations, consistent with section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (final rule). Under the final rule, depository institutions and depository institution holding companies that have less than $10 billion in total consolidated assets and meet other qualifying criteria, including a leverage ratio (equal to tier 1 capital divided by average total consolidated assets) of greater than 9 percent, will be eligible to opt into the community bank leverage ratio framework (qualifying community banking organizations). Qualifying community banking organizations that elect to use the community bank leverage ratio framework and that maintain a leverage ratio of greater than 9 percent will be considered to have satisfied the generally applicable risk-based and leverage capital requirements in the agencies' capital rules (generally applicable rule) and, if applicable, will be considered to have met the well-capitalized ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act. The final rule includes a two-quarter grace period during which a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the greater than 9 percent leverage ratio requirement, generally would still be deemed well-capitalized so long as the banking organization maintains a leverage ratio greater than 8 percent. At the end of the grace period, the banking organization must meet all qualifying criteria to remain in the community bank leverage ratio framework or otherwise must comply with and report under the generally applicable rule. Similarly, a banking organization that fails to maintain a leverage ratio greater than 8 percent would not be permitted to use the grace period and must comply with the capital rule's generally applicable requirements and file the appropriate regulatory reports.

DATES: The final rule is effective on January 1, 2020.

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I. Introduction

A. Background

On February 8, 2019, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) published a notice of proposed rulemaking (the proposed rule or proposal) [1] to implement section 201 of the Economic Growth, Regulatory Relief, and

[1] 84 FR 3062 (February 8, 2019).

Consumer Protection Act (Act), and proposed to establish a community bank leverage ratio for qualifying community banking organizations as a simple alternative methodology to measure capital adequacy. The proposal was intended to simplify regulatory capital requirements and provide material regulatory compliance burden relief to qualifying community banking organizations that opt into the community bank leverage ratio framework.

Section 201 of the Act directs the agencies to develop a community bank leverage ratio for qualifying community banking organizations of not less than 8 percent and not more than 10 percent. The Act provides that a qualifying community banking organization is a depository institution or depository institution holding company with total consolidated assets of less than $10 billion that satisfies such other factors, based on its risk profile, that the agencies determine are appropriate. Pursuant to section 201, a qualifying community banking organization that exceeds the community bank leverage ratio level established by the agencies shall be considered to have met: (i) The generally applicable risk-based and leverage capital requirements in the agencies' capital rules (generally applicable rule); (ii) the capital ratio requirements in order to be considered well capitalized under the agencies' prompt corrective action (PCA) framework (in the case of insured depository institutions); and (iii) any other applicable capital or leverage requirements. In addition, the Act directs the agencies to establish procedures for the treatment of qualifying community banking organizations that fall below the community bank leverage ratio level established by the agencies.[2]

Section 201 of the Act defines the community bank leverage ratio as the ratio of a qualifying community banking organization's tangible equity capital to its average total consolidated assets, both as reported on the qualifying community banking organization's applicable regulatory filing. In addition, the Act states that the agencies may determine that a banking organization is not a qualifying community banking organization based on the banking organization's risk profile. This determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and such other factors as the agencies determine appropriate. The Act also specifies that the community bank leverage ratio framework does not limit the agencies' authority in effect as of the date of enactment of the Act.

The Act directs the agencies to consult with applicable state bank supervisors in carrying out section 201 of the Act and to notify the applicable state bank supervisor of any qualifying community banking organization that exceeds, or does not exceed after previously exceeding, the community bank leverage ratio. As part of this consultation process, the agencies had a series of discussions with state bank supervisors, before and after publication of the proposal, that helped shape key elements of the community bank leverage ratio framework in the final rule.

In response to the proposal, the agencies received approximately 50 public comment letters and approximately 500 form letters from depository institutions, depository institution holding companies, trade associations, and other interested parties. Commenters generally supported the agencies' efforts to simplify the regulatory capital requirements. However, as discussed in greater detail below, many commenters indicated that certain aspects of the proposal were burdensome or unnecessarily complex, and some commenters expressed concern that banking supervisors would make the proposed community bank leverage ratio the de facto minimum capital requirement for community banking organizations, irrespective of whether they have opted into the community bank leverage ratio framework. Commenters generally favored greater simplicity in the community bank leverage ratio framework, and recommended the removal of the proposal's separate PCA proxy levels. After reviewing the comments, the agencies are making several modifications to address commenters' concerns and further simplify the community bank leverage ratio framework while retaining the quality and quantity of regulatory capital in the banking system.

B. Summary of the Final Rule

In response to comments received on the proposal, the agencies are making a number of changes in this final rule. In addition, the final rule clarifies other important aspects of the community bank leverage ratio framework. The key changes being made to the final rule include the following:

- Adoption of tier 1 capital, and therefore the existing leverage ratio, into the community bank leverage ratio framework;
- Removal of the qualifying criteria for mortgage servicing assets and deferred tax assets arising from temporary differences;
- Removal of the PCA proxy levels; and
- Allowing a banking organization that elects to use the community bank leverage ratio framework to be considered well-capitalized during the two-quarter grace period if its leverage ratio is 9 percent or less and greater than 8 percent.

Under the final rule, the numerator of the community bank leverage ratio is the existing measure of tier 1 capital used by non-advanced approaches banking organizations.[3] [4] Numerous commenters described complexities that would be created with the proposed introduction of a new measure of capital, tangible equity, in the community bank leverage ratio framework and, therefore, the agencies have adopted the commenters' recommendation to use tier 1 capital. The use of tier 1 capital also has the benefit of including the existing threshold deduction approaches for mortgage servicing assets (MSAs) and deferred tax assets arising from temporary differences (temporary difference DTAs) which enabled the agencies to remove the qualifying criteria related to these exposures from the community bank leverage ratio framework. Due to the adoption of tier 1 capital, the community bank leverage ratio is generally calculated in the same

[2] The agencies note that, under existing PCA requirements applicable to insured depository institutions, to be considered ''well capitalized'' a banking organization must demonstrate that it is not subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. *See* 12 CFR 6.4(b)(1)(iv) (OCC); 12 CFR 208.43(b)(1)(v) (Board); 12 CFR 324.403(b)(1)(v) (FDIC). The same legal requirements would continue to apply under the community bank leverage ratio framework.

[3] Under the final rule, a qualifying community banking organization that elects to use the community bank leverage ratio framework will calculate its leverage ratio taking into account the modifications made in relation to the capital simplifications rule and current expected credit losses methodology (CECL) transitions final rule. *See* 84 FR 35234 (July 22, 2019) and 84 FR 4222 (February 14, 2019), respectively. The agencies anticipate that the tier 1 capital amount used in the numerator of the calculation will reflect any future modifications made to the tier 1 capital definition applicable to non-advanced approaches banking organizations. *See* 84 FR 35234 (July 22, 2019).

[4] For purposes of the community bank leverage ratio framework, an electing banking organization is not required to calculate tier 2 capital and therefore would not be required to make any deductions that would be taken from tier 2 capital or potentially tier 1 capital due to insufficient tier 2 capital. As part of the final rule the agencies are amending 12 CFR 3.22(f) (OCC); 12 CFR 217.22(f) (Board); 12 CFR 324.22(f) (FDIC).

manner as the generally applicable rule's leverage ratio: Tier 1 capital divided by average total consolidated assets minus amounts deducted from tier 1 capital. As a result, the final rule incorporates and refers to the generally applicable rule's leverage ratio.

Commenters also raised concerns that the PCA proxy levels included in the proposal caused unnecessary complexity in the community bank leverage ratio framework and requested that the framework include a grace period to transition back to the generally applicable rule if a banking organization's community bank leverage ratio was less than the well-capitalized threshold. The agencies are incorporating this feedback into the final rule by modifying the definition of a ''qualifying community banking organization'' to include the level of the leverage ratio as a qualifying criterion.

The final rule provides that to be a ''qualifying community banking organization,'' a banking organization must not be an advanced approaches banking organization [5] and must meet the following qualifying criteria: (i) A leverage ratio of greater than 9 percent; (ii) total consolidated assets of less than $10 billion; (iii) total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets; and (iv) the sum of total trading assets and trading liabilities of 5 percent or less of total consolidated assets. Consistent with section 201, the final rule provides that qualifying community banking organizations that opt into the community bank leverage ratio framework (electing banking organization) will be deemed to have met the ''well capitalized'' ratio requirements and be in compliance with the generally applicable rule. Such banking organizations will not be required to calculate and report risk-based capital ratios.

Notably, the agencies have retained the proposal's 9 percent calibration for the leverage ratio in the community bank leverage ratio framework. The agencies believe that a 9 percent calibration, in conjunction with the final rule's qualifying criteria, will not result in a reduction in the aggregate level of regulatory capital currently held by electing banking organizations. Further, incorporating into the community bank leverage ratio framework the existing leverage ratio and the two-quarter grace period will facilitate the transition to and from the generally applicable rule. Banking organizations opt into and out of the framework through their Consolidated Reports of Condition and Income (Call Report) or Form FR–Y9C.

If a qualifying community banking organization that has opted into the community bank leverage ratio framework subsequently fails to satisfy one or more of the qualifying criteria but continues to report a leverage ratio of greater than 8 percent, the banking organization could continue to use the community bank leverage ratio framework and be deemed to meet the ''well capitalized'' capital ratio requirements for a grace period of up to two quarters.[6] As long as the banking organization is able to return to compliance with all the qualifying criteria within two quarters, it will continue to be deemed to meet the ''well capitalized'' ratio requirements and be in compliance with the generally applicable rule. A banking organization will be required to comply with the generally applicable rule and file the relevant regulatory reports if the banking organization (i) is unable to restore compliance with all qualifying criteria during the two-quarter grace period (including coming into compliance with the greater than 9 percent leverage ratio requirement), (ii) reports a leverage ratio of 8 percent or less, or (iii) ceases to satisfy the qualifying criteria due to consummation of a merger transaction.

The agencies believe that the final rule provides a simple framework that simultaneously meets safety and soundness goals and responds to the concerns conveyed through comments received on the proposal. Additionally, the final rule meets the policy objectives described in the proposal. First, the community bank leverage ratio framework is available to a meaningful number of well-capitalized banking organizations with less than $10 billion in total consolidated assets. Second, the community bank leverage ratio requirement is calibrated to maintain the overall amount of capital currently held by qualifying community banking organizations. Third, banking organizations with higher risk profiles remain subject to the generally applicable rule to ensure that such banking organizations hold capital commensurate with the risk of their exposures and activities.[7] Fourth, the agencies maintain the authority to take supervisory action under the PCA framework and other statutes and regulations based on a banking organization's capital ratios and risk profile. The final rule also provides regulatory compliance burden relief as the community bank leverage ratio is simple to apply and allows a qualifying community banking organization to avoid the burden of calculating and reporting risk-based capital ratios under the generally applicable rule.

II. Proposed Rule

A. Proposed Community Bank Leverage Ratio Framework

The agencies proposed the community bank leverage ratio framework as a simple alternative methodology to measure capital adequacy for qualifying community banking organizations, based on the requirements of section 201 of the Act. Under the proposal, a qualifying community banking organization would have been defined as a depository institution or depository institution holding company that was not an advanced approaches banking organization and that met the following criteria (qualifying criteria), each as described further below:

- Total consolidated assets of less than $10 billion;
- Total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets;
- Total trading assets plus trading liabilities of 5 percent or less of total consolidated assets;
- MSAs of 25 percent or less of tangible equity (as defined in the proposal); and
- Temporary difference DTAs of 25 percent or less of tangible equity.

Under the proposal, the community bank leverage ratio would have been calculated as the ratio of tangible equity to average total consolidated assets. Tangible equity would have been defined as total bank equity capital or total holding company equity capital, as applicable, prior to including minority interests, and excluding accumulated other comprehensive income (AOCI),

[5] An advanced approaches banking organization is generally defined as a firm with at least $250 billion in total consolidated assets or at least $10 billion in total on-balance sheet foreign exposure, and depository institution subsidiaries of those firms. Proposed rulemakings to tailor capital and liquidity requirements applicable to large banking organizations may result in changing the definition of advanced approaches banking organization. *See* 83 FR 66024 (December 21, 2018) and 84 FR 24296 (May 24, 2019).

[6] As a result of adopting the grace period construct, the final rule does not include the agencies' proposed PCA proxy levels, which would have allowed certain banking organizations that fell to a leverage ratio of 9 percent or lower to remain in the community bank leverage ratio framework indefinitely.

[7] 12 CFR 3.10(a)–(b) (OCC); 12 CFR 217.10(a)–(b) (Board); 12 CFR 324.10(a)–(b) (FDIC).

deferred tax assets arising from net operating loss and tax credit carry forwards, goodwill, and other intangible assets (other than MSAs), each as of the most recent calendar quarter and calculated in accordance with a qualifying community banking organization's regulatory reports. Average total consolidated assets would have been calculated in a manner similar to the generally applicable rule's leverage ratio denominator in that amounts deducted from the numerator would also have been excluded from the denominator. Under the proposal, a qualifying community banking organization could have elected to use the community bank leverage ratio framework if its community bank leverage ratio was greater than 9 percent.

The proposal would have permitted an electing banking organization to remain in the community bank leverage ratio framework even in cases where such an institution's community bank leverage ratio subsequently fell to 9 percent or less. In this situation, the proposal would have continued to provide for the agencies' supervisory actions under PCA and other applicable statutes and regulations. Specifically, for insured depository institutions, the proposal would have incorporated community bank leverage ratio levels as proxies for the following PCA categories: Adequately capitalized, undercapitalized and significantly undercapitalized. If an electing banking organization had met certain community bank leverage ratio levels, it would have been considered to have met the capital ratio requirements within the applicable corresponding PCA category and been subject to the same restrictions that currently apply to any other insured depository institution in the same PCA category.

After issuing the proposal, the agencies proposed a regulatory capital schedule that would have been simpler than Schedules RC–R of the Call Report and HC–R of Form FR Y–9C for use by electing banking organizations. On this proposed reporting schedule, the community bank leverage ratio calculation would have required a banking organization to report significantly less information than under the generally applicable rule.

B. Summary of Comments

Collectively, the agencies received approximately 50 public comment letters and approximately 500 form letters on the proposal from depository institutions, depository institution holding companies, trade associations, and other interested parties. As further detailed in the more comprehensive discussion of the final rule, commenters generally supported the agencies' efforts to propose a simpler regulatory capital framework but expressed concerns with some aspects of the proposal.

Several commenters expressed concern that calibrating the community bank leverage ratio at 9 percent is unnecessarily punitive and would disqualify too many banking organizations from being able to use the community bank leverage ratio framework. These commenters favored calibrating the community bank leverage ratio at 8 percent. One commenter suggested calibrating the community bank leverage ratio at 10 percent, the highest permitted by statute, because higher leverage ratios may lower the adverse effects of crises on U.S. GDP, which exceeds the costs that may arise from lower capital formation and lower GDP.

Many commenters also expressed concern that the proposed PCA proxy levels would have added unnecessary complexity to the community bank leverage ratio framework, and therefore recommended their elimination in the final rule. Some commenters expressed concern that the agencies would not permit an insured depository institution with a community bank leverage ratio at or below 9 percent to demonstrate that it is well capitalized under the generally applicable rule before assigning it a PCA category other than well capitalized. Other commenters indicated that some of the qualifying criteria were unnecessary (such as that for MSAs), overly complex to calculate (such as the off-balance sheet exposures criterion), or did not appropriately reflect the risks of underlying assets.

Multiple commenters suggested that the proposed numerator of the community bank leverage ratio should be based on tier 1 capital, as defined under the generally applicable rule, rather than on a new ''tangible equity'' measure. Commenters expressed concern that examiners may penalize banking organizations for opting into or out of the framework, and that the community bank leverage ratio could become the de facto minimum capital requirement for all community banking organizations.

III. Final Rule

A. Qualifying Criteria for the Community Bank Leverage Ratio Framework

The agencies received comments requesting that they eliminate or modify certain of the qualifying criteria in the proposal, particularly the MSA and the temporary difference DTA criteria. Many of these commenters also suggested using tier 1 capital, as recently modified by the agencies in a final rule (simplifications rule),[8] as the numerator of the leverage ratio. Several commenters noted that some of the qualifying criteria, such as the proposed limit for MSAs, could prevent many otherwise qualifying community banking organizations from opting into the community bank leverage ratio framework. Finally, some commenters suggested that the off-balance sheet criterion, as proposed, would be overly burdensome for community banking organizations to calculate and that certain elements included in this criterion should be eliminated as they do not represent material risk to banking organizations.

After considering the comments, the agencies have decided to modify the definition of ''qualifying community banking organization'' by removing the MSA criterion and the temporary difference DTA criterion. Exposures to MSAs and temporary difference DTAs will be addressed through the use of tier 1 capital as the numerator, which requires deduction of such assets to the extent they exceed certain regulatory thresholds, rather than the proposed use of ''tangible equity.'' The use of tier 1 capital as the numerator is discussed in more detail below in this **SUPPLEMENTARY INFORMATION**. Under the final rule, a qualifying banking organization must not be an advanced approaches banking organization and must have:

- A leverage ratio of greater than 9 percent;
- Total consolidated assets of less than $10 billion;
- Total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets, and
- Total trading assets plus trading liabilities of 5 percent or less of total consolidated assets.[9]

[8] *See* 84 FR 35243 (July 22, 2019). The agencies also are adopting a final rule that permits banking organizations not subject to the advanced approaches capital rule to implement the simplifications rule in the quarter beginning January 1, 2020, or wait until the quarter beginning April 1, 2020.

[9] Consistent with the proposal, the agencies have reserved the authority to disallow the use of the community bank leverage ratio framework by a depository institution or depository institution holding company, based on the risk profile of the banking organization. This authority is reserved under the general reservation of authority included in the capital rule, in which the community bank leverage ratio framework would be codified. *See* 12 CFR 3.1(d) (OCC); 12 CFR 217.1(d) (Board); 12 CFR

Continued

1. Leverage Ratio of Greater Than 9 Percent

Under the proposal, a banking organization would have been required to have a community bank leverage ratio of greater than 9 percent in order to be eligible to opt into the community bank leverage ratio framework. The final rule adopts the 9 percent calibration of the community bank leverage ratio as proposed. The proposal also would have allowed an electing banking organization to remain in the community bank leverage ratio framework despite having a community bank leverage ratio which subsequently fell to 9 percent or less. As discussed above, the final rule eliminates the PCA proxy levels and, therefore, an electing banking organization will generally be required to maintain a leverage ratio of greater than 9 percent in order to be eligible to use the community bank leverage ratio framework. A two-quarter grace period, as discussed in further detail below, is available for a banking organization that ceases to meet any of the qualifying criteria, including a banking organization whose leverage ratio falls to 9 percent or less, but is greater than 8 percent. During the grace period, a banking organization may continue to be treated as a qualifying community banking organization and is presumed to satisfy the ''well capitalized'' ratio requirements and be in compliance with the generally applicable rule without having to calculate and report risk-based capital ratios.

2. Total Consolidated Assets

Under the proposal, a qualifying community banking organization would be required to have less than $10 billion in total consolidated assets as of the end of the most recent calendar quarter, in accordance with the Act. Total consolidated assets would be calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable.

A commenter indicated that the Act places no limit on the ability of the agencies to apply the community bank leverage ratio framework to institutions with $10 billion or more in total assets and suggested that the agencies should apply the community bank leverage ratio framework based on suitability for relief rather than on size thresholds. The same commenter urged the agencies to take into account acquisitions and to index applicability to incorporate inflation or other relevant market measures.

The agencies have considered the concerns raised with regard to the asset size threshold. The agencies continue to believe that the community bank leverage ratio framework is appropriate for most banking organizations with total consolidated assets of less than $10 billion that meet the other qualifying criteria. The agencies believe that the generally applicable rule is appropriate for larger banking organizations and banking organizations with concentrations in off-balance sheet exposures and trading assets and liabilities because such banking organizations may present risks that are not appropriately captured by the community bank leverage ratio framework. The agencies recently finalized a rule to simplify the generally applicable rule, and have proposed to modify and tailor several of the prudential requirements applicable to banking organizations with $100 billion or more in total consolidated assets.[10] [11] The agencies believe these revisions reflect an appropriate tailoring of regulations based on asset size and other risk characteristics to ensure that the requirements remain appropriate for the risk profiles of different banking organizations while also maintaining the safety and soundness of the banking industry. As such, the agencies are finalizing without modification the $10 billion in total assets size threshold.

3. Total Off-Balance Sheet Exposures

Under the proposal, a qualifying community banking organization would have been required to have total off-balance sheet exposures of 25 percent or less of its total consolidated assets, as of the end of the most recent calendar quarter. The agencies included this qualifying criterion in the community bank leverage ratio framework because the proposed community bank leverage ratio included only on-balance sheet assets in its denominator and thus would not have required a qualifying community banking organization to hold capital against its off-balance sheet exposures. This qualifying criterion was intended to reduce the likelihood that a qualifying community banking organization with significant off-balance sheet exposures would hold less capital under the community bank leverage ratio framework than under the generally applicable rule.

Under the proposal, total off-balance sheet exposures would have been calculated as the sum of the notional amounts of certain off-balance sheet items against which banking organizations would hold capital under the generally applicable rule[12] as of the end of the most recent calendar quarter. Total off-balance sheet exposures would have included:

a. The unused portions of commitments (except for unconditionally cancellable commitments);

b. Self-liquidating, trade-related contingent items that arise from the movement of goods;

c. Transaction-related contingent items (*i.e.,* performance bonds, bid bonds and warranties);

d. Sold credit protection in the form of guarantees and credit derivatives;

e. Credit-enhancing representations and warranties;

f. Off-balance sheet securitization exposures;

g. Letters of credit;

h. Forward agreements that are not derivative contracts; and

i. Securities lending and borrowing transactions.

Total off-balance sheet exposures would have excluded the notional amount for all derivative contracts except credit derivatives for sold credit protection. As stated in the proposal, the agencies believe that the notional amount for derivatives (other than credit derivatives for sold credit protection) is not an appropriate indicator of credit risk and could inadvertently disqualify a banking organization from using the community bank leverage ratio framework if the banking organization is otherwise appropriately using derivatives to hedge its risks. The proposed components of total off-balance sheet exposures would have been generally consistent with off-balance sheet items that are included in risk-weighted assets in the generally applicable rule, except for securities lending and borrowing transactions. Securities lending and borrowing transactions would have been assigned amounts in accordance with the reporting instructions for these items in Schedules RC–L of the Call Report or HC–L of Form FR Y–9C, as applicable. The proposed calculation of total off-balance sheet exposures would have been simpler than under the generally applicable rule, which requires that off-balance sheet exposures be converted to

324.1(d) (FDIC). In addition, for purposes of the capital rule and section 201 of the Act, the agencies have reserved the authority to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation. *See* 12 CFR 3.1(b) (OCC); 12 CFR 217.1(b) (Board); 12 CFR 324.1(b) (FDIC).

[10] *See* 84 FR 35243 (July 22, 2019).

[11] *See* 83 FR 66024 (December 21, 2018) and 84 FR 24296 (May 24, 2019).

[12] *See* 12 CFR 324.33 (FDIC); 12 CFR 217.33 (Federal Reserve); 12 CFR 3.33 (OCC).

on-balance sheet equivalents for purposes of determining capital requirements.

The agencies received several comments and requests for clarification on the proposed limit for off-balance sheet exposures. One commenter expressed concern that the process for categorizing off-balance sheet exposures, such as off-balance sheet securitizations, was overly complex, and the commenter would prefer that the off-balance sheet filter instead identify specific transactions and products routinely used by community banks that meet the off-balance sheet exposure definition. Another commenter found the wording in the proposed rule unclear and noted that it would be beneficial for the agencies to reference the specific Schedule RC–L line items that would be included in the 25 percent limitation for off-balance sheet line items.

Several commenters expressed concern about the inclusion of residential mortgage-related off-balance sheet items. One commenter wrote that the agencies should not exclude banking organizations from using the community bank leverage ratio framework due to any mortgage origination-related hedging activity. The commenter expressed concern that as proposed the criterion may capture certain exposures related to routine functioning of the mortgage market. Another commenter noted that mortgage sales to certain Federal Home Loan Banks (FHLBs) through the Mortgage Partnership Finance Program could be captured by the off-balance sheet qualifying criteria. A commenter suggested that FHLB advances should be eliminated from the calculation because such advances are typically secured at a significant discount relative to underlying loan collateral. The commenter was concerned that a banking organization may be disqualified from the community bank leverage ratio framework due to its level of unfunded commitments and FHLB lines of credit.

Finally, one commenter requested clarification on whether sales of when-issued mortgage-backed security contracts are included in the 25 percent limitation, stating that these items should be excluded because, in the commenter's view, they are of lower risk.

The agencies considered the commenters' concerns and have decided to finalize the off-balance sheet qualifying criterion as proposed with several clarifications. The agencies are clarifying that the off-balance sheet qualifying criterion incorporates off-balance sheet exposures currently required to be captured and reported by banking organizations in Schedules RC–L and RC–R of the Call Report or HC–L and HC–R of Form FR Y–9C which thereby permits these firms to leverage their existing identification, measurement and reporting infrastructure for these exposures. The agencies also are clarifying that banking organizations are only required to identify off-balance sheet securitizations to the extent that they are not already captured as part of another off-balance sheet exposure category. For example, if a banking organization issues a credit enhancing representation and warranty that also meets the definition of a traditional securitization, the final rule does not require that such an exposure be separately identified as an off-balance sheet securitization exposure because the exposure would already be captured through the requirement to include credit enhancing representations and warranties in the off-balance sheet qualifying criterion.

The agencies also are clarifying that hedging techniques related to mortgage banking activities are generally only captured in the off-balance sheet qualifying criterion to the extent such exposures are treated as off-balance sheet exposures and subject to credit conversion factors under the generally applicable rule. For this reason, typical mortgage banking activities such as forward loan delivery commitments between banking organizations and investors, which typically are derivative contracts, were excluded from the off-balance sheet exposure criterion in the proposal and are excluded under the final rule. Put and call options on mortgage-backed securities are also typically derivatives and excluded from this criterion under the final rule. A contractual obligation for the future purchase of a ''to be announced'' (*i.e.,* when-issued) mortgage securities contract, that does not meet the definition of a derivative contract under the generally applicable rule, would be captured in the off-balance sheet qualifying criterion as it would be considered a forward agreement under the generally applicable rule. In contrast, a contractual obligation for the future sale (rather than purchase) of a ''to be announced'' mortgage securities contract, that does not meet the definition of a derivative contract under the generally applicable rule, would not be captured in the off-balance sheet qualifying criterion as it would not be considered a forward agreement under the generally applicable rule.

Banking organizations that sell mortgages to certain FHLBs through the Mortgage Partnership Finance Program may provide a credit enhancement to the FHLB. If these credit enhancements meet the definition of a credit-enhancing representation and warranty or would otherwise be considered an off-balance sheet securitization under the generally applicable rule, then the exposure amount would be included in the off-balance sheet qualifying criterion. Because these are credit risk exposures that would be assigned risk-based capital under the generally applicable rule, inclusion in the off-balance sheet qualifying criterion is appropriate.

The agencies analyzed average off-balance sheet exposures for banking organizations with less than $10 billion in total consolidated assets and observed that the vast majority of such banking organizations report off-balance sheet exposures totaling less than 25 percent of total consolidated assets, as of March 31, 2019. Accordingly, the agencies have determined that both the definition and calibration of the total off-balance sheet exposures qualifying criterion should allow a meaningful number of banking organizations to use the community bank leverage ratio framework without unduly restricting lending practices. The criterion should help to prevent banking organizations from engaging in substantial off-balance sheet activity without a commensurate capital requirement.

4. Total Trading Assets and Trading Liabilities

Under the proposal, a qualifying community banking organization would have been required to have total trading assets and trading liabilities of 5 percent or less of its total consolidated assets, each measured as of the end of the most recent calendar quarter. Total trading assets and trading liabilities would have been calculated as the sum of those exposures, in accordance with the reporting instructions for these items on Schedules RC of the Call Report or HC of Form FR–Y–9C, as applicable. A banking organization would divide the sum of its total trading assets and trading liabilities by its total consolidated assets to determine its percentage of total trading assets and trading liabilities.

The agencies recognize the potential elevated levels of risk and complexity that can be associated with certain trading activities. For this reason, banking organizations with significant trading assets and trading liabilities are subject to a market risk capital requirement under the generally

applicable rule.[13] In contrast, electing banking organizations would not be required to calculate additional market risk capital requirements and, as a result, the community bank leverage ratio framework may not appropriately capitalize for material amounts of trading assets and trading liabilities. In addition, elevated levels of trading activity can produce a heightened level of earnings volatility, which has implications for capital adequacy. Therefore, the agencies do not believe it is appropriate to make the community bank leverage ratio framework available to banking organizations with material market risk exposure. However, the agencies do not believe that low levels of trading activity should preclude a banking organization from using the community bank leverage ratio framework.

Based on the agencies' analysis, the vast majority of banking organizations with less than $10 billion in total consolidated assets have total trading assets and trading liabilities well below 5 percent of their total consolidated assets, as of March 31, 2019. The agencies believe that the proposed 5 percent threshold will help ensure that banking organizations that engage in significant trading activity are not subject to the community bank leverage ratio framework. Further, this criterion is generally consistent with section 203 of the Act, which excludes a community banking organization from proprietary trading restrictions if its total trading assets and trading liabilities are 5 percent or less of its total consolidated assets. The agencies did not receive any comment with regard to the proposed qualifying criterion for total trading assets and trading liabilities and are finalizing this requirement as proposed.

5. Advanced Approaches Banking Organizations

Under the proposal, advanced approaches banking organizations would not have been eligible to use the community bank leverage ratio framework. The agencies received no comment on this requirement and believe that, in general, section 201 of the Act is designed to provide regulatory burden relief for banking organizations with less than $10 billion in total consolidated assets and that have a limited risk profile.

A banking organization with less than $10 billion in total consolidated assets may be subject to the advanced approaches rules if it is a subsidiary of a much larger banking organization. While these types of advanced approaches banking organizations may be relatively small banking organizations, the agencies do not believe they share the same type of risk characteristics as non-complex community banking organization for which the community bank leverage ratio framework is appropriate. Consequently, under the final rule, an advanced approaches banking organization will not be eligible to use the community bank leverage ratio framework, regardless of its size.

B. Definitions of the Leverage Ratio's Numerator and Denominator

1. Numerator

Under the proposal, the numerator of the community bank leverage ratio would have been tangible equity, calculated as a banking organization's total bank equity capital or total holding company equity capital, as applicable, determined in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, prior to including minority interests, less: (i) Accumulated other comprehensive income (AOCI), (ii) all intangible assets (other than MSAs), and (iii) DTAs, net of any related valuation allowances, that arise from net operating loss and tax credit carryforwards, each as of the end of the most recent calendar quarter. Tangible equity would not have included minority interests (equity of a consolidated subsidiary that is not owned by the qualifying community banking organization) because minority interests do not have the same loss absorption capacity as other components of tangible equity at the consolidated banking organization level.

The agencies received numerous comments in response to the proposed use of tangible equity as the numerator of the community bank leverage ratio. Many commenters noted that banking organizations are already familiar with the current tier 1 capital calculation, and that tier 1 capital, therefore, should be used to calculate the community bank leverage ratio instead of tangible equity. A commenter also argued that the burden associated with implementing the community bank leverage ratio framework would exceed the reporting relief provided by reduced complexity. Several commenters expressed concerns that it would be too complex for a banking organization to switch between the calculation of tangible equity and tier 1 capital as it either opts into or out of the community bank leverage ratio framework or no longer meets the definition of a qualifying community banking organization. Several commenters recommended the agencies instead use tier 1 capital for the numerator, suggesting that this would not only simplify the calculation when switching between frameworks but would also increase comparability across all banking organizations. Commenters also preferred to use tier 1 capital for the numerator in order to ensure that certain instruments, such as trust preferred securities (TruPS) and common stock issued by bank subsidiaries, would count as regulatory capital under the community bank leverage ratio framework, up to their current limits. Finally, several commenters noted that use of tier 1 capital as the numerator would avoid the need for revisions to state banking laws that reference tier 1 capital, including but not limited to state law lending limits.

Multiple commenters, although not explicitly expressing a preference for using tier 1 capital as the numerator, did request that certain adjustments be made to the proposed definition of tangible equity. A commenter recommended that cumulative preferred stock with a stated final maturity date be included as an eligible component of tangible equity. Several commenters requested that the agencies allow TruPS to count as tangible equity. A commenter recommended that the agencies include common stock minority interest of up to 10 percent of the numerator of the community bank leverage ratio where the subsidiary holds risk-weighted assets of at least the amount of common stock minority interest being included. Finally, some commenters expressed concern that the CECL methodology under U.S. generally accepted accounting principles could impact eligibility for the community bank leverage ratio framework and recommended that the agencies provide for an ongoing adjustment to the community bank leverage ratio numerator that approximates the incremental regulatory capital impact of CECL credit loss allowance levels over levels currently recorded under U.S. generally accepted accounting principles.

Taking into account the concerns of commenters and seeking to balance burden reduction with safety and soundness, the agencies have decided to replace the proposed tangible equity measure with the current calculation of tier 1 capital as the numerator of the community bank leverage ratio. This change would align the final rule's calculation of the leverage ratio with the generally applicable rule's leverage

[13] 12 CFR part 3, subpart F (OCC); 12 CFR part 217, subpart F (Board); 12 CFR part 324, subpart F (FDIC).

ratio, a calculation methodology with which banking organizations are already familiar, and therefore would streamline adoption of the community bank leverage ratio framework. In addition, the use of tier 1 capital in the community bank leverage ratio framework will enhance comparability among banking organizations and remove the need for separate qualifying criteria for MSAs and temporary difference DTAs, as discussed previously. Based on the agencies' analysis, for the majority of banking organizations with less than $10 billion in total consolidated assets, the proposed tangible equity and the current tier 1 capital figures result in nearly the same amount of regulatory capital. Finally, the use of tier 1 capital as the numerator of the leverage ratio allows for the incorporation of changes from the simplifications rule, which further simplifies the tier 1 capital calculation by amending the treatment of MSAs, temporary difference DTAs, investments in capital instruments, and minority interests.[14]

The agencies note that the generally applicable rule requires deductions from tier 2 capital related to investments in capital instruments of unconsolidated financial institutions when such investments exceed certain limits and that such deductions can affect the calculation of tier 1 capital.[15] This corresponding deduction approach requires a banking organization to make deductions from the same component of capital for which the underlying instrument would qualify if it was issued by the banking organization itself. In addition, if a banking organization does not have a sufficient amount of a specific regulatory capital component against which to effect the deduction, the shortfall must be deducted from the next higher (that is, more subordinated) regulatory capital component. Without any revision to the corresponding deduction approach, an electing banking organization with investments in tier 2 capital instruments of other financial institutions could have been required to apply the corresponding deduction approach potentially resulting in deductions from tier 1 capital. Under the final rule, however, since the community bank leverage ratio framework does not have a total capital requirement, an electing banking organization is neither required to calculate tier 2 capital nor make any deductions that would have been taken from tier 2 capital under the generally applicable rule. Therefore, if an electing banking organization has investments in the capital instruments of an unconsolidated financial institution that would qualify as tier 2 capital of the electing banking organization under the generally applicable rule (tier 2 qualifying investments), and the banking organization's total investments in the capital of unconsolidated financial institutions exceed the threshold for deduction, the banking organization is not required to deduct the tier 2 qualifying investments.

An electing banking organization is only required to make a deduction from its common equity tier 1 capital or tier 1 capital if the sum of its investments in the capital of an unconsolidated financial institution is in a form that would qualify as common equity tier 1 capital or tier 1 capital instruments of the electing banking organization and exceeds the threshold for deduction. The agencies do not believe this is a common occurrence and observed that as of March 31, 2019, very few community banking organizations made a deduction from tier 2 capital. Therefore, the agencies believe it is appropriate to clarify this aspect of the tier 1 calculation for qualifying community banking organizations to ensure that it can be made as simply as possible. Further, although the community bank leverage ratio framework will not require qualifying community banking organizations to make deductions from their regulatory capital calculations for investments in tier 2 capital instruments issued by other financial institutions, the agencies will continue to monitor such investments and will address, on a case-by-case basis, any instances where such activity potentially creates an unsafe or unsound practice or condition.

With respect to a banking organization that has not elected the community bank leverage ratio framework but invests in an instrument (*e.g.,* subordinated debt instrument) issued by an electing banking organization that would qualify as tier 2 capital under the generally applicable rule, the investing banking organization would continue to treat the instrument as tier 2 capital notwithstanding the electing banking organization's capital treatment of the instrument.

The agencies believe adoption of tier 1 capital, including the adjustments described above, also addresses commenters' concerns about the inclusion of TruPS,[16] certain other preferred stock instruments, and minority interests includable in the numerator of the leverage ratio calculation by maintaining the same treatment that currently applies under the generally applicable rule's calculation for tier 1 capital for non-advanced approaches banking organizations.

2. Denominator

Under the proposal and consistent with the Act, the community bank leverage ratio denominator would have been based on a banking organization's average total consolidated assets. Specifically, average total consolidated assets for purposes of the denominator would have been calculated in accordance with the reporting instructions to Schedules RC–K on the Call Report or HC–K on Form FR Y–9C, as applicable, less the items deducted from the numerator, other than AOCI. The proposed denominator therefore would have been similar, but not identical, to the denominator of the generally applicable rule's leverage ratio.

The agencies received a limited number of comments on the proposed denominator for the community bank leverage ratio. A commenter suggested the agencies consider seasonality in total assets and allow for the use of four-quarter average total consolidated assets for the denominator. The agencies note that the denominator as proposed would be average total consolidated assets as described above, which would have substantially maintained consistency with the current regulatory capital calculation for average total consolidated assets. Another commenter asked that the agencies consider allowing a deduction from the denominator for pass-through reserve balances held with the Federal Reserve System. The commenter argued that allowing this deduction would refine this calculation for correspondent banking organizations to align more closely their capital requirements to their risk and would, in the commenter's view, not unduly discourage correspondent banking organizations from assisting community banking organization clients with holding proper reserve balances with the Federal Reserve System.

The agencies note that the leverage ratio in the generally applicable rule is

[14] *See* 84 FR 35234 (July 22, 2019).

[15] *See* 12 CFR 3.22(c)(2) (OCC); 12 CFR 217.22(c)(2) (Board); 12 CFR 324.22(c)(2) (FDIC).

[16] Banking organizations that are currently grandfathered and eligible to include TruPS in tier 1 capital can continue to include TruPS in tier 1 capital under the community bank leverage ratio framework, subject to existing limits. *See* 12 CFR 3.20(c)(3) (OCC); 12 CFR 217.20(c)(3) (Board); 12 CFR 324.20(c)(3) (FDIC). *See* 12 CFR 3.22(c)(2)(iii)(A) (OCC); 12 CFR 217.22(c)(2)(iii)(A) (Board); 12 CFR 324.22(c)(2)(iii)(A) (FDIC). *See* 12 CFR 217.300(c) (Board).

designed to be a simple, non-risk-based on-balance sheet measure. Adjusting the leverage ratio denominator as commenters suggested would add unnecessary complexity to the measure. Therefore, the agencies are finalizing the leverage ratio denominator as proposed, except that items deducted from the denominator will align with the deductions from tier 1 capital as the numerator rather than from the proposed tangible equity measure as the numerator.

C. Calibration of the Leverage Ratio in Order To Qualify for the Community Bank Leverage Ratio

The agencies proposed to permit a qualifying community banking organization to elect to use the community bank leverage ratio framework if the organization's community bank leverage ratio was greater than 9 percent at the time of election. A qualifying community banking organization with a community bank leverage ratio greater than 9 percent would have been considered to have met: (i) The requirements of the generally applicable rule; (ii) the well-capitalized capital ratio thresholds under the agencies' PCA framework for insured depository institutions or the well-capitalized standards under the Board's regulations for holding companies, as applicable; and (iii) any other capital or leverage requirements to which the banking organization is subject. Such qualifying community banking organizations would not have been required to calculate capital ratios under the generally applicable rule. Additionally, to have been considered well capitalized under the proposed community bank leverage ratio framework, and consistent with the agencies' PCA framework, a qualifying community banking organization must not have been subject to any written agreement, order, capital directive, or PCA directive to meet and maintain a specific capital level for any capital measure.

In general, commenters stated that the community bank leverage ratio requirement should be lowered to 8 percent, citing the lower end of the range of the requirement under section 201 of the Act. Commenters indicated that such a calibration would more closely track the current well capitalized thresholds under PCA and would allow more banking organizations to be eligible to use the community bank leverage ratio framework. Several commenters wrote that the proposed community bank leverage ratio requirement and qualifying criteria were excessively conservative, particularly combined with the assumption that the adoption of CECL would, in the commenters' view, reduce firms' regulatory capital levels. A commenter suggested a banking organization should have the option to phase in the impact of the day-one CECL adjustment recorded in retained earnings over a five year period when it elects to use the community bank leverage ratio framework to calculate regulatory capital. A few commenters indicated that the proposed community bank leverage ratio calibration would not factor in the adjusted allowance for credit loss for up to 1.25 percent of risk-weighted assets, which would be permitted under the generally applicable rule for purposes of the total capital ratio, but would not be relevant under the community bank leverage ratio. Finally, a commenter recommended a dynamic calibration that would vary depending on the business cycle to accommodate recovery and encourage lending in a stressed environment.

After considering the comments received on calibration, the agencies have decided to adopt a 9 percent leverage ratio as a qualifying criterion for the community bank leverage ratio framework. The agencies believe that a 9 percent calibration, with complementary qualifying criteria for asset size, off-balance sheet assets, and trading assets and trading liabilities, generally maintains the current level of regulatory capital held by electing banking organizations and supports the agencies' goals of reducing regulatory burden for as many community banking organizations as possible. For example, even though an 8 percent leverage ratio would have allowed more banking organizations to opt into the community bank leverage ratio framework, the reduced calibration could create an inappropriate incentive for some qualifying community banking organizations to hold less regulatory capital than they do today. Rather than lowering the minimum community bank leverage ratio from 9 percent to 8 percent, the agencies determined that it would be more appropriate to alleviate the potential burden associated with switching regulatory capital frameworks as capital levels fall by permitting an electing banking organization to have its ratio drop below 9 percent temporarily (*i.e.,* the two-quarter grace period). This grace period will provide an electing banking organization time to either comply with the qualifying criteria or to prepare to comply with the generally applicable rule and file the appropriate regulatory reports.

The agencies estimate that, as of the first quarter of 2019, the vast majority of banking organizations with under $10 billion in total consolidated assets would meet the definition of a qualifying community banking organization and have a leverage ratio above 9 percent. Based on reported data as of March 31, 2019, there are 5,221 insured depository institutions with less than $10 billion in total consolidated assets and 231 depository institution holding companies with less than $10 billion in total consolidated assets that file the form FR Y–9C.[17] The agencies estimate that approximately 85 percent of such insured depository institutions and approximately 76 percent of such depository institution holding companies would qualify to use the community bank leverage ratio framework under the 9 percent calibration and other qualifying criteria. The agencies believe the community bank leverage ratio framework in this final rule, including a 9 percent calibration, meets the objectives described above.

In February of 2019, the agencies issued a final rule to amend the generally applicable rule in response to CECL (CECL transitions final rule).[18] The CECL transitions final rule provides for an optional three-year transition arrangement that will allow a banking organization to phase in any adverse day-one regulatory capital effects of CECL adoption on retained earnings, deferred tax assets, allowance for credit losses, and average total consolidated assets. These day-one regulatory capital effects will be phased in over the transition period on a straight line basis. Under this final rule, the leverage ratio under the community bank leverage ratio framework is generally calculated in the same manner as the generally applicable rule's leverage ratio. Accordingly, an electing banking organization is also eligible to phase-in any adverse day-one regulatory capital effects of CECL adoption on retained earnings, DTAs, allowance for credit losses, and average total consolidated assets. Banking organizations will retain their three-year transition period without reset (*i.e.,* the transition period cannot be extended) upon passage in or

[17] As of March 31, 2019, there are 4,261 depository institution holding companies with less than $10 billion in total consolidated assets. More than 95 percent of such holding companies are not subject to the capital rule because they have less than $3 billion in total consolidated assets and meet certain additional criteria to qualify for the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement. *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

[18] 84 FR 4222 (February 14, 2019).

out of the community bank leverage ratio framework.

D. Ability To Opt Into and Out of the Community Bank Leverage Ratio Framework

Under the proposal, a qualifying community banking organization with a community bank leverage ratio greater than 9 percent could have elected to use the community bank leverage ratio framework at any time. Such a banking organization would have indicated its election by completing a community bank leverage ratio reporting schedule in its Call Report or Form FR Y–9C, as applicable. Also, under the proposal, an electing banking organization would have been able to opt out of the community bank leverage ratio framework and become subject to the generally applicable rule by completing the associated reporting requirements on Schedules RC–R of the Call Report or HC–R of Form FR Y–9C, as applicable. Additionally, the agencies noted in the proposal that an electing banking organization would have been able to opt out of the community bank leverage ratio framework between reporting periods by providing the capital ratios under the generally applicable rule to its appropriate regulators at the time of opting out. A banking organization that opted out of the community bank leverage ratio framework would have been required to meet the qualifying criteria included in the definition of a qualifying community banking organization and have a community bank leverage ratio of greater than 9 percent to be able to opt back into the community bank leverage ratio framework.

Several commenters suggested that the optionality aspect should be further emphasized to both bankers and agency examiners. These commenters expressed concern that banking organizations that do not opt in could be seen as outliers and could be pressured to raise capital and opt into the community bank leverage ratio framework, or that procedural issues would make it too difficult in practice for banking organizations to opt out.

The agencies have considered the comments and are finalizing the election to use the community bank leverage ratio framework as proposed. Due to the adoption of tier 1 capital and the leverage ratio into the community bank leverage ratio framework, the agencies will update accordingly the proposed reporting changes to the Call Report and Form FR Y–9C. The agencies are further clarifying that the community bank leverage ratio framework is an optional framework, based on section 201 of the Act, which serves the purpose of removing the burden of calculating and reporting risk-based capital ratios for banking organizations that meet certain criteria. The agencies are also clarifying that a banking organization can opt out of the community bank leverage ratio framework at any time, without restriction, by reverting to the generally applicable rule and providing the capital ratios under the generally applicable rule to its appropriate regulators at the time of opting out.

One commenter requested that the rule require that banking agencies notify state bank regulators when a state-chartered electing banking organization opts out of the framework between reporting periods. Under the final rule, a qualifying community banking organization may opt into or out of the community bank leverage ratio framework at any time and for any reason. The agencies, therefore, are not including a mandatory notification requirement in the final rule, as this could discourage banking organizations from electing to apply and report under the generally applicable rule. The agencies note that the Call Report and Form FR Y–9C are available to the public and therefore additional notice is not necessary.

As described above, a banking organization generally opts into and out of the community bank leverage ratio framework through its Call Report or Form FR Y–9C. As a result, a banking organization's compliance with the community bank leverage ratio framework or the generally applicable rule will be determined based upon the capital framework it has elected in its last filed Call Report or Form FR Y–9C.[19]

E. Ongoing Compliance With the Community Bank Leverage Ratio Framework

1. Meeting the Definition of a Qualifying Community Banking Organization

Under the proposal, an electing banking organization that no longer met the proposed qualifying criteria would have been required, within two consecutive calendar quarters, either to meet the qualifying criteria again or to demonstrate compliance with the generally applicable rule. During the proposed grace period, the banking organization could have continued to be treated as a qualifying community banking organization and could have, therefore, continued calculating and reporting a community bank leverage ratio to determine its compliance with other statutes and regulations.

The agencies did not receive specific comments relating to the mechanics of the proposed grace period. One commenter argued that a six-month transition period would be too short for banking organizations to sell MSAs, if necessary, or prepare for the different treatment in the generally applicable rule. Other commenters noted that the use of tier 1 capital would ease any transition back to the risk-based capital requirements. The agencies continue to believe that this limited grace period is appropriate to mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization's risk profile from quarter to quarter, while capturing more permanent changes in risk profile, and are therefore finalizing the two-quarter grace period largely as proposed. Under the final rule, the grace period begins as of the end of the calendar quarter in which the electing banking organization ceases to satisfy any of the qualifying criteria and will end after two consecutive calendar quarters. For example, if the electing banking organization no longer meets one of the qualifying criteria as of February 15, and still does not meet the criteria as of the end of that quarter, the grace period for such a banking organization will begin as of the end of the quarter ending March 31. The banking organization may continue to use the community bank leverage ratio framework as of June 30, but will need to comply fully with the generally applicable rule (including the associated reporting requirements) as of September 30, unless the banking organization once again meets all qualifying criteria of the community bank leverage ratio framework, including a leverage ratio of greater than 9 percent, by that date.

Under the proposal, an electing banking organization that ceased to meet the qualifying criteria as a result of a business combination would have received no grace period and immediately would have been required to revert to the generally applicable rule. The agencies continue to believe this approach is appropriate, as banking organizations would need to consider the regulatory capital implications of a planned business combination and be prepared to comply with the applicable requirements. An electing banking organization that expects that it would not meet the qualifying criteria as a result of a business combination would

[19] *See* section I in this **SUPPLEMENTARY INFORMATION** for a discussion on the interaction between the effective date of the final rule and when a banking organization elects to use the community bank leverage ratio framework.

need to provide its pro forma capital ratios under the generally applicable rule to its appropriate regulator as part of its merger application, if applicable, and fully comply with the generally applicable rule for the regulatory reporting period during which the transaction is completed.

2. Treatment of a Community Banking Organization That Falls Below Certain Leverage Ratio Levels

Under the proposal, an electing banking organization that had a community bank leverage ratio greater than 9 percent would have been considered well capitalized. In addition, an electing banking organization would have been considered to have met the minimum capital requirements under the generally applicable rule if its community bank leverage ratio was 7.5 percent or greater.[20] Under the proposal, an electing banking organization could have chosen to stop using the community bank leverage ratio framework and instead become subject to the generally applicable rule. The proposal also provided an electing banking organization with a declining community bank leverage ratio (*e.g.,* below 9 percent) with the option to remain in the community bank leverage ratio framework indefinitely, rather than requiring the firm to revert to the generally applicable rule. Under the proposal, an electing banking organization that was an insured depository institution and no longer exceeded the 9 percent community bank leverage ratio would have been subject to community bank leverage ratio levels that would serve as proxies for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories.[21]

The agencies received comments and requests for clarification regarding both the proposed PCA proxy levels and the grace period for a banking organization that has a community bank leverage ratio at or below 9 percent. One commenter requested that the agencies clarify when PCA consequences begin to apply. Another commenter indicated that the framework should require a banking organization that falls below the well-capitalized level to immediately begin reporting capital ratios under the generally applicable rule. Another commenter proposed that, instead of instituting the PCA proxy levels, the agencies should give qualifying banking organizations with a community bank leverage ratio between 8 percent and 9 percent a two-quarter grace period after which they would either need to restore their community bank leverage ratio to greater than 9 percent or revert to the generally applicable rule.

The agencies also received comments in response to the proposal's incorporation of community bank leverage ratio levels as proxies for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA categories. In general, commenters noted that the establishment of a new, separate PCA framework within the community bank leverage ratio framework is not necessary or required under section 201 of the Act, expressing concern that the community bank leverage ratio framework could, in the future, function as the new, de facto minimum capital requirement, particularly if it is difficult for a banking organization to switch back to the generally applicable rule. Commenters also noted community banking organizations' sensitivity to several restrictions that could arise if the community banking organization is determined to be less than well capitalized, including restrictions on funding sources such as limits on brokered deposits, and the inability to open branches or make acquisitions. Some commenters suggested alternative calibration levels for the PCA proxy levels.

In response to commenter concerns regarding the proposed PCA proxy levels for electing banking organizations that no longer exceed a 9 percent leverage ratio, the agencies decided not to incorporate the proposed PCA proxy levels in the final rule. Therefore, under the final rule, banking organizations that are insured depository institutions and that have a leverage ratio of greater than 9 percent are deemed to have met the well capitalized capital ratio requirements for PCA purposes. Further, the agencies included the requirement to have a leverage ratio greater than 9 percent as a qualifying criterion in the definition of a qualifying community banking organization. Consequently, the two-quarter grace period described above also applies depending on the level of an electing banking organization's leverage ratio. Under the final rule, an electing banking organization that has a leverage ratio that is greater than 8 percent and equal to or less than 9 percent is allowed a two-quarter grace period after which it must either (i) again meet all qualifying criteria or (ii) apply and report the generally applicable rule. During this two-quarter period, a banking organization that is an insured depository institution and that has a leverage ratio that is greater than 8 percent would be considered to have met the well-capitalized capital ratio requirements for PCA purposes. An electing banking organization with a leverage ratio of 8 percent or less is not eligible for the grace period and must comply with the generally applicable rule, *i.e.,* for the quarter in which the banking organization reports a leverage ratio of 8 percent or less. An electing banking organization experiencing or anticipating such an event would be expected to notify its primary federal supervisory agency, which would respond as appropriate to the circumstances of the banking organization.

A commenter asked that the proposed rule be revised to provide expressly that for an otherwise qualifying community bank that is state chartered to be disqualified from using the community bank leverage ratio framework based on criteria other than the enumerated qualifying criteria, such a determination must be made jointly by (1) the bank's primary federal banking supervisory agency (either the FDIC or the Board) and (2) the appropriate state bank supervisor. The agencies expect to continue to work closely with the state bank supervisors, particularly with respect to institutions that are supervised jointly. However, the agencies are not revising the rule to require a joint determination of the federal supervisor and the state supervisor because such a requirement could prevent the federal supervisor from applying the capital standards it believes to be appropriate.

Finally, a commenter requested clarification that a bank that is a qualifying community bank may elect to use the community banking organization leverage ratio framework even if its parent holding company is not a qualifying community banking organization, or vice versa. Consistent with the proposal, a non-advanced approaches subsidiary insured depository institution may opt into the community bank leverage ratio framework even if its parent holding company is not a qualifying banking organization, and vice versa. The agencies do not have safety and

[20] Under the proposal, an electing banking organization that is a depository institution holding company would no longer be considered well capitalized if the holding company had a community bank leverage ratio of 9 percent or less.

[21] *See, e.g.,* 12 U.S.C. 5371 (establishing a capital floor for insured depository institutions and depository institution holding companies); section 201 of the Act (requiring development of a community bank leverage ratio for which a depository institution exceeding that ratio would be considered to meet the requirements to be treated as well capitalized under PCA); 12 U.S.C. 1831o (PCA).

soundness concerns with these scenarios and the agencies intended to allow such elections in the proposal.

F. FDIC Deposit Insurance Assessments Regulations

The FDIC's deposit insurance assessments regulations also would be affected by the finalized community bank leverage ratio framework. The FDIC is considering, and is expected to adopt, a separate final rule to apply the community bank leverage ratio framework to the deposit insurance assessment system. The separate final rule amends the FDIC's assessment regulations to price all qualifying community banks that elect to use the community bank leverage ratio framework as small banks, and continues to use the leverage ratio to determine assessment rates for established small banks. The separate final rule additionally clarifies that an electing bank that meets the definition of a custodial bank will have no change to its custodial bank deduction or reporting items required to calculate the deduction, and makes technical amendments to ensure that the assessment regulations continue to reference the PCA regulations for the definitions of capital categories used in the deposit insurance assessment system. Because the leverage ratio in this final rule is the same leverage ratio currently being used for assessment purposes, the separate final rule does not modify the FDIC's assessment methodology. The FDIC does not expect that any changes to its deposit insurance assessment regulations pursuant to this separate final rule will have a material impact on aggregate assessment revenue or on rates paid by individual institutions.

G. Other Affected Regulations

Under the final rule, the community bank leverage ratio framework incorporates tier 1 capital. Therefore, Federal banking regulations outside of the regulatory capital rule (non-capital rules) can continue to reference tier 1 capital. The final rule amends standards referencing total capital so that an electing banking organization uses tier 1 capital instead of total capital. The final rule amends standards referencing risk-weighted assets so that an electing banking organization uses average total consolidated assets (*i.e.,* the denominator of the leverage ratio) instead of risk-weighted assets.

In addition, certain of the agencies' non-capital rules refer to ''capital stock and surplus'' (or similar items) which is generally defined as tier 1 capital and tier 2 capital plus the amount of allowances for loan and lease losses not included in tier 2 capital. The final rule amends standards referencing ''capital stock and surplus'' (or similar items) so that an electing banking organization uses tier 1 capital plus allowances for loan and lease losses (or adjusted allowance for credit losses, as applicable). Thus, for example, for purposes of compliance with section 23A of the Federal Reserve Act, the Board's Regulation W should provide that for an electing banking organization ''capital stock and surplus'' means tier 1 capital plus allowances for loan and lease losses (or adjusted allowance for credit losses, as applicable).

H. Effective Date of the Final Rule

The final rule will be effective as of January 1, 2020, and banking organizations can utilize the community bank leverage ratio framework for purposes of filing their Call Report or Form FR Y–9C, as applicable, for the first quarter for 2020 (*i.e.,* as of March 31, 2020). A banking organization's compliance with capital requirements for a quarter prior to the final rule's effective date shall be determined according to the agencies' generally applicable rule until the institution has filed their Call Report Form or FR Y–9C, as applicable, for the first quarter of 2020 and has indicated whether or not it has elected the community bank leverage ratio framework.

IV. Regulatory Analyses

A. Paperwork Reduction Act

The agencies' capital rule contains ''collections of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. The information collections that are part of the agencies' capital rule will not be affected by this final rule and therefore no final submissions will be made by the FDIC or OCC to OMB under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320) in connection with this rulemaking.[22] The agencies note that firms that elect to be subject to the community bank leverage ratio framework will become exempt from certain collections of information that are part of the agencies' regulatory capital rule. Because of uncertainty regarding the number of firms that will elect to use the community bank leverage ratio framework, the agencies have not revised their estimates regarding the annual burden hours associated with such collections of information to account for elections to use the community bank leverage ratio framework. The agencies will reassess the annual burden hours associated with these information collections once there is more certainty regarding community bank leverage ratio elections.

The final rule will also require changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051) and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128 (Board)), which will be addressed in one or more separate **Federal Register** notices.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency either to provide a final regulatory flexibility analysis with a final rule for which a general notice of proposed rulemaking is required or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[23]

[22] The OCC and FDIC submitted their information collections to OMB at the proposed rule stage. However, these submissions were done solely in an effort to apply a conforming methodology for calculating the burden estimates and not due to the proposed rule. OMB filed comments requesting that the agencies examine public comment in response to the proposed rule and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation. In addition, OMB requested that the OCC and the FDIC note the convergence of the agencies on the single methodology. The agencies received no comments on the information collection requirements. Since the proposed rule stage, the agencies have conformed their respective methodologies in a separate final rulemaking titled, *Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations,* 84 FR 4222 (February 14, 2019), and the FDIC and OCC have had their submissions approved through OMB. As a result, the agencies' information collections related to the regulatory capital rules are currently aligned and therefore no submission will be made to OMB.

[23] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *https://*

Continued

Under regulations issued by the SBA, the size standard to be considered a small business for banking entities subject to the proposed rule is $600 million or less in consolidated assets.[24] Under 5 U.S.C. 605(b), this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

Pursuant to the RFA, the OCC specifically considers (a) whether the final rule is likely to impact a substantial number of small entities; and (b) whether the economic impact on a substantial number of small entities is significant. To measure whether a rule would have a ''significant economic impact,'' the OCC focuses on the potential costs of the rule on OCC-supervised small entities, consistent with guidance on the RFA published by the Office of Advocacy of the SBA.[25] As of December 31, 2017, the OCC supervised approximately 898 small entities.[26]

Although the minimum required capital under the community bank leverage ratio framework will, in most cases, be greater than that required for the generally applicable risk-based and leverage capital requirements, banks are not required to opt into the community bank leverage ratio framework. In addition, banks that do elect to use the community bank leverage ratio framework may, at any time, stop using the community bank leverage ratio framework. Accordingly, the final rule does not represent a regulatory increase in minimum regulatory capital requirements, and the primary cost to institutions for implementing the final rule will be administrative costs associated with required updates to their capital reporting procedures and reports.[27]

Banks that elect to use the community bank leverage ratio framework will have to make updates to their capital reporting procedures and reports. Banks will also have to make updates to existing policies and procedures to ensure compliance with regulations that will be affected by the final rule (*e.g.,* lending limits). The total impact associated with the final rule is the estimated annual tax benefit minus the compliance costs of modifying policies and procedures. The OCC estimates that each institution will spend no more than 160 hours to modify their policies and procedures. To estimate costs, the OCC uses a compensation rate of $114 per hour.[28] Therefore, the OCC estimates the cost per institution will not exceed $18,240 (160 hours × $114 per hour).

In general, the OCC classifies the economic impact of expected cost (to comply with a rule) on an individual bank as significant if the total estimated monetized costs in one year are greater than (1) 5 percent of the bank's total annual salaries and benefits or (2) 2.5 percent of the bank's total annual non-interest expense. Based on the above criteria, the estimated cost of the rule could impose a significant economic impact at 19 of the 898 small entities if they all elected to opt into the community bank leverage ratio framework. The OCC uses 5 percent to determine a substantial number of small entities. Approximately 2 percent (19/898 = 2.1%) of small entities could be significantly impacted by the rule, which is not a substantial number of small entities.

Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comment on the effect of the proposed rule on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments on the IRFA. The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the final regulation. Based on its analysis, and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $600 million or less and trust companies with total assets of $41.5 million or less (small banking organization).[29] On average since the second quarter of 2018, there were approximately 2,976 small bank holding companies, 133 small savings and loan holding companies, and 555 small state member banks.

As discussed, the Board is issuing this final rule to provide a simple measure of capital adequacy for certain community banking organizations. Under the final rule, depository institutions and depository institution holding companies that have less than $10 billion in total consolidated assets and meet other qualifying criteria, including a leverage ratio (equal to tier 1 capital divided by average total consolidated assets) of greater than 9 percent, will be eligible to opt into the community bank leverage ratio framework and, as a result, will not be required to calculate the risk-based capital ratios under the generally applicable capital rule.[30]

www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

[24] *See* 13 CFR 121.201.

[25] *See* ''A Guide for Government Agencies; How to Comply with the Regulatory Flexibility Act,'' pp. 18–20 (Aug. 2017), *available at https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[26] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if the OCC should classify an OCC-supervised institution a small entity. The OCC uses December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's Table of Size Standards.

[27] The agencies intend to separately seek comment on the proposed changes to regulatory filings for qualifying community banking organizations that elect to use the community bank leverage ratio framework.

[28] To estimate wages, the OCC reviewed May 2018 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities excluding non-depository credit intermediaries (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses $114 per hour, which is based on the average of the 90th percentile for nine occupations adjusted for inflation (2.8 percent as of Q1 2019, according to the BLS), plus an additional 33.2 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2018 for NAICS 522: Credit intermediation and related activities).

[29] *See* 13 CFR 121.201. Effective August 19, 2019, the Small Business Administration revised the size standards for banking organizations to $600 million in assets from $550 million in assets. 84 FR 34261 (July 18, 2019).

[30] In general, the Board's capital rule only applies to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement, which applies to bank holding companies and savings and loan holding companies with less than $3 billion in total assets that also meet certain additional criteria. Very few bank holding companies and savings and loan holding companies that are small entities would be impacted by the final rule because very few such entities are subject to the Board's capital rule.

Although the final rule would provide some direct reduction in compliance burden associated with the capital rule, much of that reduction of compliance burden would be achieved through a separate notice to amend the regulatory reports associated with the capital rule. The Board does not expect that the final rule will result in a material change in the level of capital maintained by small banking organizations because (i) the framework is optional and (ii) a substantial majority of small banking organizations maintain capital in excess of both the generally applicable capital rule and the threshold established under the final rule. A small number of firms may face reduced capital requirements due to electing to use the community bank leverage ratio framework rather than the existing risk-based and leverage capital ratio framework. For example, the Board estimates that 454 small state member banks would be eligible for the community bank leverage ratio framework and that 4 of these small state member may face less stringent capital requirements as a result. The Board does not expect the rule to have a significant economic impact on a substantial number of small entities.

FDIC: The RFA generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.[31] However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[32] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

For the reasons described below, the FDIC believes that the final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the FDIC has conducted and is providing a final regulatory flexibility analysis.

1. The Need for, and Objectives of, the Rule

The policy objective of the proposed rule is to conform the FDIC's regulations to the statutory language established by the Act. On May 24, 2018, the Act amended provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act[33] as well as certain other statutes administered by the agencies.[34] Section 201 of the Act, titled ''Capital Simplification for Qualifying Community Banks,'' directs the agencies to develop a community bank leverage ratio (community bank leverage ratio) of not less than 8 percent and not more than 10 percent for qualifying community banks. The Act defines a qualifying community banking organization as a depository institution or depository institution holding company with total consolidated assets of less than $10 billion.

2. The Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No significant issues were raised by the public comments in response to the initial regulatory flexibility analysis.

3. Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

As of March 31, 2019, the FDIC supervised 3,465 institutions, of which 2,705 are considered small entities for the purposes of RFA. Of these FDIC-supervised small entities, 2,297 (85 percent) meet or exceed the qualifications for adopting the community bank leverage ratio framework, as delineated above in Section III.A.[35]

Adoption of the community bank leverage ratio framework is voluntary so it is uncertain how many small, FDIC-supervised entities that qualify will choose to adopt. Each qualifying entity must weigh the benefits of not being subject to risk-based capital requirements against the costs of adhering to the higher leverage ratio requirements under the community bank leverage ratio framework. As of March 2019, 237 (9 percent of) small, FDIC-supervised institutions would experience a net decrease in required capital holdings as a result of qualifying for and adopting the community bank leverage ratio framework. For purposes of this analysis, the FDIC assumes that these 237 small, FDIC-supervised institutions would adopt the community bank leverage ratio framework and therefore be affected by the final rule. In order to assess the maximum potential effects of the proposed rule, this analysis also calculates the expected effects assuming that all 2,297 small, FDIC-supervised institutions that qualify would adopt the community bank leverage ratio framework.

5. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This analysis considers benefits and costs relative to a pre-statutory baseline in which qualifying institutions must maintain a tier 1 leverage ratio of five percent, a tier 1 risk-based capital ratio of eight percent, a common equity tier 1 ratio of 6.5 percent and a total capital ratio of 10 percent in order to be deemed well capitalized for purposes of Prompt Corrective Action. Pursuant to the capital conservation buffer that is part of the Basel III rule, institutions must also maintain an additional 0.5 percentage points of risk-weighted assets above the risk-based well-capitalized thresholds to avoid potential limitations on dividends and other capital distributions.[36] Under the final rule, in contrast, qualifying institutions would have the option to operate under a 9 percent community bank leverage ratio framework and not be subject to risk-based capital requirements.

As previously discussed, 241 (9 percent of) small, FDIC-supervised institutions would experience a net decrease in required capital holdings as

[31] 5 U.S.C. 601 *et seq.*

[32] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[33] Public Law 111–203, 124 Stat. 1376.

[34] Public Law 115–174, 132 Stat. 1296.

[35] Consolidated Reports of Condition and Income for the quarter ending March 31, 2019.

[36] With the additional capital conservation buffer requirements, the pre-statute baseline risk-based capital thresholds are 7 percent for common equity tier 1 capital, 8.5 percent for tier 1 capital, and 10.5 percent for total capital.

a result of qualifying for and adopting the community bank leverage ratio framework. For purposes of this analysis, the FDIC assumes that these 241 small, FDIC-supervised institutions would adopt the community bank leverage ratio framework and therefore be affected by the final rule. In order to assess the maximum potential effects of the proposed rule, this analysis also calculates the expected effects assuming that all 2,277 small, FDIC-supervised institutions that qualify would adopt the community bank leverage ratio framework.

No bank will be compelled to raise capital under the community bank leverage ratio framework since the framework is optional. Moreover, as of March 2019, the 2,277 qualifying small, FDIC-supervised institutions held aggregate tier 1 capital in excess of 12 percent of their average assets—well in excess of both the 5 percent required by the generally applicable leverage ratio rules and the 9 percent threshold in the community bank leverage ratio framework. Some of the 241 small, FDIC-supervised banks whose capital requirements would be reduced under the community bank leverage ratio framework might choose to reduce their capital. However, these 241 banks also held aggregate tier 1 capital in excess of 12 percent of their average assets, suggesting that most of them already have the ability to operate with less capital but have chosen not to. Given these facts, the FDIC does not believe that adopting banks will change their leverage capital ratios significantly in response to this rule.

It is possible that the elimination of risk-based capital requirements by banks that choose to adopt the rule would increase their incentives to hold higher-weighted assets, such as loans. To provide a high-end estimate of the economic effect for RFA purposes, this analysis will assume that every adopting bank responds to the rule by permanently increasing its loan balances by 1 percent.

The analysis estimates the annual economic effect of a 1 percent permanent increase in loan balances at adopting banks by multiplying the increase by the net interest margin currently being earned by each bank.[37]

For each of the 237 banks that would experience a reduction in capital requirements under the community bank leverage ratio framework, this analysis calculates the expected economic effect to each bank by multiplying 1 percent of the bank's loan balances by its net interest margin. Under these assumptions, as of March 2019, only six banks would experience an annual increase in net interest income that is significant (*i.e.*, greater than 2.5 percent of their total noninterest income over the previous four quarters or 5 percent of their total salaries and benefits paid over the previous four quarters). The estimated aggregate increase in net interest income totals approximately $600,000. The six banks would comprise only less than 0.3 percent of the 2,705 small entities covered by this rule. These effects are not significant for a substantial number of small entities.

As an estimate of the maximum potential effects of the rule, the analysis alternately assumes that all of the 2,297 qualifying small FDIC-supervised banks that could adopt the framework choose to do so, and that all increase their loan balances by 1 percent and earn their current net interest margin on the new loans. This analysis results in twelve banks experiencing an annual increase in net interest income that is significant (*i.e.*, greater than 2.5 percent of their total noninterest income over the previous four quarters or 5 percent of their total salaries and benefits paid over the previous four quarters). The twelve banks comprise less than 0.54 percent of the 2,705 small entities covered by this rule. Thus, the plausible high-end effects are still not significant for a substantial number of small entities.

Although the preceding assumptions and analysis indicate that the rule is unlikely to have significant economic effects on a substantial number of small, FDIC-supervised institutions, the extent of the rule's effects on capital and assets are uncertain. Therefore, the FDIC believes, but does not certify, that the final rule will not have a significant economic impact on a substantial number of small entities.

There are other non-quantified economic effects resulting from the adoption of the community bank leverage ratio framework, such as simplicity benefits and compliance cost-savings from not having to comply with risk-based capital requirements going forward. Utilizing the community bank leverage ratio framework is expected to reduce reporting costs for small entities. Opting into the community bank leverage ratio framework would enable institutions to eliminate the reporting of many line items in schedule RC–R of their Call Reports, resulting in a reduction in reporting costs for institutions. Depository institutions also may benefit from reduced reporting costs because by being able to employ those resources in ways the institution believes is more beneficial. The FDIC does not have a reasonable basis for quantifying the compliance cost savings associated with the rule, but does not believe they will be significant for a substantial number of small entities.

The quantified economic effects are expected to be significant for less than half of a percent of small, FDIC-supervised institutions covered by this rule. Even assuming broad adoption rates and an increase in lending by all adopting institutions, the quantified economic effects are only significant for less than half of a percent of small, FDIC-supervised institutions.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

As described above, the FDIC does not believe this rule will have a significant economic impact on a substantial number of small entities. Further, since the election of the community bank leverage ratio is voluntary, the impacts are expected to be beneficial for institutions that adopt it.

The agencies considered alternative calibrations, such as 8 percent. As discussed in Section III.C however, the agencies believe that a 9 percent calibration, with complementary qualifying criteria for asset size, off-balance sheet assets, and trading assets and liabilities, should generally maintain the current level of regulatory capital held by electing banking organizations while maintaining the quality and quantity of regulatory capital in the banking system consistent with the agencies' safety-and-soundness goals, while also supporting the agencies' goals of reducing regulatory burden for as many community banking organizations as possible. For example, even though an 8 percent leverage ratio would allow more banking organizations to opt into the community bank leverage ratio framework it could incentivize a large number of qualifying community banking organizations to hold less regulatory capital than they do today.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[38] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final

[37] Defined as the annualized net interest income as a percent of average earning assets, as reported on schedule RI. For reference, the average net interest margin was 3.9 percent for small, FDIC-insured institutions, for the quarter ending March 31, 2019.

[38] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

D. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). Because the rule does not specifically require banks to modify their policies and procedures, the OCC has determined that there are no expenditures for the purposes of UMRA. Therefore, the OCC concludes that the final rule will not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[39] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[40]

The Federal banking agencies considered the administrative burdens and benefits of the rule and its elective framework in determining its effective date and administrative compliance requirements. As such, the final rule will be effective on January 1, 2020.

[39] 12 U.S.C. 4802(a).

[40] 12 U.S.C. 4802.

F. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[41] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[42]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[43] The OMB has determined that the final rule is not a ''major rule'' within the meaning of the Congressional Review Act. As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 3

Administrative practice and procedure, Federal Reserve System, National banks, Reporting and recordkeeping requirements.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 6

Federal Reserve System, National banks.

12 CFR Part 23

National banks.

[41] 5 U.S.C. 801 *et seq.*

[42] 5 U.S.C. 801(a)(3).

[43] 5 U.S.C. 804(2).

12 CFR Part 24

Community development, Credit, Investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 206

Banks, Banking, Interbank liability, Lending limits, Savings associations.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 223

Banks, Banking, Federal Reserve System.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 238

Savings and loan holding companies (Regulation LL).

12 CFR Part 251

Administrative practice and procedure, Banks, Banking, Concentration limit, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, State non-member banks, Savings associations.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, State non-member banks, Savings associations.

12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. Investments abroad.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Investments, Reporting and recordkeeping requirements.

12 CFR Part 365

Banks, Banking, Mortgages.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the joint preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), and 93a.

■ 2. Section 1.2 is amended by revising paragraph (a) to read as follows:

§ 1.2 Definitions.

(a) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter:

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

(ii) A qualifying community banking organization's allowances for loan and lease losses as reported in the bank's Consolidated Report of Condition and Income (Call Report); or

(2) For all other banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in part 3 of this chapter, as applicable (or comparable capital guidelines of the appropriate Federal banking agency), as reported in the bank's Call Report; plus

(ii) The balance of a bank's allowances for loan and lease losses not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(2)(i) of this section, as reported in the bank's Call Report.

* * * * *

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

§ 3.2 [Amended]

■ 4. Section 3.2 is amended by removing the first definition of ''Non-significant investment in the capital of an unconsolidated financial institution''.

■ 5. Section 3.10 is amended by revising paragraph (a) to read as follows:

§ 3.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A national bank or Federal savings association must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches national banks or Federal savings associations or, for Category III OCC-regulated institutions, a supplementary leverage ratio of 3 percent.

(vi) For Federal savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in § 3.12), that is subject to the community bank leverage ratio framework (as defined in § 3.12), is considered to have met the minimum capital requirements in this paragraph (a).

* * * * *

■ 6. Add section 3.12 to read as follows:

§ 3.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 3.10, the capital ratio requirements for the well capitalized capital category under § 6.4(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association and that satisfies all of the following criteria:

(i) Has a leverage ratio of greater than 9 percent;

(ii) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to the Call Report as of the end of the most recent calendar quarter;

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through

(*1*) Guarantees; and

(*2*) Credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to the Call Report;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures; and

(iv) Has total trading assets plus trading liabilities, calculated in accordance with the reporting instructions to the Call Report of 5 percent or less of the national bank's or Federal savings association's total consolidated assets, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the applicable reporting requirements of its Call Report.

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 3.10(a)(1) in its Call Report or by otherwise providing this information to the OCC.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 3.10(a)(1) immediately.

(b) *Calculation of the leverage ratio.* A qualifying community banking organization's leverage ratio is calculated in accordance with § 3.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 3.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 3.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements.* (1) Except as provided in paragraphs (c)(5) and (6) of this section, if a national bank or Federal savings association ceases to meet the definition of a qualifying community banking organization, the national bank or Federal savings association has two reporting periods under its Call Report (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with § 3.10(a)(1) and report the required capital measures under § 3.10(a)(1) on its Call Report.

(2) The grace period begins as of the end of the calendar quarter in which the national bank or Federal savings association ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the national bank or Federal savings association continues to be treated as a qualifying community banking organization for the purpose of this part and must continue calculating and reporting its leverage ratio under this section unless the national bank or Federal savings association has opted out of using the community bank leverage ratio framework under paragraph (a)(3) of this section.

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements under § 3.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 6.4(b)(1)(i)(A) through (D) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, a national bank or Federal savings association that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such a national bank or Federal savings association must comply with the minimum capital requirements under § 3.10(a)(1) and must report the required capital measures under § 3.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, a national bank or Federal savings association that has a leverage ratio of 8 percent or less does not have a grace period and must comply with the minimum capital requirements under § 3.10(a)(1) and must report the required capital measures under § 3.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

■ 7. Section 3.22 is amended by revising paragraph (f) to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

* * * * *

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a national bank or Federal savings association does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the national bank or Federal savings association must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital. Notwithstanding any other provision of this section, a qualifying community banking organization (as defined in § 3.12) that has elected to use the community bank leverage ratio framework pursuant to § 3.12 is not required to deduct any shortfall of tier 2 capital from its additional tier 1 capital or common equity tier 1 capital.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 8. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24a, 93a, 215a–2, 215a–3, 481, 1462a, 1463, 1464, 2901 *et seq.,* 3907, and 5412(b)(2)(B).

■ 9. Section 5.3 is amended by revising paragraph (e) to read as follows:

§ 5.3 Definitions.

* * * * *

(e) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter:

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Consolidated Report of Condition and Income (Call Report); or

(2) For all other national banks and Federal savings associations:

(i) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in part 3 of this chapter, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(ii) The balance of the national bank's or Federal savings association's allowances for loan and lease losses not included in the institution's tier 2 capital, for purposes of the calculation of risk-based capital reported in the institution's Call Reports, described in paragraph (e)(2)(i) of this section.

* * * * *

■ 10. Section 5.37 is amended by revising paragraph (c)(3) to read as follows:

§ 5.37 Investment in national bank or Federal savings association premises.

* * * * *

(c) * * *

(3) *Capital and surplus* means:

(i) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter:

(A) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

(B) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Call Report; or

(ii) For all other national banks and Federal savings associations:

(A) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under part 3 of this chapter, as applicable, as reported in the national bank's or Federal savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(B) The balance of a national bank's or Federal savings association's allowances for loan and lease losses not included in the bank's or savings association's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(3)(ii)(A) of this section, as reported in the national bank's or Federal savings association's Call Reports filed under 12 U.S.C. 161 or 1464(v), respectively.

* * * * *

■ 11. Section 5.58 is amended by revising paragraph (h)(2) to read as follows:

§ 5.58 Pass-through investments by a Federal savings association.

* * * * *

(h) * * *

(2) The Federal savings association is not investing more than 10 percent of its total capital (or, in the case of a Federal savings association that is a qualifying community banking organization that has elected to use the community bank leverage ratio framework, 10 percent of its tier 1 capital, as used under § 3.12 of this chapter) in one company;

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

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

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

■ 13. Section 6.4 is amended by:

■ a. Revising the section heading;

■ b. Removing paragraph (b);

■ c. Redesignating paragraph (c) as paragraph (b);

■ d. Revising newly designated paragraph (b) introductory text and paragraph (b)(1); and

■ e. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

The revisions read as set forth below.

§ 6.4 Capital measures and capital categories.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this part, the relevant capital measures shall be:

(i) Total Risk-Based Capital Measure: the total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: the tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio;

(iv) The Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the supplementary leverage ratio; and

(2) For a qualifying community banking organization (as defined in § 3.12 of this chapter), that has elected to use the community bank leverage ratio framework (as defined in § 3.12 of this chapter), the leverage ratio calculated in accordance with § 3.12(b) of this chapter is used to determine the well capitalized capital category under paragraph (b)(1)(i) (A) through (D) of this section.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this part, a national bank or Federal savings association shall be deemed to be:

(1)(i) Well capitalized if:

(A) Total Risk-Based Capital Measure: The national bank or Federal savings association has a total risk-based capital ratio of 10.0 percent or greater;

(B) Tier 1 Risk-Based Capital Measure: The national bank or Federal savings association has a tier 1 risk-based capital ratio of 8.0 percent or greater;

(C) Common Equity Tier 1 Capital Measure: The national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater;

(D) Leverage Measure:

(*1*) The national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(*2*) With respect to a national bank or Federal savings association that is a subsidiary of a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Form FR Y–15), on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The national bank or Federal savings association is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) Qualifying community banking organization: A qualifying community banking organization, as defined under § 3.12 of this chapter, that has elected to use the community bank leverage ratio framework under § 3.12 of this chapter, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i) (A) through (D) of this section.

* * * * *

PART 23—LEASING

■ 14. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 24(Tenth), and 93a.

■ 15. Section 23.2 is amended by revising paragraph (b) to read as follows:

§ 23.2 Definitions.

* * * * *

(b) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter:

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus.

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in part 3 of this chapter, as applicable, as reported in the bank's Consolidated Reports of Condition and Income (Call Report) filed under 12 U.S.C. 161; plus

(ii) The balance of a bank's allowances for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(2)(i) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

* * * * *

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 16. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

■ 17. Section 24.2 is amended by revising paragraph (b) to read as follows:

§ 24.2 Definitions.

* * * * *

(b) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter:

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in part 3 of this chapter, as applicable, as reported in the bank's Consolidated Reports of Condition and Income (Call Report) as filed under 12 U.S.C. 161; plus

(ii) The balance of a bank's allowances for loan and lease losses not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(2)(i) of this section, as reported in the bank's Call Report as filed under 12 U.S.C. 161.

* * * * *

PART 32—LENDING LIMITS

■ 18. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 19. Section 32.2 is amended by revising paragraph (c) to read as follows:

§ 32.2 Definitions.

* * * * *

(c) *Capital and surplus* means—

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter:

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Call Report; or

(2) For all other national banks and Federal savings associations:

(i) A national bank's or savings association's tier 1 and tier 2 capital calculated under the risk-based capital standards applicable to the institution as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Report); plus

(ii) The balance of a national bank's or Federal savings association's allowances for loan and lease losses not included in the bank's or savings association's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(2)(i) of this section, as reported in the national bank's or savings association's Call Report.

* * * * *

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 20. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 21. Section 34.81 is amended by adding a definition for ''Capital and surplus'' in alphabetical order to read as follows:

§ 34.81 Definitions.

Capital and surplus means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter:

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

(ii) A qualifying community banking organization's allowances for loan and lease losses, or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in part 3 of this chapter, as applicable, as reported in the bank's Call Report; plus

(ii) The balance of a bank's allowances for loan and lease losses, or allowance for credit losses, as applicable, not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(2)(i) of this section, as reported in the bank's Call Report.

* * * * *

PART 160—LENDING AND INVESTMENT

■ 22. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

■ 23. Section 160.3 is amended by adding a definition for ''total capital'' in alphabetical order to read as follows:

§ 160.3 Definitions.

* * * * *

Total capital means:

(1) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter, total capital refers to the qualifying community banking organization's tier 1 capital, as used under § 3.12(b)(2) of this chapter;

(2) For all other Federal savings associations, total capital means the sum of tier 1 capital and tier 2 capital,

as calculated under part 3 of this chapter.

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

■ 24. The authority citation for part 192 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901, 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

■ 25. Section 192.500 is amended by adding (a)(3)(iii)to read as follows:

§ 192.500 What management stock benefit plans may I implement?

(a) * * *

(3) * * *

(iii) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter, the term tangible capital, as it is used in this paragraph (a)(3), refers to the qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 206—LIMITATIONS ON INTERBANK LIABILITIES (REGULATION F)

■ 26. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 371b–2.

■ 27. Section 206.2 is amended by revising paragraph (g) to read as follows:

§ 206.2 Definitions.

* * * * *

(g) *Total capital* means the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), total capital means the bank's Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter). For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basel Capital Accord, ''total capital'' means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basel Capital Accord (Accord), ''total capital'' means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

* * * * *

■ 28. Section 206.5 is amended by adding paragraph (a)(4) to read as follows:

§ 206.5 Capital levels of correspondents.

(a) * * *

(4) Notwithstanding paragraphs (a)(1) through (3) of this section, a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio (as defined in § 217.12 of this chapter) is considered to have met the minimum capital requirements in this paragraph (a).

* * * * *

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 29. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78*l*(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 30. Section 208.2 is amended by adding paragraph (d)(3) to read as follows:

§ 208.2 Definitions.

* * * * *

(d) * * *

(3) For a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), capital stock and surplus means the bank's Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowance for loan and lease losses or adjusted allowance for credit losses, as applicable.

* * * * *

■ 31. Section 208.43 is amended by revising paragraphs (a) and (b) to read as follows:

§ 208.43 Capital measures and capital category definitions.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this subpart, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(C) With respect to any bank that is a subsidiary (as defined in § 217.2 of this chapter) of a global systemically important BHC, on Jan. 1, 2018, and thereafter, the supplementary leverage ratio.

(2) For a qualifying community banking organization (as defined in § 217.12 of this chapter), that has elected to use the community bank leverage ratio framework (as defined in § 217.12 of this chapter), the leverage ratio calculated in accordance with § 217.12(b) of this chapter is used to determine the well capitalized capital category under paragraph (b)(1)(i)(A) through (D) of this section.

(b) Capital categories. For purposes of section 38 of the FDI Act and this subpart, a member bank is deemed to be:

(1)(i) ''Well capitalized'' if:

(A) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater; and

(D) Leverage Measure:

(*1*) The bank has a leverage ratio of 5.0 percent or greater; and

(*2*) Beginning on January 1, 2018, with respect to any bank that is a subsidiary of a global systemically important BHC under the definition of ''subsidiary'' in § 217.2 of this chapter, the bank has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The bank is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation

thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) A qualifying community banking organization, as defined in § 217.12 of this chapter, that has elected to use the community bank leverage ratio framework under § 217.12 of this chapter, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i)(A) through (D) of this section.

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 32. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.,* 1818, 1835a, 1841 *et seq.,* 3101 *et seq.,* 3901 *et seq.,* and 5101 *et seq.;* 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 33. In part 211, remove the words ''Capital Adequacy Guidelines'' wherever they appear and add in their place the words ''capital rule''.

■ 34. Section 211.2 is amended by revising paragraphs (b), (c), and (x) to read as follows:

§ 211.2 Definitions.

* * * * *

(b) *Capital and surplus* means, unless otherwise provided in this part:

(1) For organizations subject to the capital rule:

(i) Tier 1 and tier 2 capital included in an organization's risk-based capital (under the capital rule); and

(ii) The balance of allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in an organization's tier 2 capital for calculation of risk-based capital, based on the organization's most recent consolidated Report of Condition and Income.

(iii) For qualifying community banking organizations (as defined in § 217.12 of this chapter) that are subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowances for loan and lease losses or adjusted allowance for credit losses, as applicable.

(2) For all other organizations, paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(c) *Capital rule* means part 217 of this chapter.

* * * * *

(x) *Tier 1 capital* has the same meaning as provided in § 217.2 of this chapter. A qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), calculates its tier 1 capital in accordance with § 217.12(b) of this chapter.

* * * * *

§ 211.9 [Amended]

■ 35. Section 211.9 is amended by redesignating footnote 5 to paragraph (a) as footnote 1 to paragraph (a).

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 36. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102–242, 105 Stat. 2236 (1991).

■ 37. Section 215.2 is amended by adding paragraph (i)(3) to read as follows:

§ 215.2 Definitions.

* * * * *

(i) * * *

(3) Notwithstanding paragraphs (i)(1) and (2) of this section, for a member bank that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), unimpaired capital and unimpaired surplus equals Tier 1 capital (as defined in § 217.12 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowances for loan and lease losses or adjusted allowance for credit losses, as applicable.

* * * * *

PART 217—CAPITAL ADEQUACY OF BANKING HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 38. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note.

■ 39. Section 217.10 is amended by revising paragraph (a) to read as follows:

§ 217.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A Board-regulated institution must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches Board-regulated institutions or, for Category III Board-regulated institutions, a supplementary leverage ratio of 3 percent.

(2) A qualifying community banking organization (as defined in § 217.12), that is subject to the community bank leverage ratio framework (as defined § 217.12), is considered to have met the minimum capital requirements in this paragraph (a) of this section.

* * * * *

■ 40. Section 217.12 is added as to read as follows:

§ 217.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 217.10, the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means a Board-regulated institution that is not an advanced approaches Board-regulated institution and that satisfies all of the following criteria:

(i) Has a leverage ratio of greater than 9 percent;

(ii) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to the Call Report or to Form FR Y–9C, as applicable, as of the end of the most recent calendar quarter;

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets,

each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to the Call Report or to Form FR Y–9C, as applicable;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures; and

(iv) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to the Call Report or to Form FR Y–9C, as applicable, of 5 percent or less of the Board-regulated institution's total consolidated assets, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the applicable reporting requirements of its Call Report or of its Form FR Y–9C, as applicable.

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 217.10(a)(1) in its Call Report or its Form FR Y–9C, as applicable, or by otherwise providing the information to the Board.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 217.10(a)(1) immediately.

(b) *Calculation of the leverage ratio.* A qualifying community banking organization's leverage ratio is calculated in accordance with § 217.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 217.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 217.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements.* (1) Except as provided in paragraphs (c)(5) and (6) of this section, if an Board-regulated institution ceases to meet the definition of a qualifying community banking organization, the Board-regulated institution has two reporting periods under its Call Report or Form FR Y–9C, as applicable (grace period) either to satisfy the requirements to be a qualifying community banking organization or to comply with § 217.10(a)(1) and report the required capital measures under § 217.10(a)(1) on its Call Report or its Form FR Y–9C, as applicable.

(2) The grace period begins as of the end of the calendar quarter in which the Board-regulated institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the Board-regulated institution continues to be treated as a qualifying community banking organization for the purpose of this part and must continue calculating and reporting its leverage ratio under this section unless the Board-regulated institution has opted out of using the community bank leverage ratio framework under paragraph (a)(3) of this section.

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements under § 217.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1)(i)(A) through (D) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, a Board-regulated institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such a Board-regulated institution must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, a Board-regulated institution that has a leverage ratio of 8 percent or less does not have a grace period and must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

■ 41. Section 217.22 is amended by revising paragraph (f) to read as follows:

§ 217.22 Regulatory capital adjustments and deductions.

* * * * *

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the Board-regulated institution must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital. Notwithstanding any other provision of this section, a qualifying community banking organization (as defined in § 217.12) that has elected to use the community bank leverage ratio framework pursuant to § 217.12 is not required to deduct any shortfall of tier 2 capital from its additional tier 1 capital or common equity tier 1 capital.

* * * * *

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 42. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), 1468(a), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

■ 43. Section 223.3 is amended by adding paragraph (d)(4) to read as follows:

§ 223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

* * * * *

(d) * * *

(4) Notwithstanding paragraphs (d)(1) through (3) of this section, for a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), capital stock and surplus equals tier 1 capital (as defined in § 217.12 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowances for loan and lease losses or adjusted allowance for credit losses, as applicable.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 44. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 45. Section 225.2 is amended by revising paragraph (h), redesignating footnote 2 to paragraph (r)(1) as footnote 1 to paragraph (r)(1), and adding paragraph (r)(4).

The revision and addition read as follows:

§ 225.2 Definitions.

* * * * *

(h) *Lead insured depository institution* means the largest insured depository institution controlled by the bank holding company as of the quarter ending immediately prior to the proposed filing, based on a comparison of the average total risk-weighted assets controlled during the previous 12-month period be each insured depository institution subsidiary of the holding company. For purposes of this paragraph (h), for a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), average total risk-weighted assets equal the qualifying community banking organization's average total consolidated assets (as used in § 217.12 of this chapter).

* * * * *

(r) * * *

(4) Notwithstanding paragraphs (r)(1) through (3) of this section:

(i) A bank holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) is well capitalized if it satisfies the requirements of paragraph (r)(1)(iii) of this section.

(ii) A depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) is well capitalized.

* * * * *

■ 46. Section 225.14 is amended by:

■ a. Redesignating footnote 3 to paragraph (a)(1)(ii) as footnote 1 to paragraph (a)(1)(ii);

■ b. Revising paragraphs (a)(1)(v)(A), (a)(1)(vii), and (c)(6)(i)(A) and (B); and

■ c. Adding paragraphs (c)(6)(iii) and (f).

The revisions and additions read as follows:

§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.

(a) * * *

(1) * * *

(v)(A) If the bank holding company is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), and:

(*1*) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction; or

(*2*) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

(B) If the bank holding company is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* leverage ratio (as calculated under § 217.12 of this chapter) for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction;

* * * * *

(vii)(A) For each insured depository institution (that is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a *pro forma* basis; and

* * * * *

(c) * * *

(6) * * *

(i) * * *

(A) *Limited growth.* Except as provided in paragraphs (c)(6)(ii) and (iii) of this section, the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes paragraph (c)(6) of this section, *other qualifying transactions* means any transaction approved under this section or § 225.23 during the 12 months prior to filing the notice under this section; and

(B) *Individual size limitation.* Except as provided in paragraph (c)(6)(iii) of this section, the total risk-weighted assets to be acquired do not exceed $7.5 billion;

* * * * *

(iii) *Qualifying community banking organizations.* Paragraphs (c)(6)(i)(A)

and (B) of this section shall not apply if:

(A) The acquiring bank holding company is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter);

(B) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as used in § 217.12 of this chapter) of the acquiring bank holding company as last reported to the Board; and

(C) The total assets to be acquired do not exceed $7.5 billion;

* * * * *

(f) *Qualifying community banking organizations.* For purposes of this section, a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) controls total risk-weighted assets equal to the qualifying community banking organization's average total consolidated assets (as used in § 217.12 of this chapter) as last reported to its primary banking supervisor.

■ 47. Section 225.22 is amended by adding paragraph (d)(8)(vi) to read as follows:

§ 225.22 Exempt nonbanking activities and acquisitions.

* * * * *

(d) * * *

(8) * * *

(vi) *Qualifying community banking organizations.* For purposes of paragraph (d)(8)(ii) of this section, a lending company or industrial bank that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), or is a subsidiary of such a qualifying community banking organization, has risk-weighted assets equal to:

(A) Its average total consolidated assets (as used in § 217.12 of this chapter) as most recently reported to its primary banking supervisor (as defined in § 225.14(d)(5)); or

(B) Its total assets, if the company or industrial bank does not report such average total consolidated assets.

* * * * *

■ 48. Section 225.23 is amended by:

■ a. Redesignating footnote 2 to paragraph (a)(1) as footnote 1 to paragraph (a)(1);

■ b. Revising paragraphs (a)(1)(iii) and (c)(5)(i); and

■ c. Adding paragraphs (c)(5)(iii) and (e).

The revisions and additions read as follows:

§ 225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies.

(a) * * *

(1) * * *

(iii) If the proposal involves an acquisition of a going concern:

(A) If the acquiring bank holding company is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter):

(*1*) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired; or

(*2*) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired;

(B) If the acquiring bank holding company is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), an abbreviated consolidated *pro forma* balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* leverage ratio for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(C) For each insured depository institution (that is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(D) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a *pro forma* basis;

* * * * *

(c) * * *

(5) * * *

(i) *In general*—(A) *Limited growth.* Except as provided in paragraphs (c)(5)(ii) and (iii) of this section, the sum of aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of paragraph (c)(5) of this section, ''other qualifying transactions'' means any transaction approved under this section or § 225.14 during the 12 months prior to filing the notice under this section;

(B) *Consideration paid.* Except as provided in paragraph (c)(5)(iii) of this section, the gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company; and

(C) *Individual size limitation.* Except as provided in paragraph (c)(5)(iii) of this section, the total risk-weighted assets to be acquired do not exceed $7.5 billion;

* * * * *

(iii) *Qualifying community banking organizations.* Paragraphs (c)(5)(i)(A) through (C) of this section shall not apply if:

(A) The acquiring bank holding company is a qualifying community

banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter); and

(B) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as used in § 217.12 of this chapter) of the acquiring bank holding company as last reported to the Board;

(C) The gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) of the acquiring bank holding company; and

(D) The total assets to be acquired do not exceed $7.5 billion;

* * * * *

(e) *Qualifying community banking organizations.* For purposes of this section, a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) controls total risk-weighted assets equal to the qualifying community banking organization's average total consolidated assets (as used in § 217.12 of this chapter) as last reported to its primary banking supervisor.

■ 49. Section 225.24 is amended by revising paragraphs (a)(2)(iv)(B) and (a)(2)(vi) to read as follows:

§ 225.24 Procedures for other nonbanking proposals.

(a) * * *

(2) * * *

(iv) * * *

(B) Consolidated *pro forma* risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter (or, in the case of a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), consolidated *pro forma* leverage ratio calculations under § 217.12 of this chapter for the acquiring bank holding company as of the most recent quarter); and

* * * * *

(vi)(A) For each insured depository institution (that is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a *pro forma* basis;

* * * * *

■ 50. Section 225.87 is amended by adding paragraph (b)(4)(iv) to read as follows:

§ 225.87 Is notice to the Board required after engaging in a financial activity?

* * * * *

(b) * * *

(4) * * *

(iv) For purposes of this paragraph (b)(4), a financial holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) calculates its Tier 1 capital (as defined in § 217.2 of this chapter) in accordance with § 217.12(b) of this chapter.

■ 51. Section 225.174 is amended by adding paragraph (d) to read as follows:

§ 225.174 What aggregate thresholds apply to merchant banking investments?

* * * * *

(d) *Qualifying community banking organizations.* For purposes of this section, a financial holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) calculates its Tier 1 capital (as defined in § 217.2 of this chapter) in accordance with § 217.12(b) of this chapter.

■ 52. Section 225.175 is amended by adding paragraph (c)(3) to read as follows:

§ 225.175 What risk management, record keeping and reporting policies are required to make merchant banking investments?

* * * * *

(c) * * *

(3) *Qualifying community banking organizations.* For purposes of this paragraph (c), a financial holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) calculates its Tier 1 capital (as defined in § 217.2 of this chapter) in accordance with § 217.12(b) of this chapter.

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 53. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78*l*.

■ 54. Section 238.53 is amended by revising paragraphs (c)(2)(iii)(B) and (c)(2)(v) to read as follows:

§ 238.53 Prescribed services and activities of savings and loan holding companies.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter (or, in the case of a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), consolidated pro forma leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter); and

* * * * *

(v)(A) For each insured depository institution (that is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital, and total capital of the institution on a pro forma basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), whose Tier 1 capital (as defined in § 217.2 of this

chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a pro forma basis;

* * * * *

PART 251—CONCENTRATION LIMIT (REGULATION XX)

■ 55. The authority citation for part 251 continues to read as follows:

Authority: 12 U.S.C. 1818, 1844(b), 1852, 3101 *et seq.*

■ 56. Section 251.3 is amended by revising paragraph (c)(2) and adding paragraph (c)(3) to read as follows:

§ 251.3 Concentration limit.

* * * * *

(c) * * *

(2) *U.S. company not subject to applicable risk-based capital rules.* For a U.S. company that is not subject to applicable risk-based capital rules (other than a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)), consolidated liabilities are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

(3) *Qualifying community banking organizations.* For a U.S. company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), consolidated liabilities are equal to:

(i) Average total consolidated assets (as used in § 217.12 of this chapter) of the company as last reported on the qualifying community banking organization's applicable regulatory filing with the qualifying community banking organization's appropriate Federal banking agency; minus

(ii) The company's tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter).

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 57. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115–174 § 201.

■ 58. Section 324.10 is amended by revising paragraph (a) to read as follows:

§ 324.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) An FDIC-supervised institution must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches FDIC-supervised institutions or for Category III FDIC-regulated institutions, a supplementary leverage ratio of 3 percent.

(vi) For state savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in § 324.12), that is subject to the community bank leverage ratio framework (as defined in § 324.12), is considered to have met the minimum capital requirements in this paragraph (a).

* * * * *

■ 59. Section 324.12 is added to read as follows:

§ 324.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 324.10, the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that satisfies all of the following criteria:

(i) Has a leverage ratio of greater than 9 percent;

(ii) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to the Call Report as of the end of the most recent calendar quarter;

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to the Call Report;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures; and

(iv) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to the Call Report of 5 percent or less of the FDIC-supervised institution's total consolidated assets, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the applicable reporting requirements of its Call Report.

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the

community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 324.10(a)(1) in its Call Report or by otherwise providing the information to the FDIC.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 324.10(a)(1) immediately.

(b) *Calculation of the leverage ratio.* A qualifying community banking organization's leverage ratio is calculated in accordance to § 324.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 324.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 324.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements.* (1) Except as provided in paragraphs (c)(5) and (6) of this section, if an FDIC-supervised institution ceases to meet the definition of a qualifying community banking organization, the FDIC-supervised institution has two reporting periods under its Call Report (grace period) either to satisfy the requirements to be a qualifying community banking organization or to comply with § 324.10(a)(1) and report the required capital measures under § 324.10(a)(1) on its Call Report.

(2) The grace period begins as of the end of the calendar quarter in which the FDIC-supervised institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the FDIC-supervised institution continues to be treated as a qualifying community banking organization for the purpose of this part and must continue calculating and reporting its leverage ratio under this section unless the FDIC-supervised institution has opted out of using the community bank leverage ratio framework under paragraph (a)(3) of this section.

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements under § 324.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1)(i)(A) through (D) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, an FDIC-supervised institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such an FDIC-supervised institution must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, an FDIC-supervised institution that has a leverage ratio of 8 percent or less does not have a grace period and must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

■ 60. Section 324.22 is amended by revising paragraph (f) to read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

* * * * *

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if an FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the FDIC-supervised institution must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital. Notwithstanding any other provision of this section, a qualifying community banking organization (as defined in § 324.12) that has elected to use the community bank leverage ratio framework pursuant to § 324.12 is not required to deduct any shortfall of tier 2 capital from its additional tier 1 capital or common equity tier 1 capital.

* * * * *

■ 61. Section 324.403 is amended by revising paragraphs (a) and (b) to read as follows:

§ 324.403 Capital measures and capital categories.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this subpart H, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches FDIC-supervised institutions, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(2) For a qualifying community banking organization (as defined under § 324.12), that has elected to use the community bank leverage ratio framework (as defined under § 324.12), the leverage ratio calculated in accordance with § 324.12(b) is used to determine the well capitalized capital category under paragraph (b)(1)(i) (A) through (D) of this section.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, an FDIC-supervised institution shall be deemed to be:

(1)(i) ''Well capitalized'' if:

(A) Total Risk-Based Capital Measure: The FDIC-supervised institution has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: The FDIC-supervised institution has a tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: The FDIC-supervised institution has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater; and

(D) The FDIC-supervised institution has a leverage ratio of 5.0 percent or greater; and

(E) The FDIC-supervised institution is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the FDIC pursuant to section 8 of the FDI Act (12 U.S.C. 1818), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act (12 U.S.C. 1831o), or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) Beginning on January 1, 2018 and thereafter, an FDIC-supervised institution that is a subsidiary of a covered BHC will be deemed to be well capitalized if the FDIC-supervised

institution satisfies paragraphs (b)(1)(i)(A) through (E) of this section and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph, a covered BHC means a U.S. top-tier bank holding company with more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Form FR Y–15).

(iii) A qualifying community banking organization, as defined under § 324.12, that has elected to use the community bank leverage ratio framework under § 324.12 shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i)(A) through (D) of this section.

* * * * *

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 62. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1), 1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

■ 63. Section 337.3 is amended by redesignating footnote 3 to paragraph (b) as footnote 1 and revising it to read as follows:

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of insured nonmember banks.

* * * * *

(b) * * *

[1] For the purposes of § 337.3, an insured nonmember bank's capital and unimpaired surplus shall have the same meaning as found in § 215.2(f) of Federal Reserve Board Regulation O (§ 215.2(f) of this chapter). For a qualifying community banking organization (as defined in § 324.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 324.12 of this chapter), capital and unimpaired surplus shall mean the FDIC-supervised institution's tier 1 capital (as defined in § 324.2 of this chapter) plus adjusted allowances for credit losses or allowances for loan and lease losses, as applicable (as defined in § 324.2 of this chapter).

* * * * *

PART 365—REAL ESTATE LENDING STANDARDS

■ 64. The authority citation for part 365 continues to read as follows:

Authority: 12 U.S.C. 1828(o) and 5101 *et seq.*

■ 65. Appendix A to subpart A of part 365 is amended:

■ a. In the first paragraph of the appendix, redesignating footnote 5 as footnote 1;

■ b. Following the heading ''Supervisory Loan-to-Value-Limits'' in the table, by redesignating footnotes 1 and 2 as footnotes 2 and 3; and

■ c. Following the heading ''Loans in Excess of the Supervisory Loan-to-Value-Limits,'' redesignating the footnote 2 as footnote 4 and revising it.

The revision reads as follows:

Appendix A to Subpart A of Part 365—Interagency Guidelines for Real Estate Lending Policies

* * * * *

Loans in Excess of the Supervisory Loan-to-Value-Limits

[4] For state non-member banks and state savings associations, ''total capital'' refers to that term described in § 324.2 of this chapter. For a qualifying community banking organization (as defined in § 324.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 324.12 of this chapter), ''total capital'' refers to the FDIC-supervised institution's tier 1 capital, as defined in § 324.2 of this chapter.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 66. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

■ 67. Section 390.344 is amended by revising the definition of ''Capital'' to read as follows:

§ 390.344 Definitions applicable to capital distributions.

* * * * *

Capital means total capital, as computed under part 324 of this chapter. For a qualifying community banking organization (as defined in § 324.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 324.12 of this chapter), total capital means the FDIC-supervised institution's tier 1 capital, as defined under § 324.2 of this chapter and calculated in accordance with § 324.12(b) of this chapter.

* * * * *

Dated: September 17, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 7, 2019.

E. Misback,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–23472 Filed 11–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2017–0018]

RIN 1557–AE70

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1576]

RIN 7100–AE74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF18

Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996; Revised Effective Date

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule, announcement of effective date, early adoption.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule that permits insured depository institutions and depository institution holding companies not subject to the advanced approaches capital rule to implement certain

provisions of the final rule titled Regulatory Capital: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which was issued by the agencies in July 22, 2019, (Capital Simplifications Final Rule) on January 1, 2020, rather than April 1, 2020, as initially provided. Consistent with this approach, the transitions provisions of the regulatory capital rule are being amended to provide that banking organizations not subject to the advanced approaches capital rule will be permitted to implement the Capital Simplifications Final Rule as of its revised effective date in the quarter beginning January 1, 2020, or to wait until the quarter beginning April 1, 2020.

DATES: This rule is effective January 1, 2020. The effective date for the amendments to 12 CFR 3.21, 3.22, 3.300(b) and (d), 217.21, 217.22, 217.300(b) and (d), 324.21, 324.22, and 324.300(b) and (d) published on July 22, 2019 (84 FR 35234), is changed from April 1, 2020, to January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: David Elkes, Risk Expert, or JungSup Kim, Risk Specialist, Capital and Regulatory Policy (202) 649–6370; or Carl Kaminski, Special Counsel, or Daniel Perez, Senior Attorney, or Rima Kundnani, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan Climent, Manager, (202) 872–7526; or Andrew Willis, Lead Financial Institutions Policy Analyst, (202) 912–4323, Division of Supervision and Regulation; or Jay Schwarz, Special Counsel (202) 452–2970; Gillian Burgess, Senior Counsel (202) 736–5564, or Mark Buresh, Senior Counsel (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) adopted the Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Capital Simplifications Final Rule) to simplify certain aspects of the capital rule.[1] The Capital Simplifications Final Rule is responsive to the agencies' March 2017 report to Congress pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), in which the agencies committed to meaningfully reduce regulatory burden, especially on community banking organizations. The key elements of the Capital Simplifications Final Rule apply solely to banking organizations that are not subject to the advanced approaches capital rule (non-advanced approaches banking organizations). Under the Capital Simplifications Final Rule, non-advanced approaches banking organizations will be subject to simpler regulatory capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of unconsolidated financial institutions than those currently applied. The Capital Simplifications Final Rule also simplifies, for non-advanced approaches banking organizations, the calculation for the amount of capital issued by a consolidated subsidiary of a banking organization and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital.

The simpler capital requirements described above are implemented through the Capital Simplifications Final Rule via amendments to 12 CFR 3.21, 3.22, 3.300, 217.21, 217.22, 217.300(b) and (d), 324.21, 324.22, and 324.300 that were originally effective April 1, 2020. The agencies initially set an effective date of April 1, 2020, for those amendments to the capital rule, in part, to give institutions sufficient time to update their recordkeeping and reporting systems. Subsequent to the publication of the Capital Simplifications Final Rule, the agencies received letters from the banking industry groups seeking the ability to adopt the Capital Simplifications Final Rule earlier than April 1, 2020. After considering these requests, the agencies have determined that allowing non-advanced approaches banking organizations to implement the Capital Simplifications Final Rule in the first quarter of 2020 would be appropriate. Allowing non-advanced approaches banking organizations to implement the Capital Simplifications Final Rule in the first quarter of 2020 would permit banking organizations that have updated their reporting systems to implement the simplifications and obtain regulatory burden relief one quarter earlier than initially provided in the Capital Simplifications Final Rule.

The agencies are adopting this direct final rule to permit non-advanced approaches banking organizations to implement the sections of the Capital Simplifications Final Rule that were originally effective on April 1, 2020, beginning on January 1, 2020. Specifically, the sections in the Capital Simplifications Final Rule that were effective April 1, 2020, under that rule are now effective January 1, 2020. Non-advanced approaches banking organizations can elect whether to implement the changes in the quarter beginning January 1, 2020, or to implement them in the quarter beginning April 1, 2020. The affected sections are those related to mortgage servicing assets, certain deferred tax assets arising from temporary differences, investments in the capital of unconsolidated financial institutions, and the calculation of minority interest and will become mandatory as of April 1, 2020. If a non-advanced approaches banking organization elects to adopt these revisions for the quarter beginning January 1, 2020, it must adopt all of these revisions for that quarter and thereafter. Consistent with the Capital Simplifications Final Rule, the transition provisions adopted by the agencies in November 2017 will cease to apply to non-advanced approaches banking organizations in the quarter in which the firm elects to adopt the these portions of the Capital Simplifications Final Rule.[2] As a result, non-advanced approaches banking organizations may choose to begin implementing the capital treatment under the Capital Simplifications Final Rule for the reporting period ending on March 31, 2020. All non-advanced approaches banking organizations must implement the capital treatment under the Capital Simplifications Final Rule for the reporting period ending on June 30, 2020.

[1] *See* 84 FR 35234 (July 22, 2019).

[2] 82 FR 55309 (Nov. 21, 2017).

Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing this direct final rule without prior notice and the opportunity for public comment and without the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[3] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[4]

As discussed above, this direct final rule addresses requests from banking industry groups to be allowed to comply starting on January 1, 2020, with certain requirements of the Capital Simplifications Final Rule that otherwise were subject to an effective date of April 1, 2020. This direct final rule will allow banking organizations to begin implementing the revised requirements either on January 1, 2020 or April 1, 2020. Non-advanced approaches banking organizations that choose not to implement the revised requirements on January 1, 2020, still will be required to do so beginning April 1, 2020. The agencies initially set an effective date of April 1, 2020, for those amendments to the capital rule, in part, to give institutions sufficient time to update their systems and reporting systems. After the rule was finalized, the agencies received requests to allow banking organizations the option to adopt the rule on January 1, 2020, rather than April 1, 2020, on grounds that early adoption would simplify the reporting requirements for banking organizations whose systems will be in place by January 1, 2020, thereby reducing regulatory burden.

The agencies believe that there is good cause to issue this direct final rule without notice and public procedure because that process would be unnecessary as the agencies recently issued a final rule after providing notice and receiving comment from the public. Specifically, the original administrative record that supports the Capital Simplifications Final Rule is still pertinent and, as a result, a new round of notice and comment on the Capital Simplifications Final Rule is unnecessary. The agencies could have issued the Capital Simplifications Final Rule with the provisions now being issued in the current direct final rule. The agencies believe that the implementation provisions of the current direct final rule are appropriate now given the feedback from the public since issuance of the Capital Simplifications Final Rule. In particular, the public feedback has indicated that many banking organizations would be prepared to implement the Capital Simplifications Final Rule for the quarter beginning January 1, 2020. Further, this final rule (1) relieves burden; (2) does not change any substantive requirements of the Capital Simplifications Final Rule or impose any new mandates on any banking organization; and (3) allows, but does not require, banking organizations to implement the revised requirements in the Capital Simplifications Final Rule earlier than initially provided.

In addition, the agencies believe that there is good cause consistent with the public interest to issue this direct final rule without notice and public procedure. This direct final rule benefits banking organizations subject to the Capital Simplifications Final Rule by allowing them to begin complying with the new requirements in the Capital Simplifications Final Rule one quarter before they become mandatory, thereby simplifying the reporting requirements for those banking organizations whose systems will be in place by January 1, 2020. Notably, this direct final rule does not impose any new requirements or mandatory burdens on any banking organization. Finally, the agencies believe that there is good cause to issue this direct final rule without notice and public procedure since it would be impracticable to request comment given the request for relief is to begin on January 1, 2020.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[5] The agencies find good cause to publish the direct final rule with an immediate effective date because the rule grants relief to banking organizations and because there is good cause for the same reasons set forth above under the discussion of section 553(b)(B) of the APA. Delaying the implementation date would deprive banking organizations that are considering adopting the requirements of the Capital Simplification Final Rule earlier of the ability to make modifications to their reporting prior on their preferred effective date.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[6] requires Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present this direct final rule in a simple and straightforward manner.

C. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OCC, Board, and FDIC have reviewed this direct final rule and determined that it does not introduce a new collection of information pursuant to the PRA.

D. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required.[7] As noted previously, the agencies are issuing this direct final rule without notice and public procedure. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply. Nonetheless, the agencies believe that, with respect to the entities subject to the direct final rule and within each agency's respective jurisdiction, the direct final rule would not have a significant economic impact on a substantial number of small entities.[8]

E. Unfunded Mandates Reform Act of 1995

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that this rule will not result

[3] 5 U.S.C. 553.

[4] 5 U.S.C. 553(b)(B).

[5] 5 U.S.C. 553(d).

[6] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[7] 5 U.S.C. 603 and 604.

[8] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less.

in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this rule.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[9] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[10]

Because the direct final rule would not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of the RCDRIA does not apply. In any event, the direct final rule will take effect on January 1, 2020.

G. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[11] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[12]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[13] As required by the Congressional Review Act, the agencies will submit the direct final rule and other appropriate reports to Congress and the Government Accountability Office for review.

The OMB has determined that the direct final ruleis not a ''major rule'' within the meaning of the Congressional Review Act.[14] As required by the Congressional Review Act, the agencies will submit the direct final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, 12 CFR part 3 is amended as follows.

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.300 is amended by adding paragraph (f) to read as follows:

§ 3.300 Transitions.

* * * * *

(f) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association may apply the treatment under §§ 3.21 and 3.22(c)(2), (5), (6), and (d)(2) applicable to an advanced approaches national bank or Federal savings association during the calendar quarter beginning January 1, 2020. During the quarter beginning January 1, 2020, a national bank or Federal savings association that makes such an election must deduct 80 percent of the amount otherwise required to be deducted under § 3.22(d)(2) and must apply a 100 percent risk weight to assets not deducted under § 3.22(d)(2). In addition, during the quarter beginning January 1, 2020, a national bank or Federal savings association that makes such an election must include in its regulatory capital 20 percent of any minority interest that exceeds the amount of minority interest includable in regulatory capital under § 3.21 as it applies to an advanced approaches national bank or Federal savings association. A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must apply the treatment under §§ 3.21 and 3.22 applicable to a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association beginning April 1, 2020, and thereafter.

* * * * *

Board of Governors of the Federal Reserve System

For the reasons set out in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR part 217 as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 3. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 4. Section 217.300 is amended by adding paragraph (g) to read as follows:

§ 217.300 Transitions.

* * * * *

(g) A Board-regulated institution that is not an advanced approaches Board-regulated institution may apply the treatment under §§ 217.21 and 217.22(c)(2), (5), (6), and (d)(2) applicable to an advanced approaches Board-regulated institution during the calendar quarter beginning January 1, 2020. During the quarter beginning January 1, 2020, a Board-regulated institution that makes such an election must deduct 80 percent of the amount otherwise required to be deducted under § 217.22(d)(2) and must apply a

[9] 12 U.S.C. 4802(a).

[10] 12 U.S.C. 4802.

[11] 5 U.S.C. 801 *et seq.*

[12] 5 U.S.C. 801(a)(3).

[13] 5 U.S.C. 804(2).

[14] 5 U.S.C. 801 *et seq.*

100 percent risk weight to assets not deducted under § 217.22(d)(2). In addition, during the quarter beginning January 1, 2020, a Board-regulated institution that makes such an election must include in its regulatory capital 20 percent of any minority interest that exceeds the amount of minority interest includable in regulatory capital under § 217.21 as it applies to an advanced approaches Board-regulated institution. A Board-regulated institution that is not an advanced approaches Board-regulated institution must apply the treatment under §§ 217.21 and 217.22 applicable to a Board-regulated institution that is not an advanced approaches Board-regulated institution beginning April 1, 2020, and thereafter.

* * * * *

12 CFR Part 324

FEDERAL DEPOSIT INSURANCE CORPORATION

For the reasons set out in the joint preamble, 12 CFR part 324 is amended as follows.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 5. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 6. Effective January 1, 2020, § 324.300 is amended by adding paragraph (f) to read as follows:

§ 324.300 Transitions.

* * * * *

(f) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution may apply the treatment under §§ 324.21 and 324.22(c)(2), (5), (6), and (d)(2) applicable to an advanced approaches FDIC-supervised institution during the calendar quarter beginning January 1, 2020. During the quarter beginning January 1, 2020, an FDIC-supervised institution that makes such an election must deduct 80 percent of the amount otherwise required to be deducted under § 324.22(d)(2) and must apply a 100 percent risk weight to assets not deducted under § 324.22(d)(2). In addition, during the quarter beginning January 1, 2020, an FDIC-supervised institution that makes such an election must include in its regulatory capital 20 percent of any minority interest that exceeds the amount of minority interest includable in regulatory capital under § 324.21 as it applies to an advanced approaches FDIC-supervised institution. An FDIC-supervised institution that is not an advanced approaches institution must apply the treatment under §§ 324.21 and 324.22 applicable to an FDIC-supervised institution that is a non-advanced approaches institution beginning April 1, 2020, and thereafter.

* * * * *

Dated: September 17, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 16, 2019

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–23467 Filed 11–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL REGISTER

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No. 219 November 13, 2019

Part IV

The President

Proclamation 9963—Veterans Day, 2019

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Wednesday, November 13, 2019

Presidential Documents

Title 3—

The President

Proclamation 9963 of November 7, 2019

Veterans Day, 2019

By the President of the United States of America

A Proclamation

On November 11, Americans commemorate the service, sacrifice, and immeasurable contributions of our Nation's veterans who have proudly worn our country's uniform to defend and preserve our precious liberty. As we celebrate Veterans Day, we pause to recognize the brave men and women who have fearlessly and faithfully worked to defend the United States and our freedom. Their devotion to duty and patriotism deserves the respect and admiration of our grateful Nation each and every day. We are forever thankful for the many heroes among us who have bravely fought around the world to protect us all.

As Americans, it is our sacred duty to care for and support those who have shown courage and conviction in selfless service to our country. Safeguarding the health and welfare of our Nation's veterans has been a top priority for my Administration. Last year, I was proud to sign into law the VA MISSION Act, the most significant reform to the Department of Veterans Affairs (VA) in more than 50 years. This historic legislation allows veterans to seek timely care from trusted providers within their communities. In 2018, I also signed the largest funding bill for the VA in history, securing $8.6 billion for veterans' mental health services, $400 million for opioid abuse prevention, and $270 million for rural veterans' health initiatives. Further, I recently signed a Presidential Memorandum directing the Department of Education to discharge some types of Federal student loans owed by totally and permanently disabled veterans.

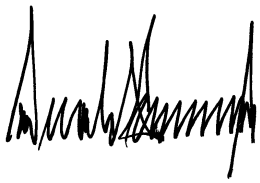
We also must not forget or forsake our veterans in times of distress as they transition to civilian life. That is why I signed an Executive Order in March addressing veteran suicide, a solemn crisis that requires urgent national action. Through this step, we launched the President's Roadmap to Empower Veterans and End a National Tragedy of Suicide (PREVENTS), which is bringing together all levels of government and the private sector to improve the quality of life for our veterans, identify and assist veterans in need, and turn the tide on this tragic crisis.

Time after time, throughout the history of our Republic, veterans have defended our way of life with integrity, dedication, and distinction. In respectful recognition of the contributions our service members have made to advance peace and freedom around the world, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor our Nation's veterans. As Commander in Chief of our heroic Armed Forces, I humbly thank our veterans and their families for their willingness to answer the call of duty and for their unwavering love of country. Today, we pledge always to fight for those who have fought for us, our veterans, who represent the best of America. They deserve our prayers, our unending support, and our eternal gratitude.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim November 11, 2019, as Veterans Day. I encourage all Americans to recognize the fortitude and sacrifice of our veterans through public ceremonies and private thoughts and prayers. I call upon Federal, State, and local officials to display the flag of the United

States and to participate in patriotic activities in their communities. I call on all Americans, including civic and fraternal organizations, places of worship, schools, and communities to support this day with commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2019–24793
Filed 11–12–19; 11:15 am]
Billing code 3295–F0–P

FEDERAL REGISTER

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Part V

The President

Notice of November 12, 2019—Continuation of the National Emergency With Respect to Iran

Notice of November 12, 2019—Continuation of the National Emergency With Respect to the Proliferation of Weapons of Mass Destruction

Federal Register
Vol. 84, No. 219
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Presidential Documents

Title 3—

The President

Notice of November 12, 2019

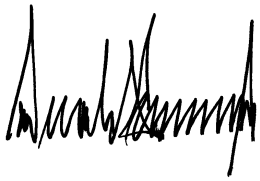
Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran.

Our relations with Iran have not yet normalized, and the process of implementing the agreements with Iran, dated January 19, 1981, is ongoing. For this reason, the national emergency declared on November 14, 1979, and the measures adopted on that date to deal with that emergency, must continue in effect beyond November 14, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12170.

The emergency declared in Executive Order 12170 is distinct from the emergency declared in Executive Order 12957 on March 15, 1995. This renewal, therefore, is distinct from the emergency renewal of March 12, 2019.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 12, 2019.

[FR Doc. 2019–24806
Filed 11–12–19; 11:15 am]
Billing code 3295–F0–P

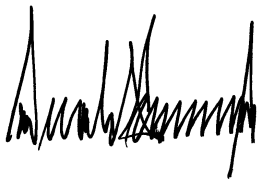
Presidential Documents

Notice of November 12, 2019

Continuation of the National Emergency With Respect to the Proliferation of Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, by Executive Order 13094, the President amended Executive Order 12938 to respond more effectively to the worldwide threat of proliferation activities related to weapons of mass destruction. On June 28, 2005, by Executive Order 13382, the President, among other things, further amended Executive Order 12938 to improve our ability to combat proliferation activities related to weapons of mass destruction. The proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 12938 with respect to the proliferation of weapons of mass destruction and the means of delivering such weapons must continue beyond November 14, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended by Executive Orders 13094 and 13382.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,

November 12, 2019.

[FR Doc. 2019–24809

Filed 11–12–19; 11:15 am]

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